

NEPCA's Rules

Rules of Nepal Council of Arbitration for Arbitral Proceedings

Preamble:

Whereas, Nepal Council of Arbitration (NEPCA), established as an autonomous and non-profitable organization for facilitating the settlement of disputes of commercial nature through the development and institutionalization of a process of arbitration or other alternative means of dispute settlement, its Executive Committee, in exercise of the power conferred by Section 26 of the Statute of NEPCA, 2048 (1991) has framed these Rules in order to manage the arbitral proceedings

Chapter - 1

Preliminary

1. **Short Title and Commencement:** (1) These Rules may be cited as "Nepal Council of Arbitration (NEPCA) Arbitral Procedure Rules, 2060 (2003)" and as "NEPCA Rules " in short.
(2) These Rules shall come into force from the date of approval (2060/8/22 B.S. corresponding to 8 December 2003) by the Executive Committee of Nepal Council of Arbitration.

2. **Definition:**

Unless the subject or context otherwise requires, in these Rules:

- (a) Meaning of words or clauses as used herein shall be as defined in the Nepal Arbitration Act.
- (b) "Statute" means the Statute of Nepal Council of Arbitration, 2048 (1991).
- (c) "Council" means the Nepal Council of Arbitration.
- (d) "Executive Committee" means the Executive Committee of the Council.
- (e) "Act" means the Arbitration Act of Nepal.
- (f) Words indicating masculine gender as used herein shall also include indicate feminine gender and the words in singular shall also indicate the words in plural and a vise versa.
- (g) "Administrative expenditure" means the administrative expenditure fixed by the Arbitrator.
- (h) "Arbitrator" means chief arbitrator and the arbitral tribunal consisting of one or more than one arbitrator.
- (i) "Agreement" means the written understanding concluded between the parties for a settlement through arbitration of a dispute arisen at present or as may be arisen in future on the matter in respect of any definite legal relationship with or without contract.
- (j) "Party" means the parties in dispute that is to be arbitrated.

Explanation:

Written understanding shall be deemed to have been concluded between the parties for the purpose of this clause if there exists any one of the following instruments:

- (1) Any contract concluded between the parties incorporating a provision for arbitration or any other separate agreement concluded thereto.
- (2) Letter, telegram, tele-fax, or any such other means of communication (media), which may be recorded in writing, exchanged between the parties with an understanding that a dispute shall be referred to arbitration.
- (3) Following the filing of a claim in any dispute by either party with a view referring to arbitration, a statement of defence filed by the party defending him/herself against the said claim without denying the reference of the dispute to arbitration.

Chapter- 2

Jurisdiction, Counting of Time-limit, Notice and Commencement of Proceedings

3. Jurisdiction:

(1) Where the parties to any contract have made provision to submit disputes arisen out of the said contract or thereunder to the Council for settlement or if an agreement is concluded between the parties or an understanding is reached between the parties to refer disputes arisen under any contract to the Nepal Council of Arbitration, such disputes shall be settled pursuant to the provisions as stipulated in these Rules.

Provided, however, that the parties may, through their written understanding, exclude any provision of these Rules in a manner that such provision shall not be applicable in respect to the dispute referred by them.

(2) The parties shall not be allowed to exercise the right as per the proviso of sub-rule (1) after commencement of arbitral proceedings.

4. Counting of Time-limit:

(1) While counting time-limit under these Rules, it shall be counted in a manner that the first day shall be excluded and the last day is included.

(2) If public holiday or holiday of the place of domicile of addressee occurs on the last day when the time-limit expires pursuant to sub-rule (1), such time limit shall remain valid till the first day when office opens subsequently after expiry of such holiday.

5. Means of Notice:

- (1) Notice, information, note, proposal to be given by a party to the other party or contact to be established or correspondence to be made to the arbitrator pursuant to these Rules shall be required to be made in writing.
- (2) While establishing contact in writing pursuant to sub-rule (1), it may be done by hand, through post office, or also through such electronic media as e-mail or fax.

6. Method of Initiating Arbitration:

- (1) If an agreement pertaining to arbitration or provision pertaining to arbitration of any agreement or written understanding of the parties makes provision for reference of the dispute to the Council, the Claimant or both the parties jointly may commence arbitral proceedings by giving a written notice of request to the Council.
- (2) A sum of NRs. 1000/- (one thousand) as the fee for application shall be required to be deposited with the Council setting out the following matters in the notice of request as referred to in sub-rule (1): -
 - (a) Name and address of the disputant parties,
 - (b) Nature and subject of dispute,
 - (c) Request made for arbitration,
 - (d) Estimated amount of claim,
 - (e) Remedy sought,
 - (f) Number of arbitrators agreed upon between the parties, if so agreed,
 - (g) The required qualification of arbitrator, if so specified,
 - (h) If separate agreement or understanding is reached on arbitration, such agreement or understanding and if there is no such agreement or understanding, provision of the agreement pertaining to arbitration under which the arbitral proceedings is commenced,
 - (i) Contract under which the dispute has arisen,
 - (j) If the agreement does not specify number of arbitrator/s, a proposal on the matter whether the arbitration shall be conducted by a sole arbitrator or by more than one arbitrator
- (3) Summary of claim may also be included in the request as referred to in sub-rule (1) in addition to the matters set forth in sub-rule (2).
- (4) Party who has filed the notice of request pursuant to sub-rule (1) shall be required to give the information of such notice of request to the other party.
- (5) If notice of request is filed by either party pursuant to sub-rule (1), the Council shall give written information to the other party and ask for reaction thereof.

7. Notice Shall Be Deemed to Have Been Received: Any written notice, information or proposal sent pursuant to sub-rules (1) and (2) of Rule 5 to the addressee or served to the place of domicile or the place of transaction or the address of correspondence of such person, such notice, note, information or proposal shall be deemed to have been received by such person.

Provided, however, that if the current real address of such person is not found despite making necessary efforts, such notice, information, note or proposal shall be deemed to have been received by such person after expiry of 15 (fifteen) days from the date of sending such notice, information, note or proposal to the place of latest domicile or the place of latest transaction of such person to the best of knowledge.

8. Commencement of Arbitration (1) Arbitral proceedings shall be deemed to commence on the date on which the other party receives the notice of request made to the Council for arbitration pursuant to Rule 6.

9. Review by the Council: The Council may, prior to making appointment of arbitrators upon receipt of request for arbitration pursuant to Rule 6, review documents as to whether the dispute referred to arbitration is an arbitrable dispute under arbitration or not and give advice to the parties thereon.

Provided, however, that the parties to the dispute shall not be bound to follow such advice.

10. Representation and Assistance :

(1) The parties may be represented or assisted by persons of their choice.

(2) If either party appoints its representative or assistant pursuant to sub-rule (1), such party shall be required to give to the Council and the other party in writing the name and address of the representative or assistant so appointed including the disclosure as to whether the person so appointed is the representative or the assistant.

Chapter- 3

Appointment of Arbitrator

11. Composition of the Arbitral Tribunal: (1) If the number of arbitrators is not specified in the agreement or the parties fail to reach an agreement on the number of arbitrators, the dispute shall be heard and settled by a sole arbitrator. However, taking into account the nature and gravity of the dispute, the Council may decide to form a tribunal consisting of 3(three) arbitrators.

12. Appointment of Arbitrators :

- (1) If the dispute is to be heard by a sole arbitrator, either party may propose names of more than one person as arbitrator to the other party.
- (2) Person accepted by the other party out of the names proposed or the first person in the proposed list pursuant to sub-rule (1) shall be appointed as the sole arbitrator.
- (3) If the parties fail to reach an agreement for appointment of the sole arbitrator within 30 (thirty) days after the commencement of arbitral proceedings, either party may request the Council for appointment of the sole arbitrator.
- (4) In case of appointment of more than one arbitrator, if either party fails to appoint an arbitrator from his side within the agreed time-limit or within 30 days from the date of commencement of the arbitral proceedings in case there is not any agreed time-limit, the other party may request the Council for appointment of the arbitrator on behalf of the party that failed to appoint the arbitrator.
- (5) If the parties to dispute reach an agreement or an understanding that there shall also be a chief arbitrator in arbitration, the chief arbitrator shall be appointed through the procedure if such procedure is specified in such agreement and if such procedure is not specified, the chief arbitrator shall be appointed by the arbitrators so appointed by both the parties. In case of failure to appoint chief arbitrator even within 15 days after the appointment of arbitrators, the Council may, on request of either party, appoint the chief arbitrator. The Council shall appoint chief arbitrator within 15 (fifteen) days upon receipt of such request.
- (6) Notwithstanding anything stated elsewhere in these Rules, both the parties to the dispute may request the Council for appointment of arbitrator at any time.

13. Personal Details of Arbitrator: Where a person is proposed for appointment as an arbitrator, the proposer shall give such information as his/her full name, address, past and present professional position, qualification, and experience pertaining to arbitration. If the Council appoints an arbitrator, the Council shall also give such information to both the parties.

14. Method for Appointment of the Arbitrator by the Council :

- (1) Upon receipt of request from either or both the parties to dispute for appointment of arbitrator pursuant to these Rules the Council shall appoint the independent and impartial arbitrators from amongst the Panel of Arbitrators maintained by the Council

- (2) While making appointment of arbitrator pursuant to sub-rule (1), following procedures shall be followed:-
- (a) The Council shall provide a list containing names of at least three arbitrators to both the parties.
 - (b) Pursuant to Sub rule 1 (a), each party shall prepare its list of priority by deleting the names of the arbitrators it objects and by numbering the other names in the order of priority and return it to the Council within 7 (seven) days.
 - (c) Pursuant to Sub rule 1 (b), after the expiry of the time-limit the Council shall appoint the person as arbitrator, within 7 (seven) days, whose name is ranked in the first place in list so returned by the party.
 - (d) If arbitrators could not be appointed pursuant to Sub rule (c), the Council shall appoint arbitrators from its Panel of Arbitrators, keeping into account the nature and gravity of the dispute and qualification and impartiality of the arbitrators being appointed therein.
- (3) While making appointment of the arbitrator pursuant to Rule 12 sub-rules (4) and (5) the Council shall follow the procedures as prescribed in sub-rule (2) herein.
- (4) Parties requesting for appointment of the arbitrator pursuant to sub-rule (1) shall be required to deposit a sum of Rs. 5,000/- (five thousand) with the Council.

15. Appointment of the Arbitrator in the Special Circumstance :

- (1) If an arbitrator appointed pursuant to these Rules is unwilling or refuses to act in such capacity or becomes unable to act in such capacity or resigns or is removed from office by order of a court or dies, the Council may, on submission of adequate evidence thereof, declare the office of such arbitrator vacant. A substitute arbitrator shall be appointed to the vacant post, within 30 (thirty) days after such declaration, according to the procedure that were applicable to the appointment of the arbitrator being replaced.
- (2) Where an arbitrator in sole arbitration, chief, or chairperson in case of arbitration by more than one arbitrator, is replaced, any hearing previously held shall be repeated. Where any other arbitrator is replaced, any hearing previously held may be repeated at the discretion of the arbitrators.

16. Independence and Impartiality of the Arbitrator:

- (1) The arbitrator shall remain fully independent and impartial for all the time and he/she shall not in the absence of other party hold any discussions, consultation or talks on the administrative procedures or oral hearing relating to the subject-matters in dispute, except otherwise provided for in these Rules.

17. Oath to Be Taken by the Arbitrator: Each person shall, prior to commencement of arbitral proceeding upon being appointed as the arbitrator, be required to take oath in writing declaring that there is no existence of circumstance where justifiable doubt may arise on his/her impartiality and independence and that he/she shall inform the parties to dispute if such circumstance arises prior to the termination of arbitration. One copy of such written oath shall also be required to be given to the Council.

18. Challenge of Arbitrator :

(1) The procedures and circumstance for the removal of the arbitrator shall be as stipulated in the Agreement.

(2) Unless procedures and circumstance for the removal of the arbitrator have been stipulated in the agreement as referred to in sub-rule (1), either party may submit an application to the arbitral tribunal for the removal of any arbitrator in the following circumstances within fifteen days of his/her appointment or becoming aware of the fact that his/her activities and conduct are not in conformity with these Rules. In case where the arbitral proceedings are underway in a sole arbitration or a sole arbitrator has been appointed, such application may be submitted in the Council.

(a) If there exists circumstance that gives rise to justifiable doubts as to his/ her independence or impartiality to arbitrate the dispute or if the arbitrator does not possess qualification as agreed upon between the parties,

(b) If any arbitrator commits forgery or indulges in improper conduct on arbitral proceedings or delays proceeding without justifiable reason, or refuses to attend the meeting of arbitral proceedings, or frequently commits irregularities and mistakes in arbitral proceedings or commits an act contrary to the natural justice,

(c) If any party intends to remove the arbitrator appointed by itself on the ground of Sub rule 2 (a) , such party may submit an application for removal of such arbitrator only on the condition that it came to know the facts referred to in Sub rule (a) only after making appointment of the arbitrator.

(3) Any party submitting an application for removal of the arbitrator as referred to in sub-rule (2) shall be required to provide written statement, including reason for removing such arbitrator, to the Council and the other party.

- (4) If an application is submitted for removal by either party, such arbitrator may voluntarily resign from the post of arbitrator. If such arbitrator does not so resign, the arbitral tribunal shall make decision on such application within fifteen (15) days of receipt of application.
- (5) If either party submits an application for removal of any arbitrator pursuant to sub-rule (2) and if the arbitral tribunal does not remove such arbitrator, the party may request the Council for decision within seven (7) days from the date of decision of the arbitral tribunal.
- (6) Upon receipt of request pursuant to sub-rule (5), the Council shall have to deliver a decision on the said matters within fifteen days.
- (7) If an arbitrator resigns or if he/she is removed by the Council or arbitral tribunal pursuant to sub-rule (2), his/her appointment shall be terminated.
- (8) Replacement of the arbitrator shall be made pursuant to sub-rule (1) of Rule 15.
- (9) Unless the arbitral tribunal, the Council or the Court otherwise orders, the arbitral proceedings or award of the arbitrators shall not be postponed even in the situation that action is being taken on application submitted by either party for removal of any arbitrator and that the decision has not been made on the said matter, and the challenged arbitrator may also participate in such proceedings and delivery of award.

Chapter - 4

Arbitral Proceedings

19. Equal Opportunity to the Parties:

Arbitrator may conduct the arbitral proceedings in such manner as it considers appropriate. All the parties to the dispute shall be treated equally and each party shall be given full opportunity to present his pleading, pleas, rebuttal and supportive evidence.

20. Communication between the parties: All the documents, evidence and other matters to be submitted to the arbitral tribunal by either party shall be made available to the other party immediately.

21. Place of Arbitration: Unless otherwise specified by the parties the place for Arbitration shall be the Secretariat of the Council.

Provided, however, that the arbitral proceedings may be held at any other place if deemed necessary to inspect any documents, goods or property or considered necessary for holding consultation or deemed necessary to record statement of the parties or any expert or witness.

22. Language:

(1) Language to be used in the arbitral proceedings shall be as specified in the agreement if so specified, and if not, as determined by the arbitrator after consultation with the parties. In case of failure to determine the language in such a manner, language used in the agreement shall be the language to be used for the arbitral proceedings.

(2) If documents to be submitted in the arbitration are not in the language referred in Sub-rule (1) in their original form the arbitrator may order to submit after making authentic translation in the said language.

23. Statement of Claim, Statement of Defence, Counter-claim and Reply to the Counter-claim:

(1) A written statement of claim setting out facts that prove claim, subject-matter in dispute (points at issue) and remedy sought shall be required to be submitted to the arbitrator and the Council within the time-limit if such time-limit is specified in the agreement for submission of claim and if not so specified, within 60 (sixty) days from the date of appointment of arbitrator or from the date of constitution of arbitral tribunal, and a copy of the same shall also be furnished to the respondent

(2) The respondent shall be required to furnish its written statement of defence on the matters as mentioned in the statement of claim setting out its counter-claim with regard to the same, if any, to the claimant, the arbitrator, and the Council within 30 (thirty) days after receipt of statement of claim pursuant to sub-rule (1). If the respondent has so submitted counter-claim, as well, the Claimant shall be required to submit written reply to the counter-claim to the arbitrator, and furnish copies of the same to the respondent and the Council within 15 days after receipt of such counter-

claim.

(3) Party submitting statement of claim or statement of defence or counter-claim or reply to the counter-claim pursuant to sub-rule (1) or (2) shall be required to submit a list, as well, of documents that it wishes to submit. The type, date, author, subject, as well, of such document shall be required to be set out in such list.

(4) In case of failure to submit statement of defence/counter-claim or reply to the counter-claim to be submitted by the respondent or the claimant pursuant to these Rules within the time-limit as referred to in sub-rule (2) because of circumstance beyond his/her control, such party may submit application therefor within seven (7) days after expiry of such time-limit. The arbitrator may extend the time-limit not exceeding 15 (fifteen) days if he/she finds reasons as set forth in such application to be justifiable.

24. Amendment of or Supplement to the Claim:-

During the course of the arbitral proceedings, the arbitrator may allow either party to amend his claim, defence or counter-claim or reply to the counter-claim or to submit supplement to claim, defence or counter-claim or reply to the counter claim.

Provided, however, that if the arbitrator considers the delay in making such amendment or supplement to claim, defence or counter-claim or reply to the counter-claim or considers it prejudicial to the other party or considers that such amendment or supplement to claim goes beyond the agreement as referred to in Rule 6, the arbitrator may refuse to allow such amendment, supplement to claim, defence, counter-claim or reply to the counter-claim.

25. Documents May Be Caused to Be Produced: The arbitrator may, on the request of either party or from his own consideration, order to produce concerned document to the arbitrator within the specified time-limit. If the other party wishes to inspect or to take copies of the document so produced or the document upon which the former party relies in respect of its claim or defence or any other evidence, the other party may inspect or take copy of such documentary evidence.

26. Decision on Validity of Jurisdiction and Agreement: -

(1) The arbitral tribunal to be constituted pursuant to these Rules shall have the powers to hear and rule on objection as to whether it has jurisdiction over the dispute for which it has been constituted or not and to rule on objection including the validity of provisions in regard to arbitration.

(2) The arbitral tribunal may rule on validity of the main agreement containing arbitration clause while ruling on validity of the arbitration provisions under any agreement pursuant to sub-rule (1). While ruling, the arbitration

related provisions shall be treated as an independent agreement

(3) Even though the main agreement containing arbitration provisions is declared void pursuant to the prevailing laws while ruling on pursuant to sub-rule (2), the arbitration provisions which forms integral part under such agreement shall not be invalid only for the said reason.

(4) If either party intends to make objection pursuant to sub-rule (1), such objection shall be required to be made within the time-limit of Rule 23 (2).

(5) Either party shall not be deemed to be deprived of making objection pursuant to sub-rules (1) and (2) herein only for the reasons that such party has appointed the arbitrator on its behalf or it participated in the appointment of the arbitrator or it gave consent to appointment of the arbitrator.

(6) The arbitrator shall give preference on objection pursuant to sub-rules (1) and (2).

27. Preliminary Hearing :

(1) Within 15 days from the date of receipt of Claim the arbitrator may, at his/her discretion or at the request of either party, hold preliminary hearing meeting with the parties or their authorized representatives with a view to specify issues to be resolved and to determine the points of arguments between the parties to transact any other matters. If the arbitrator, at his/ her discretion, does not convene such meeting and parties too do not make request thereof, the Council may on its own cause the arbitrator to convene such meeting. The Council shall be required to give notice of such meeting to the arbitrator and all the parties to the dispute.

(2) At the preliminary hearing held pursuant to Sub-rule (1), the arbitrator may determine the matters relating to the submission of documents by the parties and the time-limit of subsequent hearings. If either party intends to produce witness at the hearing of the arbitration, such party shall be required to provide introduction, as well, of such witness pursuant to Rule 31 (2).

(3) The arbitrator shall be required to record any agreement or understanding reached in the course of hearing pursuant to sub-rule (1) and send a copy of such agreement or understanding within 7 (seven) days to each of the parties and file a copy with the Council for record.

28. Agreed Points:

The parties shall be required to identify the points that are agreed between them out of the issues in dispute within the time-limit specified by the arbitrator, and submit to the Council and the arbitrator.

29. Additional Written Statements:

(1) The arbitrator shall decide what kind of further written statement, in addition to the statement of claim filed by the Claimant and the statement of defence filed by the Respondent, shall be required from the parties or may be presented by them.

(2) The arbitrator shall fix time-limit for producing written statements, which shall be required from the parties or may be presented by them pursuant to sub-rule (1) and for providing opportunity to the other party for reviewing them. Such time-limit shall not exceed 15 days unless extended by the arbitrator.

30. Arbitration Hearing:

(1) The arbitrator shall set date and time of oral hearing or the meeting and shall give the parties a written notice of such hearing or meeting.

(2) All the oral hearings shall be held in camera and all written documentation shall be kept confidential unless the parties otherwise agree.

31. Submission of Evidence :

(1) Either Party filing claim or defence shall have the onus of proving its claim or defence in respect of the dispute referred pursuant to these Rules.

(2) If either party intends to present a witness, such party shall communicate to the arbitrator and other party the name and address of such witness it intends to present, the language to be used by such witness and the subject upon which such witness shall give his/her testimony at least fifteen days before the hearing to be held for the testimony of such witness unless such party has given information pursuant to sub-rule (2) of Rule 27.

(3) If any witness gives his/her testimony before the arbitrator, such testimony shall be required to be recorded in writing. If testimony of such witness is taken in other language except as specified in Rule 22, such testimony shall be

required to be recorded by having translated into the language as specified in Rule 22.

(4) Relevance of evidence, offered to the arbitrator pursuant to these Rules with the issues in dispute, admissibility thereof, materiality and weight thereof shall be decided by the arbitrator, and it shall not be necessary that such decision should be in accordance with the provisions of the evidence law.

(5) Unless the party itself becomes absent by expiring time-limit or waives its right to be present, the arbitrator shall examine all the oral evidence in presence of all the parties.

(6) If either party intends to submit any document at the oral hearing, such party shall be required to assemble all such documents and communicate to the other party and arbitrator fifteen days before the holding of oral hearing. If the parties agree, such documents shall be deemed to have been submitted as evidence without submitting further proofs with regard to the same or without reading out in the course of such hearing.

Provided, however, that other party may challenge on the admissibility of any document so submitted as evidence if it so wishes.

(7) If either party intends to submit at the time as referred to in sub-rule (6) of this Rule, any document that was not disclosed pursuant to sub-rule (3) of Rule 23, the arbitrator may allow to submit such document at the said hearing.

Provided, however, that while so allowing, the arbitrator may take into account the reason of failing to give information of such document at the said time as well as the applicable legislation.

32. Examination of Witnesses:

(1) The arbitrator may determine the manner in which witnesses are examined.

(2) While examining witnesses pursuant to this Rule and taking testimony of any witness, the arbitrator may prohibit other witnesses except the parties and their representatives from being present at the oral hearing.

(3) The witness may submit his/her statement in writing with signature.

Provided, however, that if any witness submits statement in writing, the other party may require such witness

to be present at an oral hearing for cross-examination.

(4) In the course of arbitral proceedings the arbitrator may, as far as possible call witnesses for testimony in a manner that it shall be convenient.

Provided, however, that if the witnesses are called by the arbitrator in such a way, the other party shall be required to be given an opportunity to cross examine such witnesses and to rebut the testimony of such witnesses.

33. Service of Expert:

(1) The arbitrator may appoint one or more than one expert for assisting him in preparing report in specific type of disputes. The arbitrator may order the parties to provide the experts necessary information access to any site, document, goods or property for inspection pertaining to the dispute.

(2) Pursuant to sub-rule (1), the arbitrator shall communicate to the parties the expert's terms of reference. If any dispute arises between the expert and the parties as to the relevance of any information or notice or production of any document, such dispute shall be referred to the arbitrator for decision.

(3) Upon receipt of report from the expert on the issue as referred to in sub-rule (1), the arbitrator shall communicate a copy of the report to the parties to dispute and give an opportunity to the parties to express, in writing, their opinion on the report.

(4) If either party requests to examine the documents, goods or property, referred to in the report of the expert and possessed by him/her, the expert shall make available such documents, goods or property to such party for examination. The expert shall provide that party with a list of documents, goods or property which he/she has not possessed but which he/she was provided to prepare his/her report giving description of the location of those goods, property or documents.

(5) If either party so requests or if the arbitrator considers so appropriate, the expert shall, after delivery of his/her written or oral report, be required to be present at an oral hearing. Upon his presence, the parties may interrogate the expert and rebut his/her report.

(6) The arbitrator shall determine the cost required to get expert's service and his/her remuneration, in consultation with the parties.

34. Interim Order May Be Issued :

(1) At the request of either party, the arbitrator may issue order he/she considers appropriate for safety and protection of goods forming the subject-matter in dispute. The arbitrator may issue appropriate order to take safety measures he/she considers appropriate including keeping such goods under the custody of a third party or selling it.

(2) The interim order pursuant to sub-rule (1) shall be established in the form of interim award. The arbitrator may require security from the person taking custody of such goods while issuing such order.

(3) If any party files a petition with a court for interim order, such petition and judgement of the court on the matter shall not be deemed incompatible with arbitration agreement. It shall not be deemed to have waived the agreement on arbitration by the parties only for reason of such petition and judgement.

(4) In addition to sub-rule (1) of this Rule, the arbitrator may, at the request of either party, issue interim order on any other issues concerning the subject-matter in dispute or may make conditional award.

35. Expiry of Time-limit:

(1) If the Claimant fails to present statement of claim within the time-limit as specified in Rule 23 (1), the arbitrator shall declare the closure of arbitration by issuing an order.

(2) If the Respondent fails to present statement of defence without adequate reason within the time-limit as specified in Rule 23 (2) and (4) of these Rules, the arbitrator shall continue the arbitration without postponement of the proceedings. If the Respondent expires the time-limit, the arbitrator shall require the Claimant to produce necessary evidence and make award impartially on the basis of facts and evidence.

(3) In the case the arbitrator calls either party at the oral hearing or orders either party to produce any document, the arbitrator shall continue but not postpone the arbitral proceedings even if such party fails to appear or fails to produce such document within the time-limit as specified in these Rules. The arbitrator shall make award on the issues of dispute on the basis of evidence offered to him/her even if either party fails to appear or fails to produce document pursuant to this sub-rule.

36. Additional Powers of Arbitrator:

Unless otherwise provided for in the agreement, the arbitrator shall have the following powers in addition to the powers conferred by other rules under these Rules:

- (a) To take bank guarantee or security that the arbitrator considers appropriate from such party if there exists a situation that the award made by him/her would not be implemented for the reason that either party to dispute is a foreign citizen;
- (b) To issue order for inspection by visiting the place where the documentary evidence or other property is situated;
- (c) To issue order to record any oral hearing in writing and to issue certified copy of document;
- (d) To exercise any specific power conferred by the parties.

37. Remuneration of the Arbitrator and Administrative Cost:

- (1) If the agreement does not specify the amount for remuneration of arbitrator and administrative costs, such remuneration and cost shall be fixed by the arbitrator in consultation with the parties. The arbitrator shall take the Schedules 1 and 2 as the guidelines for fixing the remuneration and cost pursuant to these Rules.
- (2) Notwithstanding anything contained in sub-rule (1), while fixing remuneration and costs pursuant to this sub-rule, the arbitrator may, taking into account the subject-matter of the dispute, condition of the parties, relevant circumstance as well, fix remuneration and costs less than that mentioned in the schedules.
- (3) The Executive Committee may make changes in the schedules referred to in sub-rule (1) from time to time as and when necessary.

38. Deposit of Costs:

(1) The arbitrator may require the parties to deposit an estimated amount as an advance for the costs required in Rule 37 (1) in the Council.

(2) If either party does not deposit money pursuant to Sub -rule (1), within 15 days from the date fixed by the arbitrator, the arbitrator may, by giving information thereof to the parties, issue an order to other party to make such payment.

(3) If either party or the parties fail(s) to make the required deposit pursuant to sub-rules (1) and (2), the arbitrator may issue notice of the suspension or termination of the arbitral proceedings. If the amounts required are not deposited by the parties with the Council even within one month after such notice of suspension or termination, the arbitrator may declare the termination of arbitral proceedings.

39. Payment out of Deposits:

(1) From the deposits received pursuant to Rule 38, the Council shall meet the administrative expenses for arbitral proceedings and shall, from time to time, make payment of remuneration to the arbitrator.

(2) After the final award has been made or arbitral proceeding have been closed, the Council shall return any unspent balance of the deposit to the parties.

(3) After the conclusion/closure of arbitral proceedings, the arbitrator may, if he/she considers that the amount of deposits furnished pursuant to Rule 38, is inadequate to bear the administrative cost of arbitration and remuneration of arbitrator, ask the parties to deposit additional amount to meet the shortages and he/she may withhold the award till the said amount is deposited in the Council.

40. Closure of Hearings:

(1) If the arbitrator considers that further hearings are not necessary or if the parties have, on enquiry, advised that they have no further evidence to produce or present, the arbitrator may declare the hearings closed.

(2) Unless agreed by the parties, the arbitrator shall not carry out any act to examine further evidence and hold hearings after the closure of hearing pursuant to sub-rule (1).

(3) Notwithstanding anything contained in these Rules, the parties may waive oral hearings through a written understanding. If the parties fail to agree on the procedure of oral hearing, the arbitrator shall determine an impartial and reasonable procedure.

Chapter - 5

The Award

41. Award:

(1) Unless otherwise provided for in these Rules, the arbitrator shall render the final award within thirty (30) days after closure of the hearing of arbitration.

(2) The award as referred to in sub-rule (1) shall be in writing and a copy of such award shall be given to each party free of cost and the original copy shall be enclosed with the case-file and handed over to the Council. The arbitrator shall read out the award to the parties present at the time of delivering the award.

(3) The award of the arbitrator shall be binding upon the parties.

(4) The award shall not be made public without consent of the parties.

42. Methods of Making Award:

(1) When the arbitral tribunal consists of more than one arbitrator, decision of the majority of arbitrators shall be the award of the arbitral tribunal.

(2) In case majority decision could not be reached pursuant to sub-rule (1), the opinion of the chief arbitrator shall be deemed to be the award of the tribunal unless otherwise provided for in the agreement.

43. Matters for Arbitral Award :

Unless otherwise mentioned in the agreement, following matters shall be included in the arbitral award:

- (a) Short description of dispute under arbitration,
- (b) Conclusion of the expert's report if such expert is appointed pursuant to Rule 33,
- (c) Ground to sustain jurisdiction if either party raises question on the jurisdiction of arbitrator,
- (d) Award of the arbitrator and the reasons and basis for such award,
- (e) Things or amount to be recovered or compensated,
- (f) Interest chargeable on amount pursuant to clause (e),
- (g) Place where the office of arbitrator is located and date of award.

44. Substantive Law to Be Followed by the Arbitrator:

(1) The substantive law as stipulated in the agreement shall be applied on arbitral proceedings. If such law is not specified in the agreement, the law of Nepal shall be applicable.

(2) The arbitrator shall settle the dispute as per the principle of *ex aequo et bono* or *amiable compositeur* if the parties have expressly authorized therefor.

(3) Notwithstanding anything contained in this Rule, the arbitrator shall settle the dispute in accordance with the Conditions of the concerned contract agreement and shall take into account the trade usage applicable to the concerned transaction while settling the dispute.

45. Settlement of Dispute through Other Measure:

(1) If the parties agree to settle dispute through other measure prior to making final award by the arbitrator, the arbitrator may declare the closure of arbitral proceedings. Upon the request of the parties, the arbitrator may, if he/she considers appropriate, record such settlement of the dispute as the award of the arbitral tribunal. If the arbitrator makes such award, he/she shall not be obliged to give the reason of such award.

(2) In case it is unnecessary or impossible to continue the arbitral proceedings for any other reason except as referred to in sub-rule (1) prior to making final award by the arbitrator, the arbitrator shall inform the parties that the arbitrator intends to close the arbitral proceedings. Unless either party objects on the justifiable ground, the arbitral tribunal shall have the power to issue such order.

(3) If the arbitrator makes an award pursuant to sub-rule (1) or issues order to close the proceedings pursuant to sub-rule (2), the arbitrator shall provide a copy of such award or order with his/her signature thereon to each party and to the Council.

46 Correction of the Award :

(1) The arbitrator may, whether on submission of an application by either party or on his/her own initiative, correct following type of minor errors in the final award:

(a) Any typographical error,

(b) Any error, lapse, fault, omission or similar nature of minor mistakes occurred unknowingly, or

(c) Any errors in computation.

(2) Within thirty days after the receipt of the award, either party with notice to the other party, may request the arbitral tribunal to correct the errors. The arbitral tribunal shall also correct such errors within fifteen (15) days after receipt of such application.

(3) Prior to correcting errors pursuant to sub-rule (1), the arbitrator shall give information thereof to the parties.

47. Supplementary Award:

(1) Within thirty days after receipt of the award either party, may request the arbitrator to make a supplementary award as to the claims presented in the arbitral proceedings but omitted from the final award.

(2) The requesting party shall give the notice pursuant to sub-rule (1) to the Council and the other party also.

(3) Upon submission of such application pursuant to sub-rule (1), if the arbitrator considers that it is necessary to make such supplementary award as per the agreement on arbitration, and that such supplementary award can be made without any further hearings, the arbitrator shall, with the consent of the other party, make its supplementary award within 45 (forty-five) days after the receipt of the request.

(4) When a supplementary award is made pursuant to this Rule, the provisions of Rule 42 shall also apply on such award.

48. Cost Chargeable on the Arbitral Proceedings:

(1) The arbitrator may fix the cost incurred on arbitral proceedings while making final award.

(2) Unless the parties agree in writing or unless the arbitrator considers it appropriate to apportion the cost between the parties, both the parties shall bear the cost of arbitration equally.

(3) Notwithstanding anything contained in sub-rule (2), the arbitrator may determine which party shall bear legal consultation fee and fee of legal representation of the successful party to the dispute. The arbitrator may apportion on pro rata basis the fee for legal representation or legal consultation if he/she determines that such apportionment is reasonable. While issuing order on such legal consultation and service fee, the arbitrator may fix the amount of the fee and service or prescribe the method of fixation as well.

Chapter - 6

Miscellaneous

49. Interest: While making final award, the arbitrator may fix the rate of interest for the period of implementation of such award.

50. Exercise of Powers: The powers vested in the Council pursuant to these Rules shall be exercised through the person or office-bearer designated by the Executive Committee.

51. Amendment: The Executive Committee shall make amendment to these Rules from time to time as and when necessary.

52. Repeal and Saving :

(1) The "Nepal Council of Arbitration Rules for Domestic Commercial Arbitration Proceedings" has hereby been repealed.

(2) With regard to the on going arbitration proceeding started prior to the commencement of these Rules under the Nepal Council of Arbitration Rules for Domestic Commercial Arbitration Proceedings, such proceeding shall be dealt with accordingly.

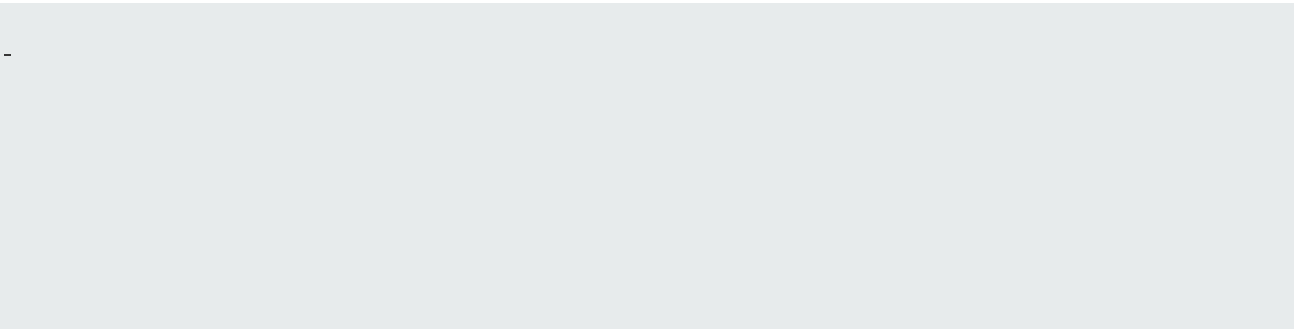
53. To Remove Difficulty: If any difficulty arises in connection with the implementation of these Rules, the concerned arbitrator may remove such difficulty through interpretation.

Schedule -1

(Related with sub-rule (1) of Rule 37)

Schedule of the Arbitrators fee (with amendments)

| S. No. | Disputed Amount in Lakhs | Sole Arbitrator | Arbitration Tribunal |
|---------------|---------------------------------|--|---|
| 1 | Upto 10 | 10% limited to Rs. 50,000 | 20% limited to Rs. 1,25,000 |
| 2 | 10+ to 25 | 50,000 + 3% of 15 Lakhs = Rs. 95,000 | 1.25 Lakhs + 7% of 15 Lakhs = Rs. 2,30,000 |
| 3 | 25+ to 50 | 95,000 + 2% of 25 Lakhs = Rs.145,000 | 2.15 Lakhs + 5% of 25 Lakhs = Rs. 3,40,000 |
| 4 | 50+ to 100 | 145,000 + 1% of 50 Lakhs = Rs. 1,95,000 | 340,000 + 3% of 50 Lakhs = Rs. 4,80,000 |
| 5 | 100+ to 200 | 195,000 + 0.60% of 100 Lakhs = Rs. 2,55,000 | 480,000 + 2% of 100 Lakhs = Rs. 6,80,000 |
| 6 | 200+ to 500 | 255,000 + 0.3% of 300 Lakhs = Rs. 3,45,000 | 680,000 + 1.25% of 300 Lakhs = Rs. 10,55,000 |
| 7 | 500+ to 1000 | 345,000 + 0.15% of 500 Lakhs = Rs. 4,20,000 | 1055,000+ 0.46% of 500 Lakhs = Rs. 12,85,000 |
| 8 | 1000+ to 2000 | 420,000 + 0.08% of 1000 Lakhs = Rs. 5,00,000 | 1285000 + 0.25% of 1000 Lakhs = Rs. 15,35,000 |
| 9 | 2000+ to 5000 | 500000 + 0.04% of 3000 Lakhs = Rs. 6,20,000 | 1535000 + 0.13% of 3000 Lakhs = Rs. 19,25,000 |
| 10 | 5000 above | 620,000 + 0.01% of the amount exceeding 5000 Lakhs | 1925,000 + 0.03% of the amount exceeding 5000 Lakhs |



Schedule -2**(Related with sub-rule (1) of Rule 37)****Schedule of the Administrative Expenses (with amendments)**

| S. No. | Disputed Amount in Lakhs | Administrative Expenses in Rs. |
|---------------|---------------------------------|--|
| 1 | Upto 10 | 2% of disputed Amount Minimum 15,000 |
| 2 | 10+ to 25 | 15,000 + 1% of 15 Lakhs = Rs. 30,000 |
| 3 | 25+ to 50 | 30,000 + 0.75% of 25 Lakhs = Rs. 48,750 |
| 4 | 50+ to 100 | 48750 + 0.50% of 50 Lakhs = Rs. 73,750 |
| 5 | 100+ to 200 | 73,750 + 0.35% of 100 Lakhs = Rs. 1,08,750 |
| 6 | 200+ to 500 | 108,750 + 0.25% of 300 Lakhs = Rs. 1,83,750 |
| 7 | 500+ to 1000 | 183,750 + 0.15% of 500 Lakhs = Rs. 2,58,750 |
| 8 | 1000+ to 2000 | 258,750 + 0.30% of 1000 Lakhs = Rs. 5,58,750 |
| 9 | 2000+ to 5000 | 558,750 + 0.05% of 3000 Lakhs = Rs. 7,08,750 |
| 10 | 5000 above | 708,750 + 0.01% of the amount exceeding 5000 Lakhs |

Note: The Arbitrator's Fee is based on the arbitration proceedings to be held at NEPCA Secretariate.

Administrative cost includes cost of venue and secretarial services.