



**ASSOCIATION OF ARBITRATORS
(SOUTHERN AFRICA)**

**RULES FOR THE CONDUCT
OF
ARBITRATIONS**

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PREAMBLE

The Association of Arbitrators (Southern Africa) advises that where the intervention of the Association is required by the Rules, the party or parties requesting such intervention shall be liable for any charges which the Association may from time to time charge including cover, in advance, for the fees of the arbitral tribunals contemplated under Rules 17 and 30. The parties by the use of these Rules shall be deemed to have accepted this as a precondition to the use of these Rules.

RULES FOR THE CONDUCT OF ARBITRATIONS

4th Edition August 2000

These Rules are intended to facilitate cost-effective arbitrations. They should not be seen as prescriptive, but rather as guidelines which may, and should, be modified when such modification will expedite the process.

The General Provisions apply to Standard and Summary Procedure Rules.

The Standard Procedure Rules are appropriate in most instances, particularly where the parties are represented, and apply except where the parties have agreed otherwise.

The Summary Procedure Rules are intended for the smaller and simpler arbitrations, particularly where the parties are not represented and have little or no experience of arbitration procedure. They require that the arbitrator plays a more active and interventionist role than he would do under the Standard Procedure Rules.

The Small Claims Arbitration Tribunal (SCAT) rules are intended for matters involving less than R60000 and preclude legal representation. The Arbitrator's fee is fixed.

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GENERAL PROVISIONS

These general provisions shall apply in all instances, irrespective whether the Standard Procedure Rules or the Summary Procedure Rules are followed.

1 Definitions

In these Rules:

- 1.1 "Day" means any day other than a Saturday, Sunday or public holiday;
- 1.2 "Rules" means these arbitration rules;
- 1.3 "Claimant" means the party to the arbitration who claims relief against the other party, provided that if each party claims relief against the other, "Claimant" shall mean the party who first referred the dispute to arbitration;
- 1.4 "Defendant" means the party to the arbitration other than the Claimant;
- 1.5 "Document" means, in relation to each party, any document of whatsoever nature in his possession or under his control, whether an original or a copy, relating to the dispute which has been referred to arbitration, including plans, diagrams, photographs and recordings on magnetic tape, compact disc and computer disc;
- 1.6 "Representative" means any person engaged by a party to assist him in the preparation of his claim or defence, as the case may be, and to present his claim or defence at the arbitration hearing on his behalf, and shall include an advocate, an attorney, a claims consultant and any other person who, by virtue of his training and experience, is able to present the case.
- 1.7 "Submissions" means the Statement of Issues, Statement of Claim, Statement of Defence, Defendant's Counterclaim and Claimant's Reply and any other similar documents permitted by the Arbitrator.
- 1.8 Where appropriate words importing the singular shall include the plural and words importing the masculine shall include the other gender.
- 1.9 "Arbitrator" shall include more than one Arbitrator where the agreement between the party provides or requires the appointment thereof.
- 1.10 "Association" shall mean the Association of Arbitrators (Southern Africa).
- 1.11 "Deliver" or "Delivery" shall mean delivery by hand and/or by facsimile and/or by mail or e-mail.
- 1.12 "Act" means the Arbitration Act 42 of 1965, as amended from time to time, or any repealing legislation.

2 Arbitration Act

Save as varied herein or, insofar as the provisions of the Arbitration Act are mandatory, the Act shall apply.

3 Appointment of Arbitrator

Where an agreement to refer a dispute to arbitration requires that the Rules of the Association shall apply thereto but does not identify the Arbitrator or the method by which the Arbitrator is to be appointed, the Chairman for the time being of the Association shall, on the application of either party to the reference, appoint the Arbitrator.

4 Time Limits

4.1 Where no time period is specified for the doing of any act in terms of these Rules or in terms of any ruling, directive or decision of the Arbitrator, unless the parties have otherwise agreed, such period shall be stipulated by the Arbitrator.

4.2 The time limits stated in these Rules shall not be extended or shortened except by leave of the Arbitrator.

5 Proceedings on Default

After the parties have agreed to arbitration the Arbitrator may proceed with the arbitration and make an Award, notwithstanding any failure, neglect or refusal of either party to comply with these Rules or to take part or further part in the arbitration.

6 Confidentiality

Unless the parties otherwise agree, the proceedings and any Award(s) published therein shall be confidential save to the extent that disclosure may be required in order to protect or pursue a legal right or to enforce or challenge an award in any legal proceedings.

7 Payment of Admitted Amount

The Defendant, in respect of the claim, or the Claimant, in respect of the counterclaim, shall be entitled, at any time before the delivery of the Arbitrator's Award, to pay to the other party an amount of money which he admits to be owing by him, to which provision the following conditions shall apply:

7.1 The payment shall be by cash or currently dated cheque and, if by cheque, shall be effective when the cheque is paid on due presentation;

7.2 The payment shall be accompanied by a written notice specifying:

7.2.1 the claim or counterclaim, or part thereof, on which the payment is made; and

7.2.2 any tender which the party makes in respect of costs; and

7.3 A copy of the said notice shall be forthwith delivered to the Arbitrator who shall take the payment and any tender of costs into account in making his Award.

8 Offer of Settlement

8.1 The Defendant, in respect of the claim, or the Claimant, in respect of the counterclaim, shall be entitled, at any time before the delivery of the Arbitrator's Award, to tender payment of a specific amount of money without admission of liability, and as an offer of settlement, to which provision the following conditions shall apply:

8.1.1 The tender shall be in the form of a written notice specifying:

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- 8.1.1.1 the claim or counterclaim, or part thereof, in respect of which the tender is being made; and
- 8.1.1.2 any tender which the party makes in respect of costs;
- 8.2 The recipient of the tender shall be entitled by written notice delivered within 10 days after his receipt of the notice of tender to accept the tender failing which notice he shall be deemed to have rejected the tender.
- 8.3 On receipt of a notice in terms of paragraph 8.2 the tenderer shall:
- 8.3.1 within 3 days pay the amount tendered to the other party and failing such payment the recipient of the tender shall be entitled to apply for an Award or an Interim Award ordering the payment to be made; and
- 8.3.2 after such payment, deliver to the Arbitrator copies of the notices referred to in paragraphs 8.1.1 and 8.2 together with a written statement that the payment referred to has been made;
- 8.4 If he received the notices and statement referred to in paragraphs 8.1.1 and 8.2 and 8.3, the Arbitrator shall take the facts therein recorded into account in making his Award; and
- 8.5 If the tender of settlement is not accepted the fact of the tender and its non-acceptance shall not be made known to the Arbitrator until he has made his Award on all the issues in the arbitration other than costs, whereupon the said facts shall be made known to him, and shall be taken into account by him in his award of costs, *provided that* if the Arbitrator shall have made an award of costs before becoming aware of the tender and its non-acceptance the tenderer shall be entitled to have the award reopened and reconsidered in respect of the costs.

9 Award Without Oral Hearing

Where the parties so agree and notify the Arbitrator in writing, the Arbitrator may make his Award without an oral hearing after consideration of the Submissions.

10 Prior Hearing of Point of Law or Fact

- 10.1 The Arbitrator shall, if both parties so agree, or may, if he so decides on the application of either party or at his own instance determine any specified issue of law or fact before other issues in the arbitration are determined, to which provision the following conditions shall apply:
- 10.1.1 the hearing of the said specified issue shall proceed and be conducted subject to conditions agreed by the parties or prescribed by the Arbitrator; and/or
- 10.2 The onus will be on the party seeking to oppose the separation of the issue of law and/or fact to establish that such separation will not contribute to the expeditious determination of the dispute and/or that the questions cannot conveniently be decided separately.

11 Award of Costs

- 11.1 The Arbitrator shall, unless the parties otherwise agree, determine the issue of costs and shall be entitled to employ the services of a professional taxing consultant to assist him in determining the amount of such costs to be awarded.
- 11.2 In the event of the Arbitrator employing the services of a professional taxing consultant, the costs thereof shall be costs in the cause but paid by the parties to the arbitration in equal shares prior to the Award being published.

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- 11.3 Disbursements made by a successful party to his representative in the proceedings shall be recoverable by way of an Award of costs on a scale to be agreed between the parties, or if not so agreed, to be determined by the Arbitrator who may, in his sole discretion, direct that such costs shall be taxed in accordance with Section 35 of the Arbitration Act.
- 11.4 If the parties agree that the costs be taxed by the Taxing Master of the Court and the Taxing Master refuses or is unable to tax such costs, then the matter shall revert to the Arbitrator who shall either refer the costs to be taxed by such professional taxing service as may be agreed or, in the absence of agreement, as he may himself appoint, or he may make an award of such costs as he deems reasonable in the circumstances.
- 11.5 The parties, by having agreed to the adoption of these Rules for the conduct of the arbitration, shall be deemed to have undertaken to be liable jointly and severally to the Arbitrator for the due payment on demand of his fees and expenses.
- 11.6 The Arbitrator may direct that recoverable costs of the arbitration, or any part of the arbitral proceedings, should be limited to a specified amount and/or duration of the hearing and/or in any other appropriate manner.
- 11.7 Any directive made by the Arbitrator under sub-rule 11.6 may be varied at any stage provided that a direction for the limitation of costs or any variation thereof must be made sufficiently in advance of the incurring of costs or the taking of steps to which it relates for the limitation to be taken into account.
- 11.8 The Arbitrator shall not exercise his powers under sub-rules 11.3 and/or 11.4 without affording the parties an opportunity to make submissions to him thereon.

12 Delivery of Award

- 12.1 The Award shall be in writing and shall be published by delivery of a copy thereof to the respective parties.
- 12.2 The Arbitrator shall provide the reasons for his Award simultaneously with publication unless the parties otherwise agree or the Award is made in terms of Rule 32.

13 Dispute on Rules

Any dispute about the meaning or effect of any of these Rules shall be determined by the Arbitrator who shall further have the power to give directions, not inconsistent with the Rules, on the manner and time in which the Rules shall be carried into effect.

14 Proper Law of the Arbitration

- 14.1 Unless the parties agree to the contrary, the seat of the arbitration shall be the Republic of South Africa.
- 14.2 The Arbitrator may hold hearings, meetings, receive argument and issue awards at any geographical place in his discretion whether within the borders of the Republic of South Africa or elsewhere.
- 14.3 Where hearings, meetings, argument or awards are held, received or made outside the borders of the Republic of South Africa, in the absence of agreement by the parties as to the proper law of the arbitration, the arbitration shall be deemed to be an arbitration conducted within the Republic of South Africa and any award as an award made within the Republic of South Africa.

STANDARD PROCEDURE RULES

The Standard Procedure Rules shall apply to the conduct of the arbitration unless the parties agree in writing to adopt any variation of these Rules or to adopt the Summary Procedure or SCAT Rules.

15 Preliminary Meeting

On the reference of the dispute to the Arbitrator he may convene a Preliminary Meeting with the parties for the purpose of:

- 15.1 confirming that the dispute falls within the ambit of the arbitration agreement and is ready for arbitration;
- 15.2 recording the acceptance by the Arbitrator of his appointment and acceptance by the parties of any conditions attached thereto;
- 15.3 determining whether the arbitration is to be conducted in accordance with the Standard Procedure Rules or the Summary Procedure Rules or any modification of either;
- 15.4 arranging for the delivery of Submissions as provided in Rules 18 to 22;
- 15.5 determining the dates and venue of the hearing and the times and duration of the sessions;
- 15.6 determining the manner and extent of recording evidence;
- 15.7 deciding whether the Award shall be subject to an Appeal in terms of Rule 30: and
- 15.8 dealing with any other matters or proposals that might facilitate the conduct of the arbitration.

If no Preliminary Meeting is held the Arbitrator shall determine the commencement date for the Submissions.

16 Additional Preliminary Meetings

The Arbitrator may, at his own instance, or on the application of either party to the reference, convene a Preliminary Meeting with the parties, in addition to those specifically provided by these Rules, for any purpose which the Arbitrator deems would advance the expeditious hearing of the matter.

17 Challenge

17.1 If any Arbitrator :

- 17.1.1 falls seriously ill, or becomes unable or unfit to act; or
- 17.1.2 lacks the necessary independence; or
- 17.1.3 for any other reason ought not to continue as Arbitrator (e.g. lacks impartiality);

the Chairman of the Association or his nominee from time to time shall convene a committee consisting of not less than three members of the Executive of the Association ("the Committee") who may revoke the Arbitrator's appointment and appoint another Arbitrator.

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- 17.2 A party who intends to challenge an Arbitrator in terms of Rule 17.1, shall make written application to the Chairman of the Association within 10 days of him becoming aware of any circumstances referred to in Rule 17.1, which application will set out fully the reasons for the challenge failing which neither party shall be entitled to make such challenge.
- 17.3 Any other party to the reference who receives an application referred to in Rule 17.2 and who wishes to oppose such application shall within 10 days of receipt by him of the application submit a written response fully motivating its opposition.
- 17.4 A copy of the application and any reply shall be served by the respective parties on the Arbitrator who shall be entitled within 10 days of receipt thereof to reply in writing.
- 17.5 Unless the parties agree to the withdrawal of the Arbitrator, the Committee will decide the challenge.
- 17.6 Where an Arbitrator is to be replaced the committee shall decide whether or not to follow the original nominating process or to appoint a replacement who shall give directives as to if and to what extent prior proceedings shall be repeated.
- 17.7 The Committee shall give directives in relation to the costs of the challenge and any costs incurred in the proceedings.

18 Statement of Issues

Not later than 15 days after the date of the Preliminary Meeting the parties shall, unless otherwise agreed, jointly prepare and submit to the Arbitrator a Statement of Issues containing details of:

- 18.1 relevant matters which are not in dispute;
- 18.2 the disputed issues in which the averments of each are set out, the responses of each to the averments of the other, the facts and contentions of law on which each party relies together with true copies of all the relevant documents; and
- 18.3 the Award which each party desires the Arbitrator to make.

Provided that if the parties are unable jointly to prepare a Statement of Issues or agree not to do so, they shall deliver Submissions as provided in Rules 19 to 22.

19 Statement of Claim

If the parties have been unable to prepare a Statement of Issues, the Claimant shall, not later than 20 days after the Preliminary Meeting, deliver to the Arbitrator and the Defendant details of :

- 19.1 each dispute on which arbitration is sought;
- 19.2 the relief claimed; and
- 19.3 all the facts and the contentions of law constituting the claim;

together with true copies of all relevant documents, all of which details and copies are hereinafter collectively referred to as the "Statement of Claim".

20 Statement of Defence

Not later than 15 days after the receipt by the Defendant of the Statement of Claim, the Defendant shall deliver to the Arbitrator and to the Claimant details of:

- 20.1 his defence stating which contentions of fact or law in the Statement of Claim are admitted and which are denied;
- 20.2 the grounds for every denial or objection; and
- 20.3 all the facts and contentions of law constituting the defence;

together with true copies of all relevant documents other than those delivered in terms of Rule 19, all of which details and copies are hereinafter referred to as the "Statement of Defence".

21 Defendant's Counterclaim

At the time of delivery of the Statement of Defence, the Defendant may deliver counterclaims, alleged to fall within the arbitration agreement, to the Arbitrator and to the Claimant, setting forth, with the necessary changes, details of the matters referred to in terms of Rule 19 together with true copies of all relevant documents other than those delivered with any previous Submission, all of which details and copies are hereinafter referred to as the "Defendant's Counterclaim".

22 Claimant's Reply

Not later than 15 days after the receipt by the Claimant of the Defendant's Counterclaim, the Claimant shall deliver to the Arbitrator and the Defendant details of his defence to the counterclaim in accordance with the provisions of Rule 20, with the necessary changes, all of which details and copies are hereinafter referred to as the "Claimant's Reply".

23 No Amendments of Submissions

The parties may not amend the Submissions or deliver any additional Submission except by leave of the Arbitrator.

24 Second Preliminary Meeting

On receipt by the Arbitrator of the Submissions contemplated by Rules 18 to 22 he may, on the application of either party or at his own instance, convene a Second Preliminary Meeting with the parties for the purpose of considering:

- 24.1 any application by either party for the Arbitrator's consent to the furnishing of further particulars to any Submission, or for the amendment of any Submission, or for the furnishing of any additional Submission.
- 24.2 the desirability of the separation of any issues for prior determination in terms of Rule 10;
- 24.3 any changes to the Rules which might be appropriate for the expeditious and cost-effective resolution of the dispute;
- 24.4 the determination or the amendment of any of the time limits laid down in terms of Rule 4 or of any other Rule;
- 24.5 the discovery of any documents in terms of Rule 25;
- 24.6 the preparation and filing of witness statements in terms of Rule 26;
- 24.7 the adoption of provisions for an Appeal against the Award in terms of Rule 30; and
- 24.8 any other matter which it is desirable to deal with that might facilitate the arbitration.

25 Documents

- 25.1 The Arbitrator may, on the application of either party or at his own instance, direct that the parties discover to each other documents and tape, video and magnetic disc recordings relating to any matter in question in the arbitration which is in the possession and control of either of the parties and, in such event, shall direct the procedure for such discovery.
- 25.2 Any documents delivered with the Submissions contemplated by Rules 18 to 22 shall be admitted in evidence without the necessity for their identification or verification by any witness but either party shall be entitled to lead evidence on the origin, accuracy, meaning or relevance of the documents.
- 25.3 No person shall, save with the leave of the Arbitrator or the consent of all the parties, be entitled to tender in evidence any documents or models unless he shall, not less than 15 days before the hearing, have delivered a notice to the Arbitrator and the other party stating his intention to do so, offering inspection thereof and requiring the party receiving notice to admit same within 10 days after receipt of the notice.
- 25.4 If the party receiving said notice fails within the said period to admit same, the said documents or models shall be received in evidence upon the mere production and without further proof thereof. If such party states that he does not admit them, the said documents or models may be proved at the hearing and the party receiving the notice may be ordered to pay the costs of their proof.

26 Witness Statements

- 26.1 The Arbitrator shall enter upon the reference and proceed without unnecessary delay to establish the facts by such fair means as may be appropriate.
- 26.2 Before any hearing the Arbitrator may require, either at his own instance or on the application of either party, that the parties to the reference deliver written notice of:
- 26.2.1 the identity of the witnesses that each party wishes to call;
 - 26.2.2 the subject matter of the witness' testimony;
 - 26.2.3 a summary of the content of such witness' testimony alternatively full written statements.
- 26.3 Neither party shall be entitled to lead the evidence of any witness where the Arbitrator has given a directive in terms of Rule 26.2 without having complied therewith, save with the leave of the Arbitrator.
- 26.4 Where, by virtue of the refusal of a witness to give a statement, a party is unable to comply with any directive given in terms of Rule 26.2, such party shall:
- 26.4.1 comply with the directive insofar as he is able;
 - 26.4.2 give notice of the reason for his inability to comply therewith.
- 26.5 In the event of the Arbitrator giving a directive in terms of Rule 26.2 he shall determine whether the notices by the parties are to be given simultaneously or, if not, he shall fix the time in which each of the parties shall give notice.
- 26.6 The fact that a party has given notice as required pursuant to Rule 26.2 shall not compel such party to call the witness to give evidence.

- 26.7 A notice given pursuant to a directive in terms of Rule 26.2, unless the parties agree to the contrary, shall not constitute evidence in the arbitration unless the witness is called to give evidence at the hearing.

27 Evidence of Expert Witnesses

No party shall, except with the leave of the Arbitrator or the consent of all the parties, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless he shall, not later than a date specified by the Arbitrator, have submitted to the Arbitrator and the other party notice of his intention so to do, in which event the following conditions shall apply:

- 27.1 Such notice shall specify the name and qualifications of each expert witness and shall briefly state the nature of the evidence which each will give.
- 27.2 Within a time limit prescribed in terms of Rule 4 each party shall submit to the Arbitrator and the other party an Expert Witness Statement in respect of each expert witness that it intends to call, in which the evidence and the opinions of such expert witness and the reasons for such opinions are set out in detail.
- 27.3 Thereafter experts of like discipline who have been engaged by each party shall hold “without prejudice” meetings, without the respective parties’ representatives being present, with a view to:
- 27.3.1 comparing their respective opinions and endeavouring to reconcile differing points of view with the purpose of narrowing the issues between them; and
- 27.3.2 preparing a minute of such meetings wherein they set out the facts and opinions on which they agree, and those upon which they do not agree.
- 27.4 The minutes of the meetings in terms of Rule 27.3 shall be **with prejudice**, and copies thereof shall be submitted to the Arbitrator and to each party not less than 5 days prior to the commencement of the hearing.
- 27.5 The Arbitrator shall have the power to appoint one or more chairpersons to preside over the meetings contemplated by Rule 27.3 and the cost thereof shall be costs in the cause, and the Arbitrator shall give such directions regarding payments of these fees as he deems fit.

28 Expert Assessors

- 28.1 The Arbitrator shall have the power to appoint one or more expert assessors to investigate, consider and report on any matter or matters specified by the Arbitrator, to which provision the following conditions shall apply:
- 28.1.1 the Arbitrator shall submit to each party a written notice of his intention to appoint an expert assessor wherein is furnished the name of the Assessor and a copy of the instructions given to such Assessor;
- 28.1.2 the written opinion of such Assessor shall be submitted to each party at the same time that it is submitted to the Arbitrator;
- 28.1.3 the Assessor shall be available at the hearing to the parties who shall have the opportunity to question him, to present expert witnesses to testify on the points at issue raised by such Assessor, and to present argument regarding the opinion of such assessor; and
- 28.1.4 the qualifying fees of such Assessor shall be costs in the cause, and the Arbitrator may make such directions regarding the payment of these fees as he deems fit.

- 28.1.5 The Assessor shall not act as an Arbitrator and will not participate in the decision of the Arbitrator.

29 Pre-hearing Conference

- 29.1 Prior to the commencement of the hearing the parties may arrange a pre-hearing conference with the object of reaching agreement on possible ways of curtailing the duration of the hearing and in particular on all or any of the following matters:
- 29.1.1 the possibility of obtaining admissions of facts;
 - 29.1.2 the holding of any inspection or examination;
 - 29.1.3 the making of any discovery of documents;
 - 29.1.4 the giving of any further particulars reasonably required for the purposes of the hearing;
 - 29.1.5 the production of plans, diagrams, photographs, models and the like to be used at the hearing;
 - 29.1.6 the consolidation of hearings;
 - 29.1.7 the quantum of damages; and
 - 29.1.8 the preparation and handing in at the hearing of copies of correspondence and other documents in the form of a paginated and indexed bundle with copies for the Arbitrator and both parties.
- 29.2 At the conclusion of such conference the parties shall draw up and sign a minute of the matters on which they have agreed and this shall be handed to the Arbitrator at the commencement of the hearing.

30 Appeal

The parties *may*, by a written and signed agreement, provide that the Award shall be subject to Appeal, to which provision the following conditions shall apply:

- 30.1 Within 10 days of the publication of the Award either party may give written notice to the other, to the Arbitrator and to the Chairman of the Association of its intention to refer the Award to an Appeal Tribunal.
- 30.2 The Notice of Appeal shall state whether the whole or part only of the Award is appealed against and if only part of such Award is appealed against, it shall state which part, and it shall further specify the findings of fact and/or rulings of law appealed against and the grounds upon which the Appeal is founded.
- 30.3 The Chairman of the of Association will appoint an Appeal Tribunal consisting of not less than three members and will give notice to the parties of the date or dates on which and the place where the Appeal will be heard and will secure a suitable venue for the hearing.
- 30.4 Not less than 15 days prior to the hearing the Appellant shall deliver to the Appeal Tribunal and to the other party a sufficient number of copies of the record together with a like number of copies of such exhibits as may be necessary for the proper adjudication of the matter, *provided that* the parties may agree to dispense with the provision of the record together with the exhibits but shall in that event and within the same period for the delivery of the record agree the facts upon which the Appeal is to be heard which facts shall be recorded in writing and signed by the parties and submitted to the Appeal Tribunal.

- 30.5 Within 10 days of giving Notice of Appeal the Appellant shall complete, sign and submit to the Association due and proper security to the satisfaction of the Chairman of the Association for the payment of all fees and costs in relation to or concerning the Appeal.
- 30.6 The Arbitrator may submit to the Appeal Tribunal any motivation or reasons for the Award within 10 days of receiving the Notice of Appeal and shall submit copies of such motivation or reasons to the parties.
- 30.7 The time period prescribed by Sections 32 and 33 of the Arbitration Act shall not commence to run until such time as the Appeal Tribunal has confirmed or varied the Award of the Arbitrator.
- 30.8 The Appeal Tribunal shall be entitled, but not derogating from its general powers:
- 30.8.1 to dismiss the Appeal on its merits
 - 30.8.2 to vary the Award
 - 30.8.3 to substitute its own Award
 - 30.8.4 to direct that the Award, either in whole or in part, be referred back to the Arbitrator for further consideration and for the making of a new or revised Award; and
 - 30.8.5 to dismiss the Appeal for non-compliance with the provisions of this Rule.
- 30.9 In the event that the Appeal Tribunal refers the Award back to the Arbitrator in terms of Rule 30.8.4, the Arbitrator shall, within 30 days of the date on which the Award was so referred back to him, make and publish a new or a revised Award in terms of Rule 12 with the proviso that the Appeal Tribunal may, on good cause shown, extend such time for making a new or revised Award.
- 30.10 The decision of the Appeal Tribunal shall:
- 30.10.1 be final and binding on the parties;
 - 30.10.2 constitute an Award as defined by the Arbitration Act for all purposes; and
 - 30.10.3 be deemed to constitute the Award of the Arbitrator.
- 30.11 For the purposes of this Rule, an Award shall include an Interim Award, and reference to the Chairman of the Association shall include any person to whom the Chairman may assign the rights and duties conferred upon him by this Rule.

31 Power to Strike out or Debar

Unless otherwise agreed by the parties, the Arbitrator shall have the power, on application and after hearing argument, to strike out the other party's claim or a part thereof or to debar the other party from adducing expert evidence or evidence of any particular witness of fact where, in the opinion of the Arbitrator, there has been a serious failure by that party to comply with some aspect of these Rules or some relevant direction of the Arbitrator.

32 Consent Award

If, during the arbitration proceedings the parties settle the dispute or any part thereof, the Tribunal may, if requested by the parties and not objected to by the Tribunal, record the settlement in the form of an Award on agreed terms.

33 Jurisdiction

- 33.1 Unless the arbitration agreement provides to the contrary, the Arbitrator may at the instance of any party to a reference or on his own initiative rule on his own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.
- 33.2 A party to the reference wishing to challenge the jurisdiction of the Arbitrator shall do so by no later than the first preliminary meeting, failing which he shall be deemed to have consented to the jurisdiction of the Arbitrator.
- 33.3 Nothing contained in Rule 33.2 shall derogate from a party's right to contend that the Arbitrator has exceeded his jurisdiction during the course of the proceedings.

34 Arbitrator's Expert Knowledge - Weight of Evidence

- 34.1 Unless the parties agree to the contrary, the Arbitrator may, subject to the provisions of these Rules and subject to the rules of natural justice:
- 34.1.1 rely on his own expert knowledge and experience provided he discloses same to the parties;
- 34.1.2 have regard to all the evidence and attribute such weight to the evidence as he shall deem appropriate, whether or not that evidence is given under oath, and whether or not that evidence is admissible in civil proceedings in a Court.

35 Security for Costs

Unless the parties agree to the contrary, the Arbitrator may, on the application of the Defendant in convention or reconvention, order a Claimant in convention or reconvention to provide appropriate security for costs (including additional security) and may stay the arbitration proceedings pending compliance with such order.

36 Corrections to the Award

- 36.1 Unless the parties agree to the contrary, an Arbitrator shall be entitled, whether on application of either party or on his own initiative:
- 36.1.1 to correct in any Award any clerical mistake or error;
- 36.1.2 to clarify an ambiguity or uncertainty in any Award.
- 36.2 If the Arbitrator acts on his own initiative he shall do so within 15 days of the Award being published.
- 36.3 An application by either party in terms of sub-rule 36.1 shall be made within 15 days of the Award being delivered, failing which neither party shall be entitled to seek such correction or clarification.
- 36.4 A correction or clarification under sub-rule 36.1 must, save where the parties agree to the contrary, be made within 15 days after the application has been delivered.
- 36.5 In the event of the Arbitrator having erroneously omitted to include in an Award a decision in relation to a claim presented in the proceedings, either party may make application as contemplated by sub-rule 36.1 in respect thereof.

- 36.6 The Arbitrator shall not act as contemplated by sub-rule 36.1 without first having afforded the parties an opportunity to make submissions to him thereon, which submissions must be made within 5 days of being called upon to do so by the Arbitrator or on receipt of an application contemplated by Rule 36.3.
- 36.7 If it appears to the Arbitrator that further submissions are required before he gives a direction pursuant to sub-rule 36.1, he shall have the power to extend the time limits referred to in the relevant sub-rule.

37 Procedural Directives

- 37.1 Any procedural directive made by the Arbitrator pursuant to the Rules may be varied at any stage provided that it is necessary or desirable for the expeditious and economic hearing of the matter.
- 37.2 The Arbitrator shall not exercise his powers under sub-rule 37.1 without affording the parties an opportunity to make submissions to him thereon.

SUMMARY PROCEDURE RULES

The Summary Procedure Rules are intended for the smaller and simpler arbitrations, particularly where the parties are not represented and have little or no experience of arbitration procedure. They require that the Arbitrator plays a more active and interventionist role than he would do under the Standard Procedure Rules. If the parties agree to follow these Rules, they should adopt them by a written and signed agreement to do so.

38 Preliminary Meeting

On the reference of the dispute to the Arbitrator he may convene a Preliminary Meeting with the parties with the purpose of :

- 38.1 confirming that the dispute falls within the ambit of the arbitration agreement and is ready for arbitration;
- 38.2 recording the acceptance by the Arbitrator of his appointment and acceptance by the parties of any conditions attached thereto;
- 38.3 determining whether the arbitration is to be conducted in accordance with the Standard Procedure Rules or the Summary Procedure Rules or any modification of either;
- 38.4 ascertaining the nature of the claims and counterclaims and defences thereto which the parties make or raise against each other;
- 38.5 ascertaining the allegations of fact on which the parties agree and those on which they disagree;
- 38.6 recording in writing signed by the Arbitrator and the parties the matters referred to in Rules 38.4 and 38.5;
- 38.7 arranging for the submission by each party to the Arbitrator and to the other party such documents or copies of documents as they, or the Arbitrator, consider relevant to the determination of the issues; and
- 38.8 arranging the date, time and venue of the hearing.

39 Conduct of the Hearing

The Arbitrator may, as he deems fit, follow formal or informal procedure and receive evidence or submissions, orally or in writing, sworn or unsworn, at joint meetings with the parties or, if the parties so agree, by the interchange of written statements or submissions, between the parties with copies to the Arbitrator, provided that each party shall be given reasonable opportunities of presenting evidence or submissions and of responding to those of the other party.

40 Powers of the Arbitrator

The Arbitrator shall have the power to:

- 40.1 depart from any statutory or common law rules of evidence to the extent that he deems reasonable provided that the rules of natural justice shall be observed;
- 40.2 put questions himself to the parties or their witnesses on any matter relevant to the issues;
- 40.3 make any enquiries as he considers necessary or expedient provided that he shall inform the parties of all matters ascertained as a result of such enquiries;
- 40.4 grant to the parties such opportunity, as he deems reasonable of making amendments to the issues or to any statement or submission;
- 40.5 inspect any property or thing to the extent that he deems necessary; and
- 40.6 rely, in his Award, on his own expert knowledge or experience in any field.

41 Representation of the Parties

Unless the parties otherwise agree in writing neither of them shall be entitled to be represented in the arbitration except by;

- 41.1 the party himself, if a natural person or a partner in the case of a partnership;
- 41.2 a director in the case of a company;
- 41.3 a member of a close corporation;
- 41.4 a bona fide full-time employee or officer of the party concerned; and
- 41.5 such technically qualified person, other than a practicing lawyer, as the Arbitrator considers to be reasonably necessary for the presentation of the case of the party concerned, including without limiting the generality of the foregoing, any professional engineer, architect or quantity surveyor in the case of a dispute on a construction contract.

RULES AND GUIDELINES FOR THE CONDUCT OF THE SMALL CLAIMS ARBITRATION TRIBUNAL

GUIDELINES

1. These basic guidelines are intended to facilitate an understanding of the purpose and workings of the Small Claims Arbitration Tribunal. The process is not only structured to produce a quick, economical, and effective dispute resolution system but is also simple to implement. The parties do not require knowledge or experience of the arbitration process. The Arbitrator plays an active, interventionist role and shall assist the parties to achieve a process best suited to their search for justice.
2. The parties are not permitted to be represented by practising attorneys or advocates though they may seek the assistance of suitably qualified advisors to prepare their written submissions to the Tribunal.
3. After the appointment of the Arbitrator, he may consider it appropriate to meet with the disputing parties so that a procedure to suit the nature of the dispute can be devised by discussion.
4. At this initial discussion the Arbitrator may consider it opportune to suggest an alternative dispute resolution process such as facilitating a settlement rather than continuing with the arbitration.
5. Should the parties wish to continue with an arbitration the dispute may be handled on the basis of each party submitting written pleadings and supporting evidence only, as opposed to written pleadings and supporting documents becoming the basis for further aural presentation, including supporting witnesses where necessary, at a hearing.
6. In deciding the issue or issues being disputed, including the matter of costs, the Arbitrator may find that it is adequate to resolve the issues by simply awarding financial remedies, which by virtue of the process, become binding on the parties. In complex issues the Arbitrator may decide to make a reasoned Award. Naturally, a reasoned Award is usually more time consuming and therefore costly. At the initial meeting the parties may wish to discuss the matter with the Arbitrator and express their views. They may even agree, with the concurrence of the Arbitrator, to instruct him one way or the other.
7. Should the Tribunal agree to deal with the dispute where the value of the claim or other compensation exceeds R50 000 net, the cost structure may be agreed by negotiation with the parties. However, the Association registration fee of R1250,00 shall not be negotiable.

The cost of the arbitration process for class A, B and C arbitrations shall be in accordance with the currently recommended scale or as amended by the Association from time to time.
8. Even though the Small Claims Arbitration Tribunal process is a much simplified one, it substantially adheres to the Arbitration Act of 1965, thus ensuring a process which operates within well-tried legal parameters.

RECOMMENDED COST STRUCTURE

THREE CLASSES OF PROCESS ENVISAGED

A CLASS 1

Claim up to R6 000 (documents only arbitration – no reasoned Award)

Cost Structure Proposed

1.	Association registration	200,00
2.	Arbitrator: Fixed fee	<u>1 200,00</u>
	TOTAL COST	R1 400,00

B CLASS 2

Claim from R6 000 to R30 000 (documents only arbitration – no reasoned award)

Cost Structure Proposed

1.	Association registration	750,00
2.	Arbitrator: 8 hrs @ R500 per hr (maximum)	4 000,00
3.	Sundries	100,00
4.	Inspection allowance, if any	<u>400,00</u>
	TOTAL COST	R5 250,00

C CLASS 3

Claim from R30 000 to R60 000

Cost Structure Proposed

1.	Association registration	1 000,00
2.	Arbitrator: 12 hrs @ R500 per hr (maximum)	6 000,00
3.	Sundries	200,00
4.	Inspection allowance, if any	500,00
5.	Reasoned Award allowance	<u>500,00</u>
	TOTAL COST	R9 200,00

All the above plus VAT

RULES

1 Definitions

- 1.1 "Day" means any day other than a Saturday, Sunday or public holiday;
- 1.2 "Rules" means these arbitration Rules;
- 1.3 "Claimant" means the party to the arbitration who claims relief against the other party, provided that if each party claims relief against the other, "Claimant" shall mean the party who first referred the dispute to arbitration;
- 1.4 "Defendant" means the party to the arbitration other than the Claimant;
- 1.5 "Document" means, in relation to each party, any document of whatsoever nature in his possession or under his control, whether an original or a copy, relating to the dispute which has been referred to arbitration, including plans, photographs and recordings on magnetic tape, compact disc and computer disc;

- 1.6 "Submissions" means the Statement of Issues, Statement of Claim, Statement of Defence, Defendant's Counterclaim and Claimant's Reply and any other similar documents permitted by the Arbitrator;
- 1.7 Where appropriate, words importing the singular shall include the plural and words importing the masculine shall include the other genders.
- 1.8 "The Association" means Association of Arbitrators (Southern Africa)

2 Matters not Subject to the Small Claims Arbitration Process of the Association of Arbitrators (Southern Africa)

A reference to the Small Claims Arbitration Rules shall not be permissible in respect of:

- 2.1 any matter involving representation in conflict with 9 below;
- 2.2 any matter requiring an Award not relating to financial redress expressed only in monetary value;
- 2.3 a dispute where the value of the claims or other compensation exceeds R50 000 net except where, by permission of the Tribunal, this sum may be exceeded;
- 2.4 a dispute where more than two parties are involved.

3 Preliminary Procedure

- 3.1 After a dispute has arisen between two parties this dispute shall be referred to arbitration only if a prior written agreement exists between them to so proceed. However, should no such agreement exist on the emergence of a dispute, the parties can agree in writing to refer the matter to the Association, requesting the appointment of a Small Claims Tribunal provided both parties become signatories to the document.
- 3.2 The reference shall be initiated by the Claimant who shall submit his Statement of Claim against the Defendant and shall set out the nature of any other relief claimed. This letter shall include a certified copy of the original signed agreement together with the letter signed by the parties agreeing to refer their dispute to the Small Claims Tribunal.
- 3.3 The Chairman of the Association or his nominee shall respond to the Claimant enclosing an "Application for Appointment of Tribunal" form setting out the required application fee.
- 3.4 On receipt of the application form and payment of the required fee, the Chairman or his nominee shall appoint the Tribunal, sending it copies of the application form and the Claimant's Statement of Claim.
- 3.5 The application fee shall not be refundable. The Tribunal shall consider this payment as part of the costs in this arbitration, when making its Award.
- 3.6 The Tribunal shall send a written confirmation of its acceptance of this appointment to the Chairman of the Association. It shall then write to the parties informing them of the appointment and request the Defendant to submit to it and to the Claimant the Statement of Defence and Counterclaim, if any, by a stipulated date.
- 3.7 Should the Defendant not respond by the stipulated date, the Tribunal may proceed to give notice to both parties of a Preliminary Meeting where the matters at issue, including the Defendant's response, will be discussed to enable the Tribunal to formulate the process to be followed.

4 Proceedings Private and Confidential

- 4.1 Unless the parties agree otherwise, the hearing of the arbitration shall be held in camera.
- 4.2 Save to the extent necessary for the purposes of the arbitration or for any court proceedings related thereto, or where otherwise under a legal obligation to do so, neither party shall disclose or make available to any other person any information concerning the arbitration or the Award.

5 Powers of the Tribunal

The Tribunal shall have the power to;

- 5.1 assist the parties to reach a settlement;
- 5.2 depart from any statutory or common law rules of evidence provided that the departure is not in breach of the Tribunal's duty to act fairly;
- 5.3 put questions to each party or its witnesses where applicable, on any matter relevant to the issues;
- 5.4 make any enquiries that it considers necessary or expedient, provided that it shall inform the parties of all matters ascertained as a result of such enquiries;
- 5.5 grant to the parties such opportunity as it deems reasonable for making amendments to the issues or to any statement or submission;
- 5.6 inspect any property or thing to the extent that it deems necessary;
- 5.7 rely, in its Award, on his own expert knowledge or experience in any field particularly when evaluating evidence presented.

6 Proceedings on Default

After the parties have agreed to arbitration, the Tribunal may proceed with the arbitration and make an Award, notwithstanding any failure, neglect or refusal of either party to comply with these Rules or to take part or further part in the arbitration.

7 Award of Costs

- 7.1 Reasonable disbursements made by a successful party to a representative of that party referred to in 9.5 below, if any, may be awarded by the Tribunal, in an amount to be determined by the Tribunal.
- 7.2 The parties, by having agreed to the adoption of these Rules for the conduct of the arbitration, shall be deemed to have undertaken to be liable jointly and severally to the Tribunal for the due payment, on demand, of its fees and expenses. Initially the Claimant shall be responsible for these payments but the Tribunal shall reasonably apportion costs as part of its Award.

8 Delivery of Award

Unless the parties otherwise agree, the Tribunal shall deliver its Award within four weeks after the conclusion of the hearing, or the submission of the last document to the Tribunal in the event that there is no hearing. This provision shall constitute a variation to S23 (a) of the Arbitration Act.

9 Representation of the Parties

Neither of the parties shall be entitled to be represented in the arbitration except by:

- 9.1 the party himself; if a natural person, or a partner in the case of a partnership;
- 9.2 a director in the case of a company;
- 9.3 a member in the case of a close corporation;
- 9.4 a bona-fide full-time employee or officer of the party concerned; and
- 9.5 such technically qualified person, other than a practising lawyer, as the Tribunal considers to be reasonably necessary for the presentation of technical expertise relating to the disputed issues.

10 Limits

- 10.1 Where no time period is specified for the doing of any act in terms of these Rules or in terms of any ruling, directive or decision of the Tribunal, unless the parties shall have otherwise agreed, such period shall be stipulated by the Tribunal.
- 10.2 The time limits stated in these Rules shall not be extended or shortened except by leave of the Tribunal.

11 Dispute on Rules

Any dispute about the meaning or effect of any of these Rules shall be determined by the Tribunal who shall further have the power to give directions, not inconsistent with the Rules, on the manner and time in which the Rules shall be carried into effect.

12 Tribunal's Fee

- 12.1 The Tribunal shall be entitled to charge a time-related fee with a set maximum cost as laid down by the Association from time to time.
- 12.2 The Tribunal shall be entitled to charge an initial retainer of 40% of the maximum allowable fee in terms of 12.1 above.
- 12.3 The Tribunal may withhold its Award until its fee is paid.

13 Arbitration Act

Save as varied herein, the provisions of the Arbitration Act (Act No 42 of 1965) shall apply.