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# **ARBITRATION RULES**

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## PREFACE

Wide spread usage of the National Construction Council (NCC) Arbitration Rules has continued to grow since they were first published in 1984. NCC has equally continued to gather experience and expertise in coordinating arbitration through use of these Rules and in settling disputes through conciliation.

At an international level, many countries have been improving their arbitration practice. Such improvements have involved the adoption of the Model Law on Arbitration of the United Nations Commission on International Trade Law (UNCITRAL).

In recognition of such improvements, NCC Arbitration Rules have been slightly amended to take into account some of the basic requirements of the international practice.

NCC reminds all those who want to pursue arbitration that, the essence of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay and expense.

These Rules are designed for disputes arising under domestic contracts but can equally be applied to international contracts provided necessary safeguards are made; particularly with regard to the law to govern the arbitral process.

Parties to a contract who wish to have any construction dispute referred to arbitration under these Rules are recommended to insert in the contract an arbitration clause in the following form:-

“Any dispute or difference of any kind whatsoever which arises or

occurs between the parties in relation to any thing or matter arising out of or in connection with this agreement shall be referred to arbitration under the Arbitration Rules of the National Construction Council”.

Where there is no prior agreement between the parties to arbitrate, the parties may enter into an agreement to refer their dispute to arbitration under these Rules.

Matters not covered in the Rules shall be subject to the agreement of the parties and the laws of the United Republic of Tanzania in the case of disputes arising out of or in connection with domestic contracts: or in accordance with the law agreed by the parties in case of disputes arising out of or in connection with international contracts.

# **ARBITRATION RULES**

Where any agreement or submission or reference provides for arbitration under the Rules of the National Construction Council (NCC), the arbitration shall be conducted in accordance with the following Rules or such amended Rules as the National Construction Council may have adopted to take effect before the commencement of arbitration.

## **1.0 General Principles**

- 1.1 The object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense.
- 1.2 Generally the parties should be free to agree on how their disputes are to be resolved, subject only to such safeguards as are necessary in the public interest. However a decision to use these Rules mandatorily abides the parties to their requirements.

## **2.0 General Duties of the Arbitrator**

- 2.1 The arbitrator shall act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent.
- 2.2 The arbitrator shall adopt procedures suitable to the circumstances to the particular case, avoiding unnecessary



delay or expense, and should provide a fair means for the resolution of the matters failing to be determined.

### **3.0 General Duties of the Parties**

3.1 The parties shall do all things necessary for the proper and expeditious conduct of the proceedings; this includes:

- (a) complying without delay with any determination of the arbitrator as to procedural or evidential matters, or with any order or direction of the arbitrator;
- (b) taking without delay any necessary steps to obtain a decision of the court on question of jurisdiction or law.

3.2 The parties are free to agree to confer any other additional powers to the arbitrator for the purposes of and in relation to the proceedings.

### **4.0 Request for, or Notification of, Arbitration**

4.1 Any party wishing to commence an arbitration under these Rules shall send to the National Construction Council a written request for arbitration, which shall include or be accompanied by:-

- (a) the names and addresses of all the parties to the arbitration;
- (b) a brief statement of the nature and circumstances



of the dispute;

- (c) a statement of any matters on which the parties have previously agreed as to the conduct of the arbitration;
- (d) copies of the contractual documents under which the arbitration arises;
- (e) any separate submission or reference to the arbitration; and shall confirm to the National Construction Council that copies have been sent to all the other parties.

## **5.0 Appointment of Arbitrator/Umpire**

- 5.1 On accepting the request, then, the National Construction Council will submit to the claimant the list of approved arbitrators.
- 5.2 On receipt of the list, the claimant shall select three names from the list and shall submit these three names to the National Construction Council within 14 days of the receipt of the list.
- 5.3 After checking on the availability of the three names, the National Construction Council will request the respondent to select one out of the three names submitted within 14 days of the receipt of the letter. If the respondent is not in agreement with all of the three names, then the parties should request the National Construction Council to appoint

an arbitrator who shall not be one of the names proposed by the claimant in the first place.

- 5.4 If the arbitration is of a complicated nature then each party shall nominate one arbitrator from the approved list and the National Construction Council shall appoint an umpire.
- 5.5 Selection of the arbitrator or umpire, will, as far as possible, have regard to the nature of the contract and the nature and circumstances of the dispute.
- 5.6 If any arbitrator or umpire, after appointment dies, refuses, fails or in the opinion of the National Construction Council becomes unable or unfit to act, the National Construction Council will, upon request, appoint another arbitrator or umpire in his place.

## **6.0 Communication between Parties and Arbitrator**

- 6.1 In the following Rules, the expression 'the arbitrator' includes all the arbitrators where more than one has been appointed.
- 6.2 All parties shall communicate directly with the arbitrator unless he directs otherwise.
- 6.3 Where the National Construction Council, on behalf of the arbitrator, sends any communication to one party, a copy to each of the other parties shall also be sent.
- 6.4 Where any party sends any communication (including any

statement under Rule 6) to the arbitrator, then he shall also send copies to all the other parties (including the National Construction Council) and confirm to the arbitrator that he has done so.

- 6.5 The addresses of the parties for the purpose of all communications during the proceedings shall be those set out in the Request for or Notification of Arbitration, or such other addresses as the parties shall later agree or as any party concerned shall at any time notify to the arbitrator and to all the other parties and National Construction Council.

## **7.0 Jurisdiction and Powers Conferred on the Arbitrator**

- 7.1 By submitting to the arbitrator under these Rules, the parties shall be taken to have conferred on the arbitrator the following jurisdiction and powers, to be exercised by him so far as Tanzania Law allows, and in his absolute and unfettered discretion, if he shall judge it to be expedient for the purpose of ensuring the just, expeditious, economical and final determination of the dispute referred to him.

- 7.2 The arbitrator shall have jurisdiction to:

- (a) determine any question as to the validity, extent or continuation in force of any contract between the parties;
- (b) order the correction or amendment of any such contract, and of the arbitration agreement, submission

or reference, but only to the extent required to rectify any manifest error, mistake or omission which he determines to be common to all the parties;

- (c) determine any question of law arising in the arbitration;
- (d) determine the validity of the arbitration agreement;
- (e) determine any question as to the jurisdiction of the arbitrator.

7.3 Unless all the parties shall at any time agree otherwise, the arbitrator shall have power, on the application of any of the parties or of his own motion, but in either case only after hearing or receiving any representations from the parties concerned, to:-

- (a) allow other parties to be joined in the arbitration with their express consent, and make a single final award determining all disputes between them;
- (b) allow any party upon such terms as to costs and otherwise, as he shall determine to amend his statement of case, defense or reply;
- (c) extend or abbreviate any time limits provided by these Rules or by his directions;
- (d) appoint experts or legal advisors on any matter, including law to assist in the conduct of the arbitration;

- (e) direct the parties to submit to the National Construction Council or the arbitrator, for subsequent exchange, written statements, whether or not verified by oath or affirmation, of the evidence of witnesses, and direct which of the makers of such statements are to attend before him for oral examination;
- (f) conduct such inquiries as may appear necessary or expedient;
- (g) order the parties to make any property or thing available for inspection, in their presence;
- (h) order the parties to produce to him and to each other, for inspection and to supply copies of any documents or classes of documents in their possession or power which he determines to be relevant;
- (i) order the preservation, storage, sale or other disposal of any property or thing under the control of any of the parties;
- (j) make interim orders for security for any party's own costs, and to secure all or part of any amount in dispute in the arbitration;
- (k) order any part to furnish him with such further details of its case, in fact or in law, as he may require;
- (l) proceed in the arbitration notwithstanding the failure or refusal or any party to comply with these Rules or with his orders or directions, or to attend any meeting



or hearing, but only after giving that party written notice that he intends to do so;

- (m) receive and take into account such written or oral evidence as he shall determine to be relevant, whether or not strictly admissible in law;
- (n) make one or more interim awards;
- (o) order the parties to make interim payments towards the costs of arbitration;
- (p) hold meetings and hearings in Tanzania;
- (q) express awards in
- (r) the currency stated in the contract;
- (s) award interest on any sum from and to any date at such rates as he determines to be appropriate;
- (t) correct any accidental mistake or omission or clarify or remove any ambiguity in the awards;

and

- (u) make an additional award in respect of any claim which was presented to the arbitrator but was not dealt with in the award.

## 8.0 Procedure in the Arbitration

- 8.1 The arbitrator shall have the jurisdiction and the powers to direct the procedure in the arbitration, necessary to ensure the just, expeditious, economical, and final determination of the disputes, as set out under Rule 7.
- 8.2 In the absence of any other agreements and directions, the procedure will be that as set out in Rules 9 and 10 or Rule 11.

## 9.0 Submission of Written Statements

- 9.1 The arbitrator at any time may fix the date for submission of written statements of claim and defence depending on the magnitude of work. The time allocation in absence of the other specified will be in accordance with Rules 9.1 to 9.4.
- 9.2 Within 14 days of the notification of appointment of the arbitrator, the party or parties (if there is more than one) who requested the arbitration – **the claimant** – shall send to the arbitrator a statement of case setting out in sufficient detail the facts and contentions of law on which he relies, and the relief that he claims.
- 9.3 Within 21 days of the receipt of the statement of case, the other party or parties (if there are more than one) – **the respondent** – shall send to the arbitrator a statement of defence stating in sufficient detail which of the facts and contentions of law in the statement of case he admits or



denies, on what grounds, and on what other facts and contentions of law he relies. If he has a counterclaim he shall set it out in his statement of defences as if it were a statement of case.

9.4 Within 7 days of receipt of the statement of defence, the claimant may send the arbitrator a statement of reply.

9.5 Where there is a counterclaim, the claimant shall send the arbitrator a statement of defence to it within 7 days of its receipt to which the respondent may reply within a further 7 days of receipt.

9.6 All statements of case, defence and reply shall be accompanied by copies or a list, if there are especially voluminous, of all essential documents on which the party concerned relies and which have not previously been submitted by any party and where practicable by any relevant samples.

9.7 After the submission of all the statements, the Arbitrator will give directions for the further conduct of the arbitration.

## **10.0 Meeting and Hearings**

10.1 The arbitrator may at any time fix the date; time and place of meetings and hearings in the arbitration, and the arbitrator will give all the parties adequate notice of these. Subject to any adjournments which the arbitrator allows, the final hearing will be continued on successive working days until it is concluded.

- 10.2 All meetings and hearings will be in private unless all the parties require otherwise. Other people may be granted permission to attend as observers upon request.
- 10.3 Provided he gives the arbitrator and the other parties not less than ten days' notice, any party may be represented at any meeting or hearing by a legal or other professional practitioner.

## **11.0 Simplified Procedure**

- 11.1 Where the value of all matters in dispute between the parties does not exceed Shs. 5,000,000/=.
- a) the National Construction Council will appoint a single arbitrator,
  - b) the arbitrator may determine the dispute at an informal hearing attended by all the parties.
  - c) Alternatively, the arbitrator may determine the dispute on the documents submitted to him by the parties, voluntarily or on his direction, without any hearing.

## **12.0 The Award**

- 12.1 The arbitrator will make his award in writing and unless all parties otherwise agree, his reasons will be set out or referred to in the award.

- 12.2 The arbitrator will send his award to the National Construction Council within 14 days after the conclusion of the final hearing. The National Construction Council, thereafter, will notify the parties that the award is ready to be taken up.

### **13.0 Disagreement of Arbitrators**

- 13.1 Where there is more than one arbitrator and the parties have agreed there is to be an umpire, decisions, orders and awards shall be made by the arbitrators unless and until they cannot agree on a matter relating to the arbitration.
- 13.2 In the event the arbitrators cannot agree, the umpire shall replace them as the arbitrator with power to make decisions, orders and awards as if he were sole arbitrator.

### **14.0 Costs of the Arbitration**

- 14.1 From the commencement of the arbitration, all the parties shall be jointly and severally liable to the National Construction Council for these costs until they are paid.
- 14.2 The National Construction Council will require all the parties to deposit equal sums of money before the start of the proceedings. The total amount of the deposit will be based on the estimated time required by the arbitrator to arrive at an award. These awards will be adjusted accordingly in the cost of the arbitration which will be included in the award.

14.3 The arbitrator's fees will be paid to the National Construction Council calculated by reference to the work done by him in connection with the arbitration and will be charged at rates appropriate to the particular circumstances of the case including its complexity and any special qualifications of the arbitrator. The rates shall be established, reviewed and published by the National Construction Council from time to time. Current rates shall be:

- (a) Time for meetings or hearings – Shs. 30,000/= per hour,
- (b) Other time spent on the arbitration outside the time for meetings or hearings – Shs. 30,000/= per hour.

The above rates include the National Construction Council administrative costs but do not include expenses as listed in Rule 14.4.

14.4 Specific outgoing expenses incurred by the National Construction Council or the arbitrator in connection with the arbitration – for travel, subsistence, hire of arbitration rooms, postage, telex, cable, telephone, copying recording and transcribing services, reports of experts and advisors and any other items – will be charged at cost.

14.5 The arbitrator will specify the total amount of the costs of the arbitration in his award. Unless all the parties shall agree otherwise, he will determine – in the exercise of his absolute and unfettered discretion – which party shall pay them and whether any party shall pay all or part of any other costs incurred by any other party.



## **15.0 Payment and Collection of Award**

- 15.1 After notification by the National Construction Council, any party may take up the award upon payment to the National Construction Council of any costs of the arbitration then still outstanding.
- 15.2 If the award has not been taken up within one month of the notification, the National Construction Council may be action recover all outstanding costs of the arbitration from any or all of the parties.
- 15.3 If the arbitrator has determined that all or any part of the costs of the arbitration shall be paid by any party other than a party which has already paid them, that party shall have the right to recover the appropriate amount from that other party.

## **16.0 Abandonment, Suspension or Conclusion before Final Award**

- 16.1 If during the proceedings the parties shall settle the dispute, the arbitrator shall terminate the proceedings and if requested by the parties, shall give an award based on agreed terms. Such an award shall have the same status and effect as any other award on the merits of the case.
- 16.2 If the arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final award is made, the parties shall pay to the National Construction Council the costs of the arbitration incurred up to that time, in such

proportions as between them as they shall agree on, failing agreement, as the arbitrator shall determine.

## **17.0 Exclusion of Liability**

- 17.1 Neither the National Construction Council nor the arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules save that the arbitrator, but not the National Construction Council shall be liable for the consequences of any conscious and deliberate wrong doing in his own part.
- 17.2 After the award has been made, any accidental mistake or omission corrected, the arbitrator shall be under no obligation to make any statement to any person about any matter concerning the arbitration, nor shall any party seek to make him a witness in any legal proceedings arising out of the arbitration.