

Règles de l'arbitrage

Son altesse royale le Prince Aga Khan Shia Imami Ismaili pour le Canada

1. TITLE, DEFINITIONS AND INTERPRETATION

1.1 These Rules shall be known as The Rules for Arbitration in Canada".

1.2 In these Rules, the words and expressions set out below shall have the meanings set out opposite them unless the contrary intention appears or the context otherwise requires:

"Appeal Board" the National Board or the International Board as the context may require

"Regional Board" the Regional Conciliation and Arbitration "National Board" Boards or the National Conciliation and "International Board" or "Board" Arbitration Board or the International Arbitration Board (as the context may require)

"Arbitration Panel" one or more persons appointed in accordance with Rule 4 to act as arbitrators

"Award" or "Partial Award" or a decision of the Arbitration Panel on any "Interim Award" substantive issue placed before it

"Claimant" the person making the claim which is the subject of arbitration

"Constitution" the Ismaili Constitution

"Respondent" the person defending the claim which is the subject of arbitration

1.3 In these Rules unless the contrary intention appears:

- (c) words importing the masculine gender include the feminine;
- (d) words importing the feminine gender include the masculine;
- (e) words in the singular include the plural;
- (f) words in the plural include the singular;
- (g) references to a person include a body of persons corporate or unincorporate; and
- (h) references to the Arbitration Board shall include the Arbitration Panel in respect of an arbitration which has commenced.

1.4 Headings are inserted in these Rules for ease of reference only and do not form part of the Rules for the purpose of construction.

1.5 The failure at any time by the Arbitration Board to require performance by any person of any provision of these Rules shall in no way affect the right of the Arbitration Board to require such performance, and any waiver in respect of any person of any breach of any of these provisions shall not be construed as a waiver of any continuing or succeeding breach of that provision.

2. APPLICABILITY AND LAW OF ARBITRATION

2.1 These Rules shall apply to every arbitration of which the Arbitration Board is seized subject only to the overriding effect of any applicable laws of the jurisdiction where the arbitration takes place to the extent of any inconsistency.

2.2 The Arbitration Board shall apply such laws to the dispute as shall be applicable having regard to the rules on the conflict of laws.

2.3 Subject to the Rule 2.2, the Arbitration Board shall make its awards in accordance with the terms of any contract between the parties and shall have due regard to the relevant usages of trade or custom.

2.4 The Chairman of the Arbitration Board or the Arbitration Panel (if already constituted) shall determine whether the Arbitration Board has jurisdiction to hear and decide any application which may be made to it. Any such question shall (unless the Arbitration Panel otherwise directs) be raised no later than the closure of pleadings as described below.

2.5 The jurisdiction of the Arbitration Board or the Arbitration Panel (if already constituted) shall not be invalidated by reason only that the contract containing the agreement to submit to arbitration is declared by the Arbitration Award to null and void.

3. COMMENCEMENT OF ARBITRATION

3.1 Any person may apply to the Arbitration Board to submit for arbitration any dispute to which he is a party .Any such application shall be in writing and shall state:

(a) the name and address of every other party to the dispute;

(b) brief details of the dispute;

(c) whether all parties have agreed to submit the dispute to the Arbitration Board, and if so, supply a copy of such agreement.

3.2 The Arbitration Board shall proceed with the application only if satisfied that it discloses a cause of action over which the Arbitration Board would have jurisdiction if all the parties agreed to submit the matter for arbitration to the Arbitration Board. If it is not so satisfied, it shall reject the application and notify the applicant accordingly.

3.3 If it has previously been agreed in writing between the parties to the dispute to submit the matter to the Arbitration Board for arbitration and the Arbitration Board is satisfied as to the validity of that agreement, the Arbitration Board shall send a copy of the application to the other parties to the dispute.

3.4 If it has not previously been agreed in writing between the parties to the dispute to submit the matter to the Arbitration Board for arbitration:

- (a) the Arbitration Board shall send a copy of the application for arbitration to the 5 other parties to the dispute;
- (b) a copy of the application shall be accompanied by a submission agreement completed in all material respects in connection with the proposed arbitration in the form set out in the First Schedule whereby all the parties to the dispute would agree to submit the dispute for arbitration to the Arbitration Board in accordance with these Rules;
- (c) a copy of the submission agreement shall simultaneously be sent to the person who submitted the dispute for arbitration for execution by him; and
- (d) failing return of the duly executed submission agreement by every party to the dispute within 21 days of its dispatch by the Arbitration Board or such later time as the Chairman of the Arbitration Board may determine, the proposed arbitration will be deemed to have failed and all the parties to the dispute shall be informed accordingly.

3.5 The arbitration shall be deemed to have commenced:

- (a) in the case of Rule 3.3, from the date of notification to the other parties to the dispute of the contents of the application for arbitration; or
- (b) in the case of Rule 3.4, from the date of receipt by the Arbitration Board of the submission agreement signed by all the parties to the dispute, which agreement may take the form of several documents of the like form each signed by one or more of the parties to the dispute.

3.6 The Arbitration Board shall notify all the parties to the dispute of the date of commencement of the arbitration, and the designation of the parties for the purpose of arbitration, in particular:

- (a) which party is the Claimant;
- (b) which party is the Respondent;
- (c) the designation of other parties, for example any Third Parties and any Second, Third or subsequent Respondents.

4. COMPOSITION OF THE ARBITRATION PANEL

4.1 The Chairman of the Arbitration Board shall (unless otherwise agreed by the parties) meet with the parties to the arbitration to select the Arbitration Panel, which shall be composed of:

- (a) anyone individual, whether or not a member of the Arbitration Board, upon whom the parties and the Chairman of the Arbitration Board

unanimously agree and who himself agrees, should be the sole member of the Arbitration Panel; or

(b) any three individuals, of whom one at least shall be a member of the Arbitration Board, on all of whom the parties unanimously agree, and who themselves agree to act as the Arbitration Panel; or

(c) failing agreement under Rule 4.1 (a) or 4.1 (b) either one or three members of the Arbitration Board as the Chairman of the Arbitration Board shall designate.

4.2 Every Arbitration Panel shall have a chairman who shall be:-

(a) the sole arbitrator in the case of an Arbitration Panel of only one individual;

(b) the member of the Arbitration Board in the case of an Arbitration Panel which includes only one member of the Arbitration Board; or

(c) such member of the Arbitration Board as the Chairman of the Arbitration Board shall designate in the case of an Arbitration Panel which includes more than one member of the Arbitration Board.

4.3 Any person approached to act as a member of the Arbitration Panel should forthwith disclose to the Chairman of the Arbitration Board any conflict of interest which he may have or any factors which are likely to be seen as impeaching his impartiality or independence whether or not they actually do so, and the Chairman of the Arbitration Board may accordingly exclude him from acting as an arbitrator.

4.4 Any person appointed as a member of the Arbitration Panel shall be under an obligation forthwith to disclose to the Chairman of the Arbitration Board any conflict of interest of which he becomes aware during the course of an arbitration or of any factors which are likely to be seen as impeaching his impartiality or independence whether or not they actually do so, and the Chairman of the Arbitration Board may accordingly disqualify him from continuing to act as an arbitrator.

4.5 In the event of the death, resignation, disqualification or other incapacity, of a member of the Arbitration Panel occurring or becoming apparent before the termination of the arbitration, the Chairman of the Arbitration Board shall review the status of the arbitration and, after consulting with the remaining members (if any) of the Arbitration Panel and the parties to the arbitration, may take one or more of the following courses of action:-

(a) appoint a substitute arbitrator to take up the vacancy in the Arbitration Panel;

(b) direct that the arbitration should commence anew;

(c) direct that the newly appointed member of the Arbitration Panel be fully briefed

by the other members of the Arbitration Panel on the status of the arbitration and that thereafter the arbitration continue without the need for any re-submission of pleadings or evidence.

5. ASSISTANCE AND REPRESENTATION

5.1 Any party to an arbitration shall be free to seek assistance in the preparation of his submissions to the Arbitration Panel.

5.2 Subject to the legal right of any party to be represented by a lawyer any party deciding to be represented before the Arbitration Panel shall first seek the written consent of the Arbitration Panel. Any such written consent may:

(a) be specific for the named representative who should preferably be an Ismaili;

(b) provide directions as to the fees which may be charged by the representative;

(c) oblige the representative to agree to abide by these Rules and to respect the authority of the Arbitration Board and the Arbitration Panel in all matters connected with the arbitration.

6. PLEADINGS

6.1 The claimant shall submit a Statement of Claim to the Arbitration Panel within 14 days of the Commencement of arbitration. The Statement of Claim shall:

(a) briefly state the alleged facts;

(b) disclose the cause of action;

(c) identify the remedy sought;

(d) have attached to it copies of any documents on which the claimant relies to prove his case;

(e) refer to any further documents the Claimant intends to submit in support of his case and shall state when these will be submitted to the Arbitration Panel;

6.2 The Respondent shall submit a Defence to the Arbitration Panel within 21 days after service on him of the Statement of Claim. The Defence shall:

(a) state whether or not the alleged facts contained in the Statement of Claim are admitted and, if not, the extent to which they are denied;

(b) state the nature of the defence;

(c) have attached to it copies of any documents on which the Respondent relies in his defence

(d) refer to any further documents the Respondent intends to submit in support of his defence and state when these will be submitted to the Arbitration Panel;

(e) state any Counterclaims in the same format as a Statement of Claim as described in Rule 6.1.

6.3 Save with the Consent of the Arbitration Panel, no counterclaim will be permitted to be made after submission of the Defence.

6.4 The Claimant shall be entitled to reply to any counterclaim within 21 days of the service on him of the Defence and any such Response shall be in the same format as a Defence as described in Rule 6.2 save and except for the right to make a Counterclaim.

6.5 Any other Respondents shall submit their pleadings at such time and in such manner as the Arbitration Panel may direct.

6.6 The Arbitration Panel shall, on the application of any party to the arbitration, decide whether to allow it to submit further pleadings and if So, shall fix the time within which such pleadings shall be submitted.

6.7 Pleadings already submitted shall not be amended save with the written consent of the Arbitration Panel.

6.8 The Arbitration Panel shall notify the parties when the pleadings have closed.

7. PROCEEDINGS BEFORE THE ARBITRATION PANEL

7.1 Subject to the provisions of this Rule 7, the Arbitration Panel may hear and decide the arbitration in such manner as it sees fit and shall have such authority and discretion as are necessary in all procedural matters to ensure a just and equitable conclusion to the arbitration.

7.2 The Arbitration Panel shall strictly adhere to and apply the rules of natural justice equity and good conscience.

7.3 Any document supplied to the Arbitration Panel by one party shall (unless otherwise directed by the Arbitration Panel) simultaneously be supplied to the other parties;

7.4 Any document supplied in any language other than the language of the arbitration itself shall be translated into the language of the arbitration and be certified to the satisfaction of the Arbitration Panel as a true and accurate translation.

7.5 The written testimony of witnesses shall be submitted as affidavits subject to the right of any party to require the cross examination of any such witness. The Arbitration Panel may draw such conclusions as it sees fit from any default on the part of a deponent to submit to cross-examination.

7.6 At the request of any party to the arbitration, the Arbitration Panel shall hear oral evidence and oral argument on such issues and from such witnesses as

may have been previously notified in writing to the Arbitration Panel. In the absence of any such request, the Arbitration Panel shall decide whether to dispose of the matter on the basis of the documents alone or whether to hear oral evidence and oral argument.

7.7 Any oral proceedings before the Arbitration Panel shall be in camera and shall take place at such place and time as the Chairman of the Arbitration Panel may determine having regard to the needs of the parties and any special circumstances regarding the type of evidence to be submitted but having paramount regard to the dignity and impartiality of the proceedings.

7.8 In the event of oral proceedings, the parties shall be required to submit in writing to the Arbitration Panel details of the names and addresses of witnesses they intend to call. Muslim witnesses shall give evidence under the form of oath set out in Part I of the Second Schedule and non-Muslim witnesses shall give evidence under the form of oath or affirmation set out in Part II of the Second Schedule.

7.9 Subject to Rule 7.8, the Chairman of the Arbitration Panel shall determine the manner of examination of the witnesses and in particular, but without limitation, whether:

(a) the testimony of witnesses should be transcribed or recorded by any manual or electronic means; and

(b) whether any witnesses should be allowed to remain present whilst the testimony of any other witness is being given.

7.10 All correspondence with the Arbitration Panel shall be conducted through the headquarters of the Arbitration Board and shall be addressed to the Chairman of the Arbitration Panel.

7.11 The parties shall produce to the Arbitration Panel such documents as it may require to be produced to it and the Arbitration Panel may draw such conclusions as it sees fit from any default.

7.12 Any procedural matters concerning the conduct of the arbitration shall be decided by the Chairman of the Arbitration Panel.

7.13 If at any stage of the arbitration proceedings, any party fails to appear or to present its case within the time limits prescribed by these Rules or by the Arbitration Panel, the Arbitration Panel may of its own motion or at the request of any other party, and upon giving reasonable notice to every other party, proceed with the arbitration and make an award.

7.14 Proceedings before the Arbitration Panel being for the bona fide purpose of resolving the dispute between the parties shall be deemed to be absolutely privileged and accordingly the parties agree that to the extent permitted by law:-

(a) except for the Arbitration Award or any Interim or Partial Award, none of the documents, papers or record of oral evidence in the possession of the Arbitration Panel or in the possession of the parties to the arbitration by virtue of having been submitted specifically for the purpose of the

arbitration shall be available for production in subsequent judicial proceedings; and

(b) no member of the Arbitration Board or Arbitration Panel shall be called upon to give evidence of any kind in any such subsequent judicial proceedings.

8. CONFIDENTIALITY

The parties to the arbitration shall not at any time divulge or communicate to any person other than a person directly concerned with the arbitration any information concerning the arbitration.

9. AWARDS, INTERIM AWARDS AND PARTIAL AWARDS

9.1 The Arbitration Panel may make such Award in respect of the arbitration as it may determine and in the case of an Arbitration Panel comprising three or more members, its decision shall be reached by simple majority of its members.

9.2 The Award shall:-

(a) be in writing signed by every member of the Arbitration Panel in the presence of each other and any dissenting member of the Arbitration Panel may append a note of his dissension;

(b) state the date and place of the Award;

(c) not be accompanied by reasons unless the Arbitration Panel shall itself choose to provide a reasoned Award;

(d) be simultaneously sent to all parties to the arbitration;

(e) be filed or registered by the Arbitration Panel with the Arbitration Board which shall in turn file or register the award with such other authority as may be required by the laws of the jurisdiction where the arbitration took place or may need to be enforced;

(f) be subject to appeal as described in the Constitution; and

(g) subject to appeal, be final and binding and be carried out by the parties forthwith.

9.3 The Arbitration Panel may at any time dispose of part only of the matters placed before it for arbitration by making such Partial Award as it deems fit.

9.4 The Arbitration Panel may on the application of any party to an arbitration before it, make such Interim Award as it considers necessary to protect the position of the parties pending the conclusion of the arbitration and the making of the Award. Any such Interim Award may be made subject to such conditions as the Arbitration Panel may determine, including, without limitation, requiring the party requesting such Interim Award to give security for any loss which may be suffered by the other parties to the arbitration by reason of the Interim Award.

9.5 Within 21 days of the date of any Award, Partial Award or Interim Award the Arbitration Panel may, or any parties to the arbitration may, with notice to the other parties, require the Arbitration Panel to:-

(a) resolve any ambiguity in the award;

(b) correct any errors of computation or of a clerical or typographical nature in the award;

(c) except in the case of a Partial Award or an Interim Award make an additional Award where the original Award does not deal with all the issues put before the Arbitration Panel for resolution.

10. SETTLEMENT OF ARBITRATION

10.1 The Arbitration Panel may at any time adjourn the proceedings or allow such facility as any of the parties may at any time request in the conduct of the arbitration to enable the parties to settle the dispute amicably between them and to bring the arbitration to an end.

10.2 If in the course of an arbitration the parties come to an agreed settlement of the issues placed before the Arbitration Panel for resolution, they may unanimously request the Arbitration Panel to issue a Settlement Award in such terms as may have been agreed between the parties.

10.3 If the Arbitration Panel sees fit, it may issue such Settlement Award, but shall not be obliged to state any reasons for the Award.

10.4 The Settlement Award shall be treated for all purposes as an Award of the Arbitration Panel.

11. TERMINATION OF ARBITRATION

11.1 Subject to any right of appeal, the arbitration shall be deemed to be terminated with effect from the date of the Award.

11.2 The Arbitration Panel shall issue an order of termination of the arbitration if at any time:

(a) all the parties to the arbitration so request; or

(b) it appears to the Arbitration Panel that the arbitration has become infructuous or unnecessary; or

(c) it appears to the Arbitration Panel that it has become impractical to continue the arbitration.

12. COSTS OF ARBITRATION

12.1 For the purpose of this Rule, the costs of the arbitration shall be the aggregate of the following costs incurred by the Arbitration Panel:-

- (a) photocopying and secretarial services;
- (b) postage, telephone, telex and facsimile transmissions;
- (c) courier services;
- (d) transportation, accommodation and incidental expenses of members of the Arbitration Panel;
- (e) conference or meeting room hiring and location expenses;
- (f) such other costs which may have been incurred by the Arbitration Panel for the purpose of arbitration.

12.2 The costs of the arbitration shall be estimated by the Arbitration Panel and notified to all the parties to the arbitration together with a direction to each party to the arbitration to pay in to the Arbitration Board his pro rata share of the estimated costs.

12.3 During the course of an arbitration the Arbitration Panel may make revisions to its estimate of costs and accordingly may require the parties to the arbitration to pay their pro rata share to the Arbitration Board.

12.4 A final account of the costs of the arbitration shall be prepared by the Arbitration Board within 30 days of the termination of arbitration and any reimbursement due to the parties to the arbitration or any further calls (as the case may be) shall be made by the Arbitration Board within the said 30 days and any such final account shall be final and binding between the parties to the arbitration.

13. EXCLUSION OF LIABILITY

The Arbitration Panel, the Arbitration Board and the individuals comprising the Arbitration Panel and the Arbitration Board shall not be liable to any of the parties to the arbitration for negligence, breach of contract, misrepresentation or otherwise connected in any way with the arbitration proceedings or the Arbitration Award.

14. NOTICES AND TIME PERIODS

14.1 Any notice or other communication to be served under these Rules shall be in writing and shall be deemed to have been properly served if sent by courier, facsimile transmission, telex transmission or prepaid first-class letter post to the last known address, facsimile number or telex number of the addressee of which details have been notified in writing by the addressee to the addressor prior to the service of such notice or other communication.

14.2 Any such notice or other communication shall be deemed to have been served:-

- (a) at the time of delivery to the address in the case of courier delivery;

- (b) immediately in the case of facsimile or telex transmission; and
- (c) 48 hours after posting in the case of pre-paid first-class letter post.

14.3 For the purpose of calculating time periods under these Rules, the day of receipt of any notice or other communication shall not be counted.

14.4 The Chairman of the Arbitration Panel shall have discretion to:

- (a) extend any period mentioned in these Rules or otherwise required for the arbitration as the period within which any pleadings or other documents are required to be served; and
- (b) condone any delay in respect of the service of any documents in any arbitration before the Arbitration Panel.

15. APPEALS

15.1 An appeal will lie from an award of the Regional Board to the National Board

- (a) upon application by the appellant and referral by the Regional Board to the National Board; or
- (b) upon application by the appellant to and by special leave of the National Board.

15.2 An appeal will lie from an award from the National Board to the International Board

- (a) upon application by the appellant and referral by the National Board to the International Board; or
- (b) upon application by the appellant to and by special leave of the International Board.

15.3 An application for referral may be made orally at or in writing within 14 days of the date on which the Regional or the National Board makes the award from which appeal lies.

15.4 An application for special leave shall be made in writing to the Appeal Board within 14 days of the date on which the Regional or the National Board refuses the application for appeal.

15.5 The application in writing referred to in Rules 15.3 and 15.4 above shall be served by the applicant on all the parties as well as the Board which heard the original proceedings.

15.6 The Chairman of the Appeal Board shall designate three members of the Appeal Board to hear and decide the Appeal on behalf of and in the name of the Appeal Board and shall designate one of the three to be the chairman for the purposes of the appeal.

15.7 The Appeal Board before making an award may in its discretion call for further information or require the parties to appear before it for oral submissions. It may also direct the Regional Board or the National Board to furnish it with further explanation on the subject matter or any question arising therein. The decision of the Appeal Board on application for special leave shall be final.

15.8 If leave is granted, the appellant shall file a Memorandum of Appeal within 30 days after the date on which such leave is granted.

15.9 The Memorandum of Appeal shall state the grounds of the appeal and supporting reasons and whether the appeal is against the whole or part of the award and if against a part only, must specify the part.

15.10 The Memorandum of Appeal shall be filed with the Appeal Board.

15.11 The Memorandum of Appeal shall be served upon all the other parties to the proceedings in which the award was given and upon the Board which gave the award. The service will be effected through the Appeal Board.

15.12 The Appeal Board shall hear or otherwise dispose of the appeal upon giving notice of not less than 14 days to the parties.

15.13 The Appeal Board shall in its absolute discretion have the power to:

(a) allow the appellant to amend the grounds stated in the Memorandum of Appeal or make any other award, on such terms as it thinks just, to ensure the determination on the merits of the real question in controversy in the proceedings before it;

(b) receive further evidence on any question of fact, and the evidence may be given in such manner as the Appeal Board may direct;

(c) draw any inference of fact which might have been drawn in the proceedings out of which the appeal arose;

(d) require for its use, to be furnished with a copy of the proceedings in which the award appealed against was given;

(e) enlarge time or excuse any delay in respect of anything to be done in the proceedings before it.

15.14 The Appeal Board:

(a) may give any decision or make any award which ought to have been given or made by the Board, and make such further or other award as the case may require;

(b) may remit the matter with the opinion of the Appeal Board for rehearing and determination by the Board;

(c) shall not be bound to allow the Appeal on the ground merely of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Appeal Board substantial wrong or miscarriage of justice has been thereby occasioned.

(d) shall follow these Rules of Arbitration in all procedural aspects of the appeal unless it specifically decides otherwise and in particular:

1. The Appeal Board shall have the same power to allow representation on behalf of the parties appearing before it as are vested in the Board under Rule 5 hereof; or
2. The members of the Appeal Board and a person, appearing before it on behalf of the parties shall have the same immunities as are vested in the members of the Board and persons appearing before it under Rule 13 hereof.