



Alternative Dispute Resolution System

ACCELERATED RULES FOR COMMERCIAL ARBITRATIONS

13 March 2021

ADR/RULES/1/COMMERCIAL/2021

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1. INTERPRETATION AND PRELIMINARY

1.1. Unless the context otherwise requires:

Arbitration	means a process in which a dispute is submitted, by agreement of the Parties, to one or more Arbitrators who make a binding decision regarding the outcome of the dispute.
ADR	means all forms of alternative dispute resolution other than litigation or adjudication through the Courts.
ADR Access	means a digital and/or online platform which provides access to individuals and/or entities to ADR mechanisms who wish to resolve their disputes outside of the Courts.
Arbitration Agreement	means a written agreement providing for the referral to arbitration of an existing dispute or a future dispute.
Commercial Disputes	means a process that allows aggrieved Parties to solve their differences arising from a defined transaction or deal. Types of commercial disputes include, but not limited to, contractual, competitions, professional, negligence, business, construction, partnerships, reputation, intellectual property, patent and outsourcing disputes.

Court	means a Magistrates or the Supreme Court of South Africa, or any court established or recognised by Section 166 of the Constitution of the Republic of South Africa, 1996 and the "Supreme Court" includes any successor in title to the Supreme Court.
Deliver	means to deliver or send copies to all Parties as provided for in these Rules.
Pleadings	means documents comprising of and including, a Statement of Case, an Offer of Settlement and a Statement of Defence.
The Administration	means the group of individuals appointed by ADR Access to perform the administrative functions as conferred by the Registrar.
The Act	means the Arbitration Act 42 of 1965.
The Registrar	means the officer appointed by ADR Access to perform the administrative functions conferred upon him/her under these Rules.
Working Day	means Monday to Friday from 08h00 to 20h00, excluding all official public holidays of South Africa.

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- 1.2. Words importing the singular include the plural and vice versa;
 - 1.3. Words importing any gender include any other gender;
 - 1.4. Any reference to a “day” or “days” will mean a “Working Day” or “Working Days” as defined in Clause 1.1 above.

2. **PURPOSE**

- 2.1. ADR Access (“Platform”) has been developed to facilitate and ensure that everyone in South Africa has access to the benefits and advantages arbitration offers when it comes to settling commercial disputes (“disputes”) without having to litigate or adjudicate through the Courts,
- 2.2. The Platform ensures a simple, effortless and memorable experience for all users with its core focus and belief being to guarantee a transparent and objective process that is affordable, expedient, accessible and fair.
- 2.3. The Registrar shall identify, screen, appoint and manage a group of individuals to provide the administrative services and support required to ensure that the Platform achieves its purpose and functions optimally.
- 2.4. The Registrar shall also identify, screen and appoint competent and skilled individuals to act as Chairpersons (“Arbitrators”) to resolve referred disputes in accordance with these Rules.
- 2.5. Any steps to be taken, and any decision to be made, and any directions to be given by Administration, in terms of these Rules, shall be taken by the Registrar.

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- 2.6. All communications to the Registrar can be sent to the following email address – registrar@adraccess.co.za.

3. APPLICABILITY

- 3.1. These Rules do not apply to any disputes referred to for arbitration that are not permissible in terms of the Act.
- 3.2. Where Parties have agreed in writing that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to the Platform for arbitration, then such disputes shall be settled in accordance with these Rules.
- 3.3. If Parties did not include a dispute referral clause to our Platform in their initial agreement they are still in their full right to reach an agreement in writing, afterwards, to vary and/or include that should a dispute arise or have arisen that said dispute be referred to our Platform by the Aggrieved Party and be settled in accordance with these Rules.
- 3.4. To assist Parties with said variation to their initial agreement they can download a draft Arbitration Agreement from www.adraccess.co.za (“our website”) by clicking on the Arbitration Agreement navigation button and downloading the document. Once downloaded all Parties need to provide their consent, initial and sign the Arbitration Agreement. Should a dispute arise or have arisen then the Aggrieved Party can initiate the process on our Platform by registering their profile on our website. There is no cost charged to download the Arbitration Agreement.
- 3.5. These Rules shall govern disputes except that where any of these Rules is in conflict with a provision of the Act. If in conflict last-mentioned provision shall prevail.

4. PROFILE REGISTRATION

- 4.1. To access the Platform and file a dispute Parties have to register their online profile.
- 4.2. To register your online profile on the Platform is free of any cost.
- 4.3. Parties wishing to utilize the Platform to resolve their dispute through arbitration must go to www.adraccess.co.za. Once there the user must click on the **REGISTER NOW** link provided.
- 4.4. Upon completion of the information requested the user will click on the **SEND TO REGISTRAR** button and receive a successfully sent message.
- 4.5. The Registrar shall then activate the profile and provide the user with their log in details. Once logged in the user will be instructed to immediately change their password to ensure absolute privacy and the necessary cyber protection.
- 4.6. Once logged into their profile the user will then be positioned to register their dispute in accordance with these Rules.

5. SERVICE AND DELIVERY OF PLEADINGS

- 5.1. A notice including notifications, pleadings and communications given between the Parties in respect of arbitration proceedings shall be in writing in the English language and shall be sent electronically, email or SMS, through the Platform for the attention of the Receiving Party to the email address and/or to the mobile number provided.

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- 5.2. If an email address or mobile number has been designated by a Party specifically for arbitration, any notice including notifications, pleadings and communications shall be delivered to that Party at that email address or mobile number.
- 5.3. The designated contact details as provided by the Parties will be accepted as their current contact and service details and the Parties are obligated to inform the Registrar in writing immediately should said contact details for whatever reason change.
- 5.4. An electronic notice, email or SMS, shall be deemed to be received at the time of transmission and to prove service it is sufficient for the forwarding Party and/or the Registrar to prove that the electronic notice was transmitted to either the email address and/or the mobile number of the receiving Party provided in this Agreement.
- 5.5. A notice transmitted by electronic means, email or SMS, through the Platform is deemed to have been received on the day it is sent.
- 5.6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official public holiday or a non-working day, the period is extended until the first working day which follows.

6. REPRESENTATION

- 6.1. Each Party may for their own account be represented by persons chosen by it. The names and addresses of such persons must be communicated to all Parties, the Registrar and to the appointed Arbitrator.
- 6.2. When registering their dispute on the Platform the Aggrieved Party will be provided an opportunity to communicate the details as set above. Upon receipt of the dispute

the Receiving Party will when providing their details and information also be provided an opportunity to communicate the details of their representative, if any, as set above.

- 6.3. The Registrar and/or the appointed Arbitrator, on its own initiative or at the request of any Party, may at any time require proof of authority granted to the representative in such a form as the they may determine.

7. REFERRAL

- 7.1. It is imperative that Parties do everything possible to resolve the dispute between themselves before referring it to our Platform to initiate the arbitration process.
- 7.2. The filing of frivolous, unjustified, baseless, malicious and/or vexatious disputes must be avoided at all costs as the responsible Party could run the risk of being ordered to pay costs on a punitive scale by the Arbitrator.
- 7.3. When creating and registering a new dispute the involved Parties will each be liable to pay an once-off upfront administration fee ex VAT to utilize the Platform. This fee will be charged for every new dispute created and registered. An automated invoice will be generated and sent to each Party through the Platform. Said fee will be due and payable within 7 (seven) working days once sent by the Platform.
- 7.4. Individuals will be billed an once-off administrative fee of **R250.00 (Ex VAT)** and entities a fee of **R500.00 (Ex VAT)** per dispute registered. These fees are subject to change at the discretion of the Registrar.
- 7.5. To ensure the expedient resolving of the dispute the above-mentioned payment will in no way hinder the pleadings process generated and managed by the Platform.

However, the Registrar reserves the right not to allocate an Arbitrator to the matter should said administrative fee not be paid by the involved Parties.

8. ONLINE VIDEO CONFERENCING

- 8.1. All proceedings referred to the Platform shall be held by means of an online video conferencing tool hosted, set up and managed by the Platform.
- 8.2. Should for whatever reason required or upon request the Registrar has the discretion to host said proceedings at a venue, date and time agreed with the Parties.
- 8.3. All proceedings shall be conducted in private, and a Party shall be entitled to require the Arbitrator to exclude therefrom any person whose presence is not reasonably required by another Party.
- 8.4. Save as is required by law, unless the Parties in writing agree and notify the Registrar otherwise, all shall maintain confidentiality with regards to all proceedings.

9. NOTICE AND STATEMENT OF DISPUTE

- 9.1. Before filing a new dispute, a Party must have registered their profile, changed their password and tested their ability to log in through the Platform.
- 9.2. It is imperative that the Party initiating the dispute have all the relevant information and/or documents, in PDF format, he wishes to utilize to substantiate his allegations and/or claims, on hand before proceeding with registering his/her/their dispute.
- 9.3. The Party (“Applicant”) initiating a dispute shall log into their profile and click on the **CREATE NEW DISPUTE** button provided. Once clicked on the Applicant shall then follow the instructions and provide the information requested. The information

requested will relate to (a) the details of the person and/or entity you are registering the dispute against (the “Respondent”), (b) the description of the dispute itself and (c) the relief or compensation sought. The Platform will also provide the Applicant direction as to how to upload supporting documentation (PDF format) he would rely on.

- 9.4. Once the information has been made available and documentation uploaded the Applicant will then instruct the Platform to forward the Notice and Statement of Dispute (“FORM 1ARB”) to the Respondent. Once the Applicant clicks on the **SEND TO RESPONDENT** link the Platform immediately sends FORM 1ARB to the Respondent via email and/or SMS.
- 9.5. The message and link in the email and/or SMS sent to the Respondent shall provide the Respondent with the necessary instructions on how to log in, create a new password, amend their profile and lodge a response to the dispute registered.
- 9.6. The Respondent will have the option to either (a) settle or (b) defend the dispute registered within a period of 3 (three) working days from receiving the email and/or SMS.

10. OFFER OF SETTLEMENT

- 10.1. Upon receipt of FORM 1ARB and after logging into their profile, the Respondent can by clicking on the **OFFER OF SETTLEMENT** link and following the instructions provided, tender, without admission of liability, as an offer of settlement, to pay or perform the whole or part of the claim made, and such tender may be accompanied by a tender to pay all or part of the costs of the arbitration of the Party to whom the tender is made.

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- 10.2. Once the details of the tender in settlement of the dispute has been uploaded the Respondent shall instruct the Platform to forward the Offer of Settlement (“FORM 2 ARB”) to the Applicant. Once the Respondent clicks on the **SEND OFFER TO APPLICANT** link the Platform immediately sends FORM 2 ARB to the Applicant via email and/or SMS.
- 10.3. The message and/or link in the email and/or SMS sent shall provide the Applicant with the necessary instructions to log in, view the Offer of Settlement and lodge a response.
- 10.4. The Applicant will have the option to either (a) accept or (b) reject the offer tendered within a period of 3 (three) working days from receiving the Offer of Settlement.
- 10.5. If the Applicant accepts the Offer of Settlement tendered the Registrar will appoint an Arbitrator to make an Award in terms of the accepted tender. If the tendered Offer of Settlement does not extend to the costs of the arbitration the Arbitrator can, after considering representations by both Parties, make such an Award as to costs as he deems just.
- 10.6. If the Applicant rejects the Offer of Settlement or does not lodge any response within the allocated time frame the Platform shall instruct the Registrar to allocate an Arbitrator to hear the dispute.

11. STATEMENT OF DEFENCE

- 11.1. Upon receipt of FORM 1 ARB and after logging into their profile, the Respondent can by clicking on the **STATE DEFENCE** link and following the instructions defend the dispute lodged by the Applicant.

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- 11.2. The Respondent will have a period of 3 (three) working days from receiving the Notice and Statement of Dispute to file his defence.
- 11.3. It is imperative that the Respondent have all the relevant information and/or documents, in PDF format, he wishes to utilize to substantiate their defence before proceeding with defending the dispute.
- 11.4. Once the **STATE DEFENCE** link is clicked on the Respondent shall then follow the instructions and provide a detailed description of the defence relied upon. The Platform will also provide the Respondent direction as to how to upload supporting documentation (PDF format) he would rely on.
- 11.5. Once the information has been made available and documentation uploaded the Respondent will then instruct the Platform to forward the Statement of Defence (“FORM 3 ARB”) to the Applicant. Once the Respondent clicks on the **SEND RESPONSE TO APPLICANT** link the Platform immediately sends FORM 3 ARB and/or message to the Plaintiff via email and/or SMS.
- 11.6. The message and/or link in the email and/or SMS sent to the Applicant shall provide the Applicant with the necessary instructions to log in to view the defence filed by the Respondent.
- 11.7. Once the Respondent has filed his Statement of Defence all pleadings relating to the arbitration process will be regarded as closed.
- 11.8. The Platform will not allow anyone, once the pleadings are closed, to file any additional information and/or upload any additional supporting documents regarding said dispute.

11.9. Should the Respondent fail to respond to the email and/or SMS received and not either defend or settle the dispute within the time frame allocated the Platform shall instruct the Registrar to allocate an Arbitrator to hear the dispute.

12. PRE - ARBITRATION CONFERENCE

12.1. To reduce the time taken to complete an arbitration hearing and in an attempt to assist the Parties in their preparations, the Registrar, has the discretion to initiate Pre-Arbitration Conference proceedings (“Pre-Arbitration”) before allocating and appointing an Arbitrator to hear the dispute and make an Award.

12.2. Should the Registrar decide not to initiate Pre-Arbitration proceedings the Parties can, by agreement, request the Registrar to convene said proceedings.

12.3. Some of the matters that may be dealt with at a Pre-Arbitration include, but are not limited to, (a) settlement discussions, (b) determining common cause facts, (c) agreeing on the disputed issues, (d) determining the issues that the Arbitrator must decide on, (e) evidential matters relating to documents and statements, (f) defining the relief and remuneration claimed and (g) the finalization of hearing bundles.

12.4. Given the nature of Pre-Arbitration proceedings, to ensure complete transparency and objectivity, the Registrar shall allocate and appoint a sole Arbitrator, other than the one to be appointed to do the hearing and make the Award, to manage and finalize said Pre-Arbitration.

12.5. Once the Pre-Arbitration is concluded and the matter is not settled, the Arbitrator shall prepare a minute which shall reflect the nature of the discussions held which shall then become part of the hearing bundle. The Registrar shall then proceed to appoint a new Arbitrator to hear the matter.

13. **JURISDICTIONAL ISSUES**

- 13.1. If the Respondent, upon receiving the Notice and Statement of Dispute (FORM 1 ARB), disputes that he was a Party to an arbitration agreement, or that the arbitration agreement and/or clause is still valid and operative, or that the claim falls within the terms of the arbitration agreement or clause, he have to file their motivated representation in writing to the Registrar and the Applicant within 2 (two) working days after receiving FORM 1ARB.
- 13.2. The Registrar shall then inform the Applicant who will then be granted 2 (two) working days from receiving said notification to file their respective response in writing to the Registrar and the Respondent.
- 13.3. The Registrar shall then appoint a sole Arbitrator in accordance with these Rules, to consider the matters so contested and decide whether or not to proceed with the Arbitration, and, if he decides to proceed therewith, to do so.
- 13.4. If the Arbitrator decides that the arbitration will proceed via the Platform, he shall then provide all Parties direction and time frames as to the filing of their pleadings in accordance with these Rules.
- 13.5. Any application to a Court on any matter so contested, or on any other matter in dispute in arbitration proceedings commenced via the Platform, shall not affect the continuation of the arbitration proceedings, save and to the extent that a Court otherwise orders.

14. HEARINGS

- 14.1. Once all jurisdictional issues and/or Pre-Arbitration meetings have been finalized and/or pleadings are closed the hearing shall proceed within as short a time as possible to establish the facts of the case by all appropriate means.
- 14.2. The Registrar shall select, allocate and appoint a sole Arbitrator to hear all disputes referred to the Platform in terms of these Rules.
- 14.3. Hearings shall be held in camera unless the Parties agree otherwise.
- 14.4. The Arbitrator may, as it 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.
- 14.5. The hearing shall be held by means of an online video conferencing tool hosted, set up and managed by the Platform.
- 14.6. Should for whatever reason required or upon request the Registrar has the discretion to host said proceedings at a venue, date and time agreed with the Parties.

15. APPOINTMENT OF ARBITRATORS

- 15.1. For jurisdictional issues or once the pleadings have closed the Registrar shall select, allocate and appoint a sole Arbitrator to hear all disputes referred to the Platform in terms of these Rules.

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- 15.2. Under exceptional circumstances, the Registrar has the discretion to select, allocate and appoint a panel of 3 (three) Arbitrators to hear a specific dispute referred to the Platform in terms of these Rules. One of the three Arbitrators shall be appointed by the Registrar as the Presiding Arbitrator.
- 15.3. The Registrar shall select, allocate and appoint an Appeals Tribunal of 3 (three) Arbitrators to hear all Appeals lodged against an Award made by a sole Arbitrator and/or a panel of 3 (three) Arbitrators after hearing a dispute in terms of these Rules. One of the three Arbitrators shall be appointed by the Registrar as the Presiding Arbitrator.
- 15.4. The Registrar shall utilize the functionality provided for by the Platform to select, allocate and appoint Arbitrators. Arbitrators aligned and registered on the Platform shall be informed in writing once a Pre-Arbitration or dispute or a jurisdictional hearing has been allocated to them. To access and view said disputes Arbitrators will log into their profiles and click on the respective case file.
- 15.5. The appointed Arbitrators shall proceed with a jurisdictional hearing or a Pre-Arbitration or arbitration or Appeal hearing at the place and at the time determined by the Registrar.
- 15.6. Arbitrators registered on the Platform shall be requested to sign a declaration that they shall immediately, upon receiving and accepting an appointment to hear a specific matter from the Platform, inform the Registrar in writing if they are aware of any circumstances or might reasonably that could give rise to any justified doubts as to his independence or impartiality to act as an Arbitrator.

16. TERMINATION OF APPOINTED AN ARBITRATOR

- 16.1. Once a matter has been allocated to an Arbitrator, prior to hearing thereof, he shall in writing disclose to the Registrar any facts and circumstances which he is aware of and/or which might reasonably give rise to any doubts as to his independence or impartiality in the eyes of the Parties. Upon receipt of said notice the Registrar shall inform the Parties and appoint a new Arbitrator.
- 16.2. An Arbitrator shall recuse himself when, due to physical, mental, or other disability, he becomes incapable properly to perform his duties, and in circumstances which would require a judicial officer to recuse himself. If the hearing or proceedings has not commenced the Registrar will appoint a new Arbitrator.
- 16.3. The Registrar shall be entitled, after a written or oral hearing of the Parties and the Arbitrator, within 3 (three) working days of said appointment, to terminate the appointment of an Arbitrator on the grounds that he has become disqualified from acting or continuing to act in terms of these Rules, or his inability or refusal to act, or that he has failed timeously and effectively to perform any of his duties and functions as Arbitrator. If the hearing or proceedings has not commenced the Registrar will appoint a new Arbitrator.
- 16.4. If the hearing or proceedings has commenced and issues as set out in Clauses 16.2 and 16.3 above arise, the Registrar has the discretion, after discussions with all Parties involved, to appoint a new Arbitrator to proceed with the matter from the start or appoint a substitute Arbitrator to continue with the hearing or proceedings. Last-mentioned Arbitrator will have the right, after availing himself of the evidence, to recall any witness he so deems necessary.

17. CONTINUATION OF PROCEEDINGS

- 17.1. Before devoting any time to any step in the proceedings, the Arbitrator shall notify the Registrar of the nature of such step and of the time and fees which he estimates will be required therefor. The Arbitrator shall submit his quotation to the Registrar and once agreed upon, all fees payable by the Parties shall be paid into an account allocated by the Registrar who shall disburse the funds as agreed to.
- 17.2. Upon receipt of such notification from the Arbitrator the Registrar shall notify the Parties of the fees payable by each of them in respect of the next step in the proceedings, or in default of timeous payment by any Party, may be paid by the other Party to ensure the continuance of the next step in the proceedings, and of when such fees are payable.
- 17.3. Unless otherwise agreed the Parties are equally liable for the administrative costs levelled by the Platform and the initial arbitration costs requested by the Registrar. Once the arbitration is finalized the Arbitrator shall have the discretion, unless the Parties agree otherwise, to award a different apportionment of costs for which is Party is liable.
- 17.4. If any Party defaults in paying his share of such fee, the other Party may pay the defaulting Party's share to enable the arbitration to proceed. He may at any stage of the proceedings apply for an order for costs to recover the other Party's share so paid. The Arbitrator may make such order as to costs on such application as he deems just.
- 17.5. Upon receipt of such payments, the Registrar shall authorise and instruct the Arbitrator to proceed with the arbitration only for the estimated time or further time in respect whereof such fees have been paid, so that at all stages the Parties shall be required to pay fees only in respect of the estimated time required for the completion

of any current step or the next step in the proceedings, and the Arbitrator shall proceed only for such time as advance payment of the required fees has been made.

- 17.6. Subject to these Rules, the Arbitrator may conduct the arbitration in such manner as it considers appropriate, provided that the Parties are treated with equality and that at an appropriate stage of the proceedings each Party is given a reasonable opportunity of presenting its case. In exercising its discretion, the Arbitrator shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the Parties' dispute.

18. POWERS OF THE ARBITRATOR

- 18.1. The Arbitrator shall have the widest discretion and powers allowed by law to ensure the just, expeditious, economical, and final determination of all the disputes raised in the proceedings, including the matter of costs, in terms of these Rules and/or where these Rules are silent in any way.

- 18.2. Unless otherwise agreed to by the Parties, the Arbitrator shall apply the law, which he considers as the applicable law, according, where applicable, to the rule of conflict of laws, which he considers applicable.

- 18.3. An Arbitrator shall have, but not limited to, the following powers, namely:

18.3.1 he may, at the request of any Party, allow one or more third persons to be joined in the arbitration as a Party provided such person is a Party to the arbitration agreement, unless he finds, after giving all Parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those Parties. He may make

a sole award or several awards in respect of all Parties so involved in the arbitration

18.3.2 he may 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.

18.3.3 he may dismiss any claim or defence on the grounds of failure of a Party timeously to comply with any ruling or interim award of the Arbitrator, or on the ground of delaying conduct on the part of a Party so as to give rise to a substantial risk of serious prejudice to the other Party or Parties.

18.3.4 he may proceed with the arbitration in accordance with these Rules, and make an Award in the absence of or without hearing any Party who is in default as provided for in these Rules, or fails to appear or to comply with any ruling or interim award of the Arbitrator.

18.3.5 he may determine, from time to time, the time, date and place of the hearing, and the hours during which the hearing shall take place.

18.3.6 he may extend before or after their expiry, or abbreviate any time limits provided for in these Rules or by his rulings or directions.

18.3.7 he may appoint one or more advisors or experts on any matter (including law) to assist in the conduct of the arbitration, but only with the agreement of all Parties and of such advisor or experts, and only if the Parties and such advisors or experts have agreed on the payment of the fees of such advisors or experts directly by one or more of the Parties.

18.3.8 he may order any Party who is a claimant, to furnish security for costs in respect of his claim.

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- 18.3.9 he may allow (but only with their express written consent) other Parties to be joined in the arbitration proceedings, and to make an award on all issues submitted by all Parties, including Parties so joined, for decision by the Arbitrator.
- 18.3.10 he may determine the existence or validity of any contract, including any contract containing the arbitration agreement, and to order rectification of such contract.
- 18.3.11 he may order the Parties to produce or make available for inspection by any other Party and by the Arbitrator, by any advisors or experts appointed to assist him, and by any expert engaged by any Party, any property or thing under the control of the Party or Parties against whom such order is made and to hold inspections in loco and to make orders for the interim custody or preservation of goods or property or where such goods or property would otherwise lose their value, for the realisation of such goods or property and the interim preservation of the proceeds of such realisation.
- 18.3.12 he may permit the amendment of any pleading or other document (other than an affidavit) delivered by a Party.
- 18.3.13 he may make rulings or give interim Awards of any matter of onus, admissibility of evidence, and of procedure, including rulings or awards of an interlocutory or interim nature, and rulings or interim Awards relating to liability for and payment of costs and implementation of interim or final Awards.
- 18.3.14 he may receive and take into account such oral or written evidence as he deems relevant, and to make such findings of fact and law as may be required for the purposes of the proceedings and the Award.

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- 18.3.15 he may state, at any stage before making a final Award, any question of law arising in the course of the reference in the form of a special case for the opinion of the Court or of counsel.
- 18.3.16 he may express his Award in such currency as may be required by the exigency of the situation, unless otherwise agreed by the Parties.
- 18.3.17 he may order specific performance of any contract in circumstances in which the Courts would have the power to do so.
- 18.3.18 he may to make an order as to costs.
- 18.3.19 he may receive evidence given by telephonic or telecasting means, provided that he is satisfied that such means afforded all Parties adequate opportunity of examining the witness giving such evidence.
- 18.3.20 he may make an Award whereby a Party is restrained from any conduct, either as an interim or final basis.
- 18.3.21 he may decide that the dispute should be determined summarily at an informal hearing attended by all Parties.
- 18.3.22 he may order that any Party should furnish more particulars or details of his case on any issue.
- 18.3.23 he may order that there should be discovery on oath or otherwise of documents and recordings (subject to valid legal objection) either in regard to all relevant matters or in regard to specific issues.
- 18.3.24 he may order that Parties provide each other with a list of the names of witnesses to be called, and with a statement of the substance of each witness' evidence, and that, save with the leave of the Arbitrator, no witness

shall be called in respect of whom such name and summary has not been provided.

18.3.25 he may order that the hearing should proceed on documents (including written submissions), only, without the presentation of other evidence and, if the Parties so agree, without the presentation of argument.

18.3.26 he may, at the request of any Party, allow one or more third persons to be joined in the arbitration as a Party provided such person is a Party to the arbitration agreement, unless the Arbitrator finds, after giving all Parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those Parties.

18.3.27 he may inquire of the Parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

18.3.28 he may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a Party, to reopen the hearings at any time before the award is made.

18.3.29 he may make a sole Award or several Awards in respect of all Parties so involved in the arbitration.

19. PARTIES IN DEFAULT

19.1. If the Respondent fails to communicate its response to the notice and Statement of Dispute filed by the Applicant the Registrar shall proceed to allocate and appoint an Arbitrator, without treating such failure in itself as an admission by the Respondent of the Applicant's allegations.

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- 19.2. If a Party, duly notified under these Rules, fails to attend a Pre-Arbitration or hearing or other meeting, without showing sufficient cause for such failure, the Arbitrator may proceed with the Pre-Arbitration or hearing or meeting in his absence.
- 19.3. If a Party, duly invited by the arbitrator to produce documents, exhibits or other evidence, fails to do so within the period of time provided for, without showing sufficient cause for such failure, the arbitrator may make the Award on the evidence before it.
- 19.4. Any Party who fails to respond as set out in Clause 19.1, prior to the appointment of an Arbitrator, for whatever reason, may lodge a condonation application to the Registrar requesting that said filing take place despite its lateness. The Registrar shall appoint a sole arbitrator to consider the Application. All cost relating to said application shall be for the Party lodging it.
- 19.5. Any Party who fails to respond as set out in clauses 19.1, 19.2 and/or 19.3 for whatever reason, after an Arbitrator has been appointed, may lodge a condonation application to the said Arbitrator, requesting that said filing and/or Pre-Arbitration or meeting take place despite its lateness. All cost relating to said application shall be for the Party lodging it.

20. WITNESSES

- 20.1. The attendance of any witness to give evidence and to produce books, documents or things to the Arbitrator may be secured by invoking the provisions of any law, and the Registrar shall render such assistance to a Party as he may require to invoke such provisions.

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- 20.2. All costs relating to the securing of witnesses for above-mentioned purposes shall be for the account of the Party wanting to call the witness to testify.
- 20.3. Witnesses, including expert witnesses, who are presented by the Parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a Party to the arbitration or in any way related to a Party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.
- 20.4. At any time during the hearing the Arbitrator may require the Parties to produce documents, exhibits or other evidence within such a period of time as the Arbitrator shall determine. The Arbitrator shall determine the admissibility, relevance, materiality and weight of the evidence offered.
- 20.5. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the Arbitrator.
- 20.6. The Arbitrator may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as video conference).
- 20.7. The Arbitrator may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that witness, including an expert witness, who is a Party to the arbitration shall not, in principle, be asked to retire.

21. EXPERTS APPOINTED BY ARBITRATOR

- 21.1.** After consultation with the Parties, the Arbitrator may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the Arbitrator, shall be communicated to the Parties.
- 21.2.** Before accepting the appointment, the expert shall submit a description of his or her qualifications and a statement of his or her impartiality and independence to the Arbitrator and Parties.
- 21.3.** Within the time frame determined by the Arbitrator, the Parties shall inform the Arbitrator whether they have any objections as to the expert's qualifications, impartiality or independence. Upon receipt of the objections the Arbitrator shall solely decide whether to accept or reject the objections filed. Once appointed the Parties will not be allowed to lodge any further objections.
- 21.4.** Upon written request the Parties shall give the expert any relevant information or produce said for inspection so required. Any dispute as to the relevance of the request by an appointed expert shall be referred to the Arbitrator for decision.
- 21.5.** Once completed and received by the Arbitrator a copy of the expert's report shall be made available to the Parties. Within the time frame determined by the Arbitrator the Parties shall be given the opportunity to express, in writing, their opinion on the report. All Parties shall be entitled to examine any document on which the expert has relied in his or her report.
- 21.6.** After receipt of the report the Parties may lodge a written request to the Arbitrator asking that the expert be heard at a hearing, where the Parties shall have the

opportunity to be present and to interrogate the expert. At this hearing, any Party may present expert witnesses in order to testify on the points at issue.

22. RECORDING OF PROCEEDINGS

- 22.1. All proceedings allocated to an Arbitrator will be recorded and stored on the Platform. These recordings namely video, audio, pleadings, documentation and Awards will be made available to participating Parties upon request to the Registrar should said require access to file their Appeal.
- 22.2. Arbitrators shall also be responsible for keeping their own written record of proceedings they reside over. These records will be filed by the Arbitrator on the respective case file once the Award is delivered to the Parties. These recordings will not be made available to any Party.

23. THE AWARD

- 23.1. Unless the Parties otherwise agree, the Arbitrator shall make its Award as soon as practicable, but in any event within 14 (fourteen) working days after the closure of the hearing, or the submission of the last document to the Arbitrator in the event that there is no hearing, provided that the Parties, at the request of Arbitrator, can extend this period in writing signed by them.
- 23.2. The final Award and all interim Awards shall be made in writing and set out the reasons upon which it is based. It shall be signed and dated by the Arbitrator, or, in the case of a tribunal of three Arbitrators, by all the members of the tribunal. If a minority of the members of a tribunal refuses to sign the Award, such refusal shall be mentioned in the Award but shall not invalidate it.

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- 23.3. When there is more than one Arbitrator, any Award or other decision of the arbitral tribunal shall be made by a majority of the Arbitrators.
- 23.4. Once the Award is delivered the Registrar shall make it available to all Parties. The Award shall be deemed to have been published to the Parties on the date when it is so delivered.
- 23.5. The Arbitrator may make separate Awards on different issues at different times. All Awards shall be made in writing and shall be final and binding on the Parties. The Parties shall carry out all awards without delay unless an Appeal is registered in terms of these Rules.
- 23.6. All Awards, inclusive of materials relating to said proceedings, are confidential save to the extent that disclosure may be required of a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an Award in bona fide legal proceedings before a Court.
- 23.7. An Arbitrator shall only be obliged to communicate its Award after receipt of payment of all its fees and expenses. If said fees and expenses have not been paid the Arbitrator is entitled to withhold the delivery and/or publication of said Award.
- 23.8. All Awards are subject to Appeal by any of the Parties provided the Party initiating the Appeal follow the process as set out in terms of these Rules.
- 23.9. If the Parties reach a written settlement after the appointment of the Arbitrator before or during the hearing, the Arbitrator shall, upon being furnished by any Party with proof that the Parties have in writing agreed thereto, make an Award in accordance with such written settlement.

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- 23.10. If such a settlement does not deal with all disputes raised in the arbitration, the Arbitrator shall, unless the settlement in its terms precludes it, make an Award in accordance with such settlement and proceed with the arbitration proceedings in respect of any disputes, including the matter of costs, not dealt with in such settlement.
- 23.11. If an Award orders the payment of a sum of money, such sum shall, unless the Award states otherwise, carry interest from the date of publication of the Award at the same rate as a judgement debt.
- 23.12. Unless the Parties otherwise agree, the award of costs is in the discretion of the Arbitrator. In exercising its discretion, the Arbitrator may take into account such circumstances as it considers relevant, including the extent to which each Party has conducted the arbitration in an expeditious and cost-effective manner.
- 23.13. The Arbitrator shall, when he awards costs, direct the scale on which such costs are to be taxed and be recoverable.
- 23.14. Costs of an arbitration include (a) the fees of the Arbitrator, (b) travel and other fees incurred by the Arbitrator, (c) costs of expert and/or other advices required by the Arbitrator, (d) costs of a taxing consultant if required by the Arbitrator and (e) administrative fees of the Platform.
- 23.15. An Arbitrator, after affording all Parties an opportunity to make submissions, may direct that recoverable costs of the arbitration, or any part thereof, should be limited to a specified amount and/or duration of the hearing and/or in any other appropriate manner.

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- 23.16. If for whatever reason the Arbitrator failed to deal with the issue of costs or its scale in his Award, the Parties may upon notification to one another, within 3 (three) working days after the publication of the Award, request the Arbitrator to make an order directing by and to whom such costs shall be paid or the scale upon which such costs shall be taxed and be recoverable.
- 23.17. After a final Award has been made, the Registrar shall render a statement of account to the Parties and return any unexpended balance remaining.
- 23.18. Within 3 (three) working days after the Award is published, a Party, with notice to the other Parties, may request that the Arbitrator to give an interpretation of the Award. The interpretation shall be given in writing within 7 (seven) working days after the receipt of the request and shall form part of the Award.
- 23.19. Within 3 (three) working days after the Award is published, a Party, with notice to the other Parties, may apply to the Arbitrator to correct in the Award any clerical or typographical errors, any patent errors arising from any accidental slip or omission, errors in computation, or any errors of a similar nature. The Arbitrator shall within 3 (three) working days either refuse or grant the application. If granted the Arbitrator shall correct his Award, which corrected Award shall be his Award.

24. APPEAL

- 24.1. All interim and final Awards made by Arbitrators appointed through our Platform is subject to a right of Appeal in terms of these Rules.
- 24.2. A notice of Appeal shall be delivered by the Appellant, within 7 (seven) working days of publication of the Award, failing which the final Award shall not be Appealable.

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- 24.3. The notice of Appeal shall state whether the whole or part only of the Award is Appealed against, and, if only part thereof is Appealed, it shall state which part, and shall further specify the findings of fact and rulings of law Appealed and the grounds upon which the Appeal is founded.
- 24.4. The Appeal shall be heard by an Appeal Tribunal consisting of three Arbitrators. The Registrar shall select the tribunal within 7 (seven) working days of the notice of Appeal having being delivered.
- 24.5. The Registrar shall obtain an estimate of the time and related costs which will reasonably be required for the Appeal Tribunal to study the recordings, hear the Appeal and make an Award thereon.
- 24.6. The Appellant shall be responsible to pay all costs relating to the Appeal and should the Appellant fail to do so within 7 working days after receiving the aforesaid estimate, the right of Appeal shall lapse.
- 24.7. Once above-mentioned payment is made the Registrar shall inform the counter Party who shall then have 7 (seven) working days to file its response.
- 24.8. Any Party who fails to respond as set out in clauses 24.2 and/or 24.6, for whatever reason, may lodge a condonation application to the said Arbitrator, requesting that their appeal be noted and/or heard and/or payment be accepted despite its lateness. All cost relating to said application shall be for the Party lodging it
- 24.9. The Appeal must be heard within 21 (twenty-one) working days after the costs referred to in Clause 23.5 above, has been paid in full.
- 24.10. The Appeal Tribunal shall make a ruling, as soon as practicable, but in any event within 14 (fourteen) working days after the closure of hearing the Appeal.

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- 24.11. The decision of the majority of the Arbitrators, shall be the decision of the Appeal Tribunal.
- 24.12. The powers of the Appeal Tribunal shall be the same as if it were a civil Appeal and to the High Court of South Africa.

25. GENERAL PROVISIONS

- 25.1. Save for intentional wrongdoing, the Parties waive, to the fullest extent permitted, any claim against the Arbitrators, the Platform and any person appointed by the Arbitrator based on any act or omission in connection with the arbitration under the applicable law.
- 25.2. All communications to the arbitral tribunal by one Party shall be communicated by that Party to all other Parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under the applicable law.
- 25.3. These Rules may at any time be amended by the Registrar. Such amendments shall be applicable to all future and current, including part-heard, arbitrations, from date of publication, save to the extent that the Arbitrator may, in the interests of a just determination of the dispute, rule otherwise. It shall be the duty of the Parties at all times to ascertain such amendments from the Registrar. All amendments shall be announced and posted on www.adraccess.co.za