

RULES OF ARBITRATION

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Rules for Speedy Arbitration of Financial Claims

1. WHICH CLAIMS QUALIFY FOR ARBITRATION IN TERMS OF THE RULES FOR SPEEDY ARBITRATION OF FINANCIAL CLAIMS?

- 1.1 These rules for Speedy Arbitration of Financial Claims (SAFE) of the South African Chamber of Arbitration (hereafter called “Chamber”) are applicable to any Dispute, difference in opinion or claim which is based on a liquid claim or document (hereafter called “Dispute”).
- 1.2 Financial claims include any claims where the Dispute is based on a liquid claim or document as defined and explained by The Magistrate’s Court Act 32 of 1944 with regards to an application for a summary judgment.
- 1.3 The sole purpose of the Chamber is to offer the South African public an opportunity to adjudicate Disputes in a speedy, user-friendly and cost-effective manner, accompanied by an order that is final and binding on both the Applicant and Respondent (hereafter called “Parties”)

2. GENERAL RULES

- 2.1 This manner of Arbitration aims to eliminate the need for argumentation or calling of witnesses to testify in the matter, either by the Parties themselves or their legal representatives, except for instances where the Arbitrator requests, at his/her sole discretion, an informal discussion between the Parties where they may present their versions and evidence. The Arbitrator may also request an informal discussion with only one of the Parties, if any uncertainties (procedural or on merit) exist, which needs to take place with the consent of the other Party, alternatively, in the presence of the other Party. Both Parties’ versions will be judged, as far as possible, based on documentation in the form of affidavits with addendums to serve as proof of evidence (accepted in Afrikaans or English).

- 2.2 Both Parties may employ legal counsel to assist with the preparation, drafting of their documentation and argumentation, if necessary and/or requested by the Arbitrator. If any argumentation is requested this shall be done in an informal way where all Parties with their legal representatives shall be present. Alternatively, the argumentation may take place via electronic communication, for example, a video conference call. The Arbitrator has the widest possible discretion with regards to this decision, in which case, all rules applicable to the argumentation and led of evidence shall be determined and given through to the Parties by the Arbitrator.
- 2.3 The Arbitrator shall also have the widest discretion and powers allowed by law to ensure the just, speedy, user-friendly, economical and final determination of all the Disputes raised in proceedings, including the matter of costs.
- 2.4 All Disputes reported to the Chamber, will be dealt with by a single Arbitrator.
- 2.5 The total costs of the Arbitration **on any Disputes**, as determined by the rules for SAFE will be calculated as follows:

2.5.1 Registration Fee payable on date of registration:

R2,500.00 for claims of R1.00 to R25,000.00;

R3,500.00 for claims of R25,000.01 to R75,000.00;

R5,000.00 for claims of R75,000.01 to R200,000.00;

R7,500.00 for claims of R200,000.01 to R400,000.00;

R10,000.00 for claims of R400,000.01 to R1,000,000.00;

R15,000.00 for claims of R1,000,000.01 and above.

PLUS an Arbitration Fee of R 3,500.00 (excluding VAT) or 10% (excluding VAT) of the capital claimed, up to a maximum fee of R100,000.00 (excluding VAT), whichever is the greater. The Arbitration Fee will be payable within 30 days of registration of the claim.

- 2.5.2 If there is a counterclaim instituted by the Respondent, the Respondent shall be responsible to also pay a Registration Fee as set out above to register his/her counterclaim plus an Arbitration Fee of R 3,500.00 (excluding VAT) or 10% (excluding VAT) of the counterclaim amount, up to a maximum amount of R100,000.00, whichever is greater. The Registration Fee together with the Arbitration Fee is due and payable by the Respondent on the date of filing the counterclaim.

- 2.5.3 If the Dispute registered by the Applicant is unopposed by the Respondent, the Arbitration Costs only consists of the Registration Fee PLUS an Arbitration Fee of 5% (excluding VAT) of the capital claimed by the Applicant, with a minimum Arbitration Fee of R 3,500.00 (excluding VAT) and a maximum Arbitration Fee of R15,000.00.
- 2.5.4 Neither the Applicant nor the Respondent's claims will be attended to without receipt of the mentioned fees, on the dates as indicated above. However, the Chamber will have the sole discretion to decide if any exemptions will be allowed.
- 2.5.5 If the Respondent has a counterclaim filed without payment of his Registration Fee and Arbitration Fee, then the Arbitration process will proceed as if no counterclaim was received.
- 2.5.6 The Arbitrator shall in its award direct which Party will be liable for all the costs of the Arbitration, which will include the Registration Fees, Arbitration Fees and Legal costs. These costs will be due and payable within 7 calendar days from the date of the award.
- 2.5.7 The Party responsible for payment of the costs consents to payment of all legal costs on an attorney and client scale plus collection commission of 10% if the award is not adhered to within 7 calendar days, and the successful Party needs to proceed with legal action to collect the capital amount, interest and costs.
- 2.6 Should the Dispute between the Parties be settled before an Arbitration award has been made, then the Parties may request the Arbitrator to make such settlement the award of the Arbitrator. The Chamber will under no circumstances refund any money paid on any matters that became settled between the Parties.
- 2.7 The Chamber will always aim to finalise any Dispute within 90 calendar days from the date on which the Dispute has been registered (if there is no counterclaim).
- 2.8 The Chamber will only register a Dispute if all the requirements as outlined in the Request for Arbitration Form have been met.

- 2.9 The Chairperson of the Chamber will appoint an Arbitrator solely based on his or her discretion, although no Arbitrator will have less than 10 years' experience in his/her field of knowledge. The appointed Arbitrator shall then determine the Dispute outcome in accordance with the rules for SAFE. Both Parties will be informed of who the appointed Arbitrator is.
- 2.10 In the unlikely event of the Arbitrator reaching a status, not being in a position to proceed with or attend to the Arbitration, then and in that instance, the Chairperson of the Chamber shall appoint a substitute Arbitrator according to its sole discretion.
- 2.11 If any of the Parties are unsatisfied with the appointment of a specific Arbitrator and prefer another Arbitrator, to be approved by the Chairperson of the Chamber, then and in such instance, the Party requesting the substitute Arbitrator shall be responsible for the difference in fees of the Arbitrator appointed by the Chamber and the preferred Arbitrator, as the Chamber has set fee agreements with its Arbitrators.
- 2.12 All correspondence between the Parties (Applicant, Respondent and the Arbitrator, which deals with the Dispute) may only be done in the presence of the said Parties, except when written consent is obtained from the absent Parties indicating that discussions and or further correspondence may be led in their absence.
- 2.13 The Arbitrator maintains the right, and may at any time, amend any clause of the Rules for SAFE, based on his or her sole discretion. This can be done on the condition that such an amendment would still serve the moral values of that which is fair and reasonable as well as the objectives of the South African Chamber of Arbitration. In the unlikely event of such a change, both Parties will be informed of the amendment via email as well as SMS.
- 2.14 The Arbitrator may at any time, based on his or her sole discretion, appoint one or more experts or advisors on any matter or refer any legal Dispute or question of law for legal counsel to a third Party in order to obtain an opinion or recommendation. Such an opinion, advise or recommendation may be incorporated into an order and the Arbitrator will indicate which Party will be responsible for such costs, although the costs will usually follow the Arbitration award.

- 2.15 The Arbitrator may at any time, based on his or her sole discretion, refer any legal Dispute or claim to any competent court of law with jurisdiction to obtain a declaratory order or any other legal aid required by the Arbitrator. The Parties shall be timeously informed of such a decision made by the Arbitrator.
- 2.16 The award of the Arbitrator will be final and binding upon both Parties and neither one of the Parties may appeal the award of the Arbitrator.
- 2.17 The Arbitration will only be treated as private and confidential, if this is agreed upon in writing, by the Applicant and the Respondent.

3. PROCEDURAL RULES

- 3.1 The Arbitration process, done in accordance with the rules for SAFE, will commence as soon as the Chamber receives a Request for Arbitration Form from the Applicant. The Chamber shall firstly determine if there is an agreement, between the Parties, which makes provision for Arbitration by the Chamber in accordance with the rules for SAFE, whereafter an Arbitrator will be appointed by the Chamber. The request will be regarded as submitted if it is accompanied by proof of payment for the Registration Fee with the correctly completed Request for Arbitration Form.
- 3.2 The Chamber shall always serve all the documents received from the Parties on the Applicant or the Respondent/s as required by the rules for SAFE. This can be done in one of the following ways:
- 3.2.1 via registered post or email with 'track and trace' as proof that the documents have been sent;
 - 3.2.2 via email with proof that it has been sent to the Party's nominated email address;
 - 3.2.3 delivered by hand with proof that it has been delivered.
- 3.3 The Request for Arbitration Form, must be accompanied by the Applicant's claim in the form of an affidavit, together with all the applicable evidence (supporting documents). The Parties versions as contained in their respective affidavits may not exceed 5000 words per affidavit.

- 3.4 All the additional required documentation, as stipulated by the form, must be attached to the Request for Arbitration Form.
- 3.5 The Respondent should, within 14 calendar days after the Request for Arbitration Form and the accompanying addendums have been sent to the Respondent, send his or her defence in the form of an affidavit to the Chamber. This should be accompanied by the necessary evidence (supporting documents) as well as the Respondent's counterclaim (if applicable). The Chamber shall always acknowledge receipt of any documents. It is the Respondents' responsibility to confirm that the defence (and counterclaim, if applicable) was received by the Chamber. The Chamber shall then serve such documents in the same manner as stipulated in clause 3b (i) - (iii) above on the Applicant. If the Respondent has a counterclaim, proof of payment of the Registration Fee should also be submitted.
- 3.6 If there is a counterclaim, the Applicant should, within 14 calendar days of which the said counterclaim has been served on the Applicant, respond to the counterclaim of the Respondent in the form of an affidavit accompanied by the necessary proof (supporting documents). These documents should then be offered to the Chamber, who will acknowledge receipt thereof. It is the responsibility of the Applicant to confirm that these documents were received by the Chamber. The Chamber shall serve these documents in the same prescribed manner on the Respondent.
- 3.7 If there is no counterclaim, the Applicant may reply to the defence of the Respondent within 14 calendar days. The replying documents shall be sent to the Chamber and by the Chamber to the Respondent in the prescribed manner. If the Applicant does not reply to the defence of the Respondent, it shall be seen that the Applicant denies the defence of the Respondent and the Arbitration shall proceed accordingly.
- 3.8 If there is a counterclaim to which the Applicant has filed its defence in terms of clause 3f, the Respondent may reply to the defence of the Applicant within 14 calendar days. The replying documents shall be sent to the Chamber, who will serve it on the Applicant in the prescribed manner. If the Respondent wishes not to reply to the defence of the Applicant, it shall be seen that the Respondent denies the defence of the Applicant and the Arbitration shall proceed.
- 3.9 The Chamber shall send all documents, indexed and paginated, to the Arbitrator, where after the Arbitrator shall indicate if a Pre-Arbitration meeting is required. During this meeting the Arbitrator shall indicate the rules and procedures to be

followed in the event that argumentation and further evidence is needed. If no Pre-Arbitration meeting is needed, the Arbitrator shall proceed with the Arbitration on the documents filed.

- 3.10 If any additional information is needed by the Arbitrator to finalise his or her award, the Arbitrator may request such information from the Applicant or the Respondent. This request should be acceded to within 7 calendar days after the date of the request and should be submitted in the form of an affidavit together with the necessary proof (supporting documents). This request and response will be revealed to and served on all Parties in the same manner as previously indicated.
- 3.11 Should either of the Parties neglect to file their various versions or neglect to accede to any request from the Arbitrator, the Chamber will inform the Parties of such failure via SMS and/or email (if possible) and indicate that this situation should be rectified within 14 calendar days. Failure to do so will entitle the Arbitrator to determine the outcome of the Dispute without the specific Party's defence or the requested information as if the Party which has failed in its obligations has given permission for this to be done.
- 3.12 The Arbitrator shall provide his or her award to both Parties within a period of 14 calendar days from which the last documents/information have been obtained from the Parties. An extension of this period may be requested by the appointed Arbitrator, but must be approved by the Chairperson of the Chamber. Both Parties will be informed of this by the Chamber via SMS and/or email (if possible).
- 3.13 Each Party should sign his or her affidavit as confirmation that it indeed contains the specific version of the Party and that the content is true and correct.
- 3.14 The Arbitrator is fully empowered to issue any appropriate cost order of which the costs might be determined on an attorney-own-client scale as explained in the Uniform Rules for Court of the High Court of South Africa.
- 3.15 The Arbitrator is also entitled to issue an appropriate award with regards to the apportionment of interest at a set rate from the specific date. If the Arbitrator makes no order as to interest, simple interest will be paid at a rate of mora tore interest, from the date on which the award has been issued, up to the date on which the award has been complied with.

- 3.16 Any Party can request the Chairperson of the Chamber to, based solely on the Chairperson's own discretion, appoint an outside (third) party to tax any account that has been issued with regard to the Arbitration order. Such taxation will be dealt with in the same manner as if the taxation has taken place in accordance with Rule 70 of the Uniform Rules for the High Court of South Africa. The Arbitrator will determine which of the respective Parties will be held liable for payment of the services of the outside (third) party with regards to the taxation of the account. This will be incorporated in the Arbitrator's final award, alternatively, the award shall be made after taxation took place.
- 3.17 Only the Arbitrator will have the power to allow an extension with regards to any due date and time frames. Furthermore, all interim requests and/or procedural requests will be dealt with by the Arbitrator and will be decided by him or her based solely on his or her own discretion. The Arbitrator will deal with the latter in the same manner as if it has been dealt with by a judge of the High Court of South Africa. Only if the South African law prohibits an Arbitrator to deal with such a request or to issue such an award will the request be referred to the applicable High Court which has jurisdiction in the matter.
- 3.18 The Arbitrator will have the power to determine and rule on his own jurisdiction, including rulings on any Dispute in regard to the existence or validity of the Arbitration agreement or the scope thereof.
- 3.19 The Arbitrator will inform the South African Chamber of Arbitration when the Arbitration award is available, who will serve it to both Parties in the same way as previously mentioned. The Parties are then free to contact the Chamber via email in case they have not received the award, after which the award will be sent to them again.
- 3.20 Both Parties agree to the fact that the Arbitration order can be made an order of court if the 'unsuccessful' Party fails to completely fulfil its obligations within 7 calendar days from the date of the Arbitration order. Alternatively, giving notice within the mentioned 7 days of its intention to bring an Application to Review, which application should be brought within 6 weeks from the date of the award.

3.21 Both Parties agree to the enforcement of any arbitral award in terms of Section 45 of the Magistrates Court Act 32 of 1944 although any other court with competent jurisdiction may be approached. This clause does however not restrict and bind any Party to only approach the Magistrates Court and the Party enforcing the award may still approach any competent court with the necessary jurisdiction.

3.22 All Disputes reported to the Chamber, will be dealt with by a single Arbitrator.

INDEMNITY

4.1 The Chamber will accept no responsibility or liability for any conduct or action or lack thereof by the Arbitrator towards any of the Parties involved with regards to anything related to the Arbitration which has taken place under the auspices of the South African Chamber of Arbitration, and are indemnified by both Parties. Furthermore, no Arbitrator, who has been appointed by the Chamber, will accept any responsibility or liability for any conduct or action, or lack thereof, which has taken place during the adjudication of the Dispute and are indemnified by both Parties, unless it is a case of gross misconduct by the Arbitrator.

4.2 The Chamber retains all rights to, and may at any time, withdraw from the Arbitration of any claim or Dispute, without supplying any reasons for this. The Arbitrator will merely inform the Parties if this has happened, via SMS and email and shall the Chamber not be entitled to any fee whatsoever. The Arbitrator may also, based solely on his or her discretion, refer the Dispute to an outside Party to arbitrate, subject to the written consent of the Chamber.