

APPENDIX F

RULES FOR ARBITRATION

1. Interpretation :

In these Rules the following words shall have the following meanings:

- (i) "Chamber" means the Ceylon Chamber of Commerce.
- (ii) "Committee" means the Committee of the Chamber.
- (iii) "Sub-Committee" means the Arbitration Sub-Committee of the Committee of the Chamber as provided for hereinafter.
- (iv) "Board" means the Board of Arbitration hereby constituted.
- (v) "Bench" means the Arbitrator or Arbitrators appointed for determining a particular dispute or difference.
- (vi) "Court" means a Civil Court having jurisdiction to decide questions forming the subject matter of a reference to arbitration if the same had been the subject matter of a suit in that Court.
- (vii) "Reference" means a reference to arbitration under any agreement to refer a difference or dispute, present or future, to arbitration under the rules of the Board.
- (viii) "Party" and "Parties" includes any individual, firm or company.
- (ix) "Foreign country" means any country outside Ceylon.
- (x) "Registrar" means such person as the Sub-committee may appoint as Registrar and includes persons appointed as Additional or Deputy Registrar who are to perform the duties provided for hereinafter.
- (xi) "Arbitration Act" means the Arbitration Act No. 11 of 1995.
- (xii) "High Court" means the High Court of Sri Lanka defined in section 50 of the Arbitration Act.
- (xiii) "Proctor or Solicitor" shall mean and include an Attorney-at-Law.

2. Objects:

The objects of these Rules shall be the determination settlement or adjustment of disputes or differences relating to trade, business, or manufacture, or any matter in respect of which there exists a written contract or agreement arising;

- (a) between a party or the agent of a party resident and carrying on business in Ceylon and a party in a foreign country who agree or have agreed in writing to submit such disputes or differences to arbitration under these Rules.
- (b) between parties resident in Ceylon who agree or have agreed in writing to submit such disputes or differences to arbitration under these Rules.
- (c) between parties resident in foreign countries who agree or have agreed in writing to submit such disputes or differences to arbitration under these Rules.

3. Constitution of the Board:

- (i) The Board shall consist of such persons as shall be appointed from time to time by the Committee.
- (ii) The Sub-Committee shall prepare or cause to be prepared by the Registrar a list of the members of the Board which shall be kept by the Registrar and be open to inspection by parties to any dispute or difference or their agents or proctors or solicitors, or otherwise at the discretion of the Registrar.

4. The Arbitration Sub-Committee:

- (i) The Committee shall appoint annually an Arbitration Sub-Committee consisting of the Chairman, the Vice-Chairman, and the Deputy-Chairman of the Chamber who shall be ex-officio members and three other members of the Committee who shall be elected by the Committee from amongst themselves. The Sub-Committee shall hold office until the next annual appointment of a Sub-Committee is made by the Committee. The Committee shall have the power to fill any vacancies occurring among the members of the Sub-Committee elected by the Committee. The quorum for a meeting of the Sub-Committee shall be four.
- (ii) The Sub-Committee shall supervise the work of the Registrar.

5. **The Registrar:**

- (i) The Registrar shall be an Officer of the Chamber and shall be the Chief Administrative Officer of the Board. He shall receive applications to the Board and keep a register thereof and shall also receive payment of fees and costs, keep an up to date list of members of the Board, appoint as hereinafter provided an Arbitrator or Arbitrators to constitute the Bench to deal with any dispute, receive all applications made to the Bench by parties and convey to them the orders and directions of the Bench, keep a register of awards made by every Bench, and such other Books and memoranda as the Sub-Committee shall from time to time direct and generally carry out the directions of a Bench and take all such other steps as may be necessary to assist every Bench in its functions.
- (ii) The Sub-committee may appoint an additional Registrar or a Deputy Registrar from among Officers of the Chamber who shall during the absence of the Registrar perform the duties and functions of the Registrar under the Rules.

6. **Constitution of a Bench:**

- (i) In every case where a dispute or difference within the meaning of the Arbitration Act has arisen between parties, who have agreed that such dispute or difference shall be referred for decision by arbitration under these Rules, such dispute or difference, upon application made by either party to the Registrar, shall be adjudicated by a Bench of one arbitrator if the parties agree on a single Arbitrator or three Arbitrators appointed under these Rules. The application for arbitration shall be made in accordance with Rule 9.
- (ii) Upon receipt of such application, the Registrar unless the parties have agreed on a single Arbitrator from among the members of the Board shall by notice sent to the parties request them to appoint one Arbitrator each from among members of the Board within 30 days of such notice.
- (iii) The Arbitrators appointed as aforesaid shall appoint the third Arbitrator from among members of the Board within 30 days of a notice sent to them by the Registrar requesting them to make such appointment.
- (iv) If a party fails to appoint an Arbitrator under clause (ii) of this Rule or if the Arbitrators fail to appoint a third Arbitrator under clause (iii) of this Rule, the appointment of an Arbitrator from among members of the Board shall be made by the High Court upon the application of a party.
- (v) The single Arbitrator or the three Arbitrators appointed as aforesaid shall constitute the Bench which shall adjudicate such dispute of difference, and in the case of a Bench of three Arbitrators the Chairman of the Bench shall be the third Arbitrator appointed under clause (iii) or (iv) of this Rule.
- (vi) In the event of any Court referring any matter before it for arbitration under these Rules, parties concerned shall be bound by these Rules subject however to any overriding provisions of the Arbitration Act or any other law.

7. The consent to act as an Arbitrator shall be obtained by the Registrar from every person appointed as an Arbitrator appointed under these Rules and no Arbitrator shall be entitled to function as such without furnishing that consent.

- 8. (i) The mandate of an Arbitrator appointed under these Rules shall terminate if such Arbitrator becomes unable to perform the functions of that office or for any other reason fails to act without undue delay, or dies or withdraws from office, or the parties agree on the termination.
- (ii) Where an Arbitrator unduly delays in discharging the duties of his office, the High Court may upon the application of a party remove such Arbitrator and appoint in his place another Arbitrator from among members of the Board.
- (iii) Where the mandate of an Arbitrator terminates under these Rules, the Registrar shall forthwith take steps for the appointment of a substitute Arbitrator provided that such appointment shall be made in the manner applicable to the appointment of the Arbitrator, whose mandate has been terminated.
- (iv) Where a Bench is reconstituted upon the termination of the mandate of an Arbitrator, proceedings shall not be had de novo unless the parties otherwise agree.

9. The party applying for arbitration shall, with the application, submit to the Registrar in quadruplicate a statement giving:-

- (i) the names in full of the parties to the dispute or difference and their addresses,
- (ii) particulars of the dispute or difference that has arisen,
- (iii) the original or a copy duly certified of the instrument containing the agreement for submission to arbitration of any dispute or difference arising, or a certified copy of the order of a Court referring a matter to arbitration,

Feb. 1997 (iv) copies of such other documents as are material and relied on.

10. On receipt of the application and the statement the Registrar shall, with the notice referred to in Rule 6 (iii) to nominate an Arbitrator, send to the other party to the dispute or difference a copy of the said statement and call upon such other party to furnish the Registrar within a date specified with a rejoinder in quadruplicate setting out his or their case which rejoinder shall be accompanied by documents and information material to the matter.
11. On receipt of the rejoinder from the other party the Registrar shall forward a copy of such rejoinder to the party who applied for arbitration and call upon him to submit within a specified date any further statement in answer to the rejoinder with documents or information material thereto.
12. All such or other notifications and communications by the Registrar shall be deemed to have been duly given or made if delivered by hand or sent by registered post to the addresses furnished by the parties.
13. The Registrar shall place all such statements, rejoinders, documents and information received from the parties to the dispute or difference before the Bench constituted under Rule 6 (iii) and the Bench shall be deemed to have entered on the reference on being furnished with such statements, rejoinders, documents and information.
14. When parties have agreed to submit a dispute or difference to arbitration under these Rules, they shall be bound to submit to such arbitration any such dispute and the Registrar shall constitute a Bench under Rule 6 upon the application of either party to the dispute to difference.
15. No award shall be made by the Bench unless the case of the party applying for arbitration has been brought to the notice of the other party and until after the lapse of such specified time within which the parties have been called upon to submit statements under Rule 10 and 11. If for any reason any party cannot be served personally or by registered post, with any notice required, then such notice shall be given by the Registrar in such other manner as he may consider sufficient and the party concerned shall be deemed to have been duly notified.
16. All applications which the parties desire to make to the Bench and all notices to be given to the parties before or in the course of arbitration or otherwise in relation thereto, shall be made through and sent by the Registrar who shall communicate the orders and directions of the Bench to the parties.
17. The parties shall do all acts necessary to enable the Bench to make a just award and shall not wilfully do or cause or allow to be done any act to delay or to prevent the Bench from making an award, and if either party shall do or cause or allow to be done any such act that party shall pay the other party such costs as the Bench may deem reasonable.
18. A dispute or difference shall normally be decided by the Bench on the written statements of the parties and the documents accompanying such statements but the Bench shall have the power to call for any other documents and, if the Bench thinks fit, to appoint a time and place for the hearing of the reference and to hear any oral evidence.
19. Unless otherwise agreed in writing by the parties to the arbitration agreement, a party to an arbitration agreement-
 - (a) may appear before the Bench personally or, where the party is a body of persons, whether corporate or unincorporate, by an officer, employee or agent of that body; and
 - (b) may be represented by an Attorney-at-Law if the party so desires.
20. The Bench may at its discretion, at any time before making its award and at the expense of the parties concerned, refer to, act upon, or adopt the advice or recommendation, of any person having special knowledge relating to the particular industry, commodity, or branch of trade concerned in the reference, or of any expert, or of any qualified Accountant, and may also, at the like expense of the parties, consult and adopt the advice of a Proctor, Solicitor or Counsel on any question of law, evidence, practice or procedure arising in the course of the reference. The Bench may also in its discretion, and at the expense of the parties concerned, appoint any expert, Accountant, or Lawyer to sit with the Bench as an assessor. The Bench in its discretion shall be entitled to fix the fees to be paid to any person under this Rule and to decide by which party to the arbitration such fees shall be paid.

21. The parties to the reference and any witness on their behalf shall, subject to the provisions of any law for the time being in force :-
- (i) submit to be examined by the Bench in relation to the matters in dispute;
 - (ii) produce before the Bench all books, deeds, papers, accounts, writings and other documents in their possession or power respectively, which may be required by the Bench;
 - (iii) comply with the requirements of the Bench as to the production of samples or other articles or things; and
 - (iv) generally do all other things which during the reference the Bench may require.
22. **The Bench may;**
- (i) on a reference by a Court, state a special case for the opinion of the Court or give its award in the form of a special case for the opinion of the Court;
 - (ii) make any award conditional;
 - (iii) correct in any award any clerical mistake or error arising from or incidental to any slip or omission;
 - (iv) administer to the parties to the arbitration any interrogatories which the Bench may consider necessary and determine the time within which the same should be answered by affidavit.
23. Where a party on a reference by a Court desires any question arising in any proceedings before the Bench referred for the opinion of the Court in the form of a special case, he shall apply in writing to the Registrar and with such application shall pay a fee to be prescribed by the Sub-Committee from time to time. If the Bench accedes to such request, the party applying shall be liable to pay all costs, charges and expenses that may be incurred of and incidental to such proceeding and shall make such deposit on account thereof with the Registrar as the Bench may direct.
24. The Bench shall have discretion to retain any documents produced before it in any proceedings or may direct that such documents or any of them be returned to the parties by whom they were produced on such terms and conditions, if any, as the Bench may determine.
25. (i) The Bench may proceed with a reference notwithstanding any failure to comply with any of the directions of the Bench and may also proceed with a reference in the absence of either or any of the parties to dispute or difference who, being entitled to appear under Rule 18 or 19 refuse or fail to attend at the time and place appointed.
- (ii) Notwithstanding anything in these Rules, it shall be competent for an Arbitrator or Arbitrators in any case where all the parties so agree or in cases where the only question in dispute is whether merchandise is equal in quality or condition to a sample, and/or in accordance with the contract to make his or their award after a comparison of the sample and the bulk or of the contract and the goods delivered and a perusal of the relative documents, without hearing viva voce evidence or the arguments of the parties or their agents.
- (iii) The law applicable to the substance of any dispute shall be determined by the Bench in accordance with the provisions of section 24 of the Arbitration Act.

Awards:

26. The award of the majority shall prevail and be taken as the decision of the Bench.
27. The Bench shall make its award in writing within four months after entering on the reference or within such extended time having regard to the circumstances of any particular case as the Bench may decide or, in the case of a reference to arbitration through the Court, within such time as the Court may allow.
28. The Bench may make an interim award, and may, by any award order and determine what shall be done by either or any of the parties in respect of the matters referred.
29. The form, content, signing and delivery of every award shall conform to provisions of section 25 of the Arbitration Act.
30. A party to an Arbitration agreement pursuant to which an award has been made may apply to the High Court for the enforcement of the award, in accordance with the provisions of Part VII of the Arbitration Act.
31. Subject to his or its rights under section 32 of the Arbitration Act, any party to an arbitration agreement shall abide by, and obey the award which shall be binding on such party or his legal representatives or its successors.

32. Any reference made by the court and the award on any application including costs, charges, fees and other expenses shall be at the discretion of the Bench, which may direct to whom and by whom, and in what manner and in what proportion such costs shall be borne or paid, and may determine the amount of costs to be so paid or any party thereof, and may award costs to be paid as between Attorney-at-Law and client, in such sum of money as the Bench may fix.

Fees :

33. Subject to any limitations imposed by the next following Rule, the Bench shall be entitled to allow fees and expenses of witnesses, expenses connected with the selection and carriage of samples and examination of goods, Licensed Measurers' Department charges, conveyance hire, cost of legal or technical advice, or proceedings in respect of any matter arising out of the arbitration incurred by the Bench, and any other incidental expenses and charges in connection with or arising out of the reference or award as the Bench shall in its absolute discretion think fit and determine.
34. (i) The Arbitration Sub-Committee shall from time to time fix the fees, costs and charges incidental to the reference and the award, including the submission fee payable by the party applying for arbitration with his application. All such fees, costs and charges shall be pre-paid and all payments shall be made to the Registrar.
- (ii) A list of such fees shall be kept by the Registrar and be open to inspection by the parties to any dispute or difference or their Agents or Proctors or Solicitors or otherwise at the discretion of the Registrar.
- (iii) Stamp Duties: Stamp duties are to be paid in accordance with the scale of stamp duties for the time being imposed by law.
- (iv) No party is entitled to copies of proceedings before Arbitrators. In a case where the Registrar is required to make copies of cases or exhibits thereto submitted by either party for the purpose of sending such copies to the other party, then a charge, as fixed by the Registrar, shall be paid by the party requiring such copies.

35. Indemnity of Arbitrators :

No party shall bring or prosecute any suit or proceedings whatsoever against the Bench, or any member thereof, for or in respect of any matter or thing done or purporting to be done under these Rules, nor bring any suit or proceeding save for the enforcement of an award against the other party.