

KFCRI ARBITRATION RULES

[2nd Edition, 1 April 2020]



KFCRI

KOVISE FOUNDATION CONFLICT RESOLUTION INTERNATIONAL
Chennai, India

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KFCRI ARBITRATION RULES

(w.e.f. 1st April 2020)

PRELIMINARY

1. SHORT TITLE AND SCOPE

- (1) These rules may be called the KFCRI Arbitration Rules.
- (2) These rules shall apply where the parties have agreed in writing that-
 - (a) a dispute which has arisen, or
 - (b) a dispute which may arise, between them in respect of defined legal relationship, whether contractual or not, shall be settled under the KFCRI Arbitration Rules.

2. DEFINITIONS

In these rules unless the context otherwise requires,

- (a) "Arbitral Award" includes an interim award and partial award;
- (b) "Arbitral Tribunal" means a sole arbitrator or a panel of arbitrators;
- (c) "Arbitration Rules" or "Rules" means the KFCRI Arbitration Rules;
- (d) "Arbitrator" means a person appointed as arbitrator and includes a chairman/presiding arbitrator;
- (e) "Committee" means the Arbitration and Mediation Committee of KFCRI;

- (f) "Claimant" means party wishing to commence arbitration proceedings under the KFCRI arbitration rules;
- (g) "Respondent" means party against whom arbitration reference has been filed;
- (h) "KFCRI" means the Kovise Foundation Conflict Resolution International, as the case may be, any of its Regional/Branch Offices administered by the Committee;
- (i) "International Commercial Arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where atleast one of the parties is:-
- (1) an individual who is a national of, or habitually resident in, any country other than India; or
 - (2) a body corporate which is incorporated in any country other than India; or
 - (3) an association or a body of individuals whose central management and control is exercised in any country other than India; or
 - (4) the Government of a foreign country.
- (j) "Party" means a party to an arbitration agreement. It shall include individual, Hindu Undivided Family, Body of Individuals (who is an Indian National or from any country other than India), Co-operative Society, firm/ company (incorporated in India or outside India), body corporate & association of persons whether incorporated or not, Government (includes Government of foreign country), Government organization or Government Undertaking;
- (k) "Panel of Arbitrators" means the panel of persons approved and maintained from time to time by the Committee to act as arbitrators;

(l) "Panel of Experts" means the panel of persons approved and maintained from time to time by the Committee to act as experts;

(m) "The Registrar" means the Administrative officer of the Secretariat of KFCRI;

CHAPTER I **ARBITRATION PROCEEDINGS**

3. REQUEST FOR ARBITRATION

(1) The claimant(s) initiating the arbitration shall give a notice of request for arbitration to the respondent(s) and to the Registrar, KFCRI.

(2) The arbitral proceedings commence on the date on which the notice of request for arbitration is received by the respondent(s).

(3) A notice of request for arbitration shall include the following:

- (a) request that the dispute be referred to arbitration;
- (b) the names and addresses of the parties to the dispute;
- (c) a reference to the contract out of or in relation to which the dispute has arisen;
- (d) a reference to the arbitration clause or arbitration agreement relied upon;
- (e) the general nature of the claim and where the claim is or can be quantified in terms of money, the amount of the claim;
- (f) the relief or remedy sought;
- (g) the preferred number of arbitrators, if not already agreed upon.

4. NUMBER OF ARBITRATORS

(1) Unless otherwise agreed by the parties, the arbitral tribunal shall consist of a sole arbitrator.

(2) Where the arbitration agreement provides for an even number of arbitrators, the Committee will appoint an additional arbitrator who shall be the presiding arbitrator.

5. APPOINTMENT OF ARBITRATORS

(1) Unless otherwise agreed by the parties, a person of any nationality may be an arbitrator, appointed by the Committee from its Panel of Arbitrators.

(2) A decision by the Committee on a matter entrusted to it by sub-rule (1) will be final and binding on the parties.

(3) Upon receipt of a request under sub-rule (3) of Rule 3, the Committee will -

(a) make the appointment as promptly as possible,

(b) have regard to-

i. any qualifications required of the arbitrator by the agreement of the parties;

ii. such considerations as are likely to secure the appointments of an independent and impartial arbitrator; and

iii. in the case of appointment of a sole or chairman/presiding arbitrator in an international commercial arbitration, the advisability of appointing a person of a nationality other than the nationalities of the parties.

(4) A substitute arbitrator will be appointed in the same manner in which his predecessor had been appointed.

(5) The Committee before appointing a person as arbitrator or the chairman/presiding arbitrator, will obtain confirmation from such person that:

- (a) no circumstances exist that give rise to justifiable doubts as to his/her independence or impartiality, and
- (b) where any qualifications are required of an arbitrator by the agreement of the parties, he possesses those qualifications.

6. DESCRIPTION OF ARBITRATORS

Where such appointment is made, the arbitrator's full name, address and nationality and a description of his/her qualifications shall be given by the Committee to both parties.

7. DISCLOSURE OF GROUNDS OF CHALLENGE

An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose in writing to the parties and the Committee any circumstances referred to in Rule 8 unless they have already been disclosed.

8. GROUNDS OF CHALLENGE

A party may challenge the appointment of an arbitrator or the chairman/presiding arbitrator only if:

- (a) circumstances exist that give rise to justifiable doubts as to his/her independence or impartiality, or
- (b) he/she does not possess the qualification agreed to by the parties.

9. CHALLENGE PROCEDURE

- (1) A party who intends to challenge an arbitrator shall, within ten days after becoming aware of the constitution of the arbitral tribunal or any ground referred to in Rule 8, send a written statement of the reasons for the challenge to the arbitral tribunal and to the Committee.
- (2) Unless the arbitrator challenged under sub-rule (1) withdraws from his office, or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
- (3) If challenge under sub-rule (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

10. FAILURE OR IMPOSSIBILITY TO ACT

- (1) The mandate of an arbitrator shall terminate if:
 - (a) he becomes de jure or de facto unable to perform his/her functions or for other reasons fail to act without undue delay; and
 - (b) he/she withdraws from his/her office or the parties agree to the termination of his/her mandate.
- (2) If under this Rule or sub-rule (2) of Rule 9, an arbitrator withdraws from his/her office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this Rule or Rule 8.

11. TERMINATION OF MANDATE AND SUBSTITUTION OF ARBITRATOR

- (1) In addition to the circumstances referred to in Rule 9 or Rule 10, the mandate of an arbitrator shall terminate -

- (a) where he/she withdraws from office for any reason; or
 - (b) by pursuant to agreement of the parties.
- (2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed in the same manner in which his/her predecessor had been appointed.
- (3) Where an arbitrator is replaced under sub-rule (2) of Rule 11, the substituted arbitrator shall be entitled to resume the said arbitration proceedings from the stage at which it was left by his/her predecessor, at the discretion of the Committee.

12. COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION

- (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objection with respect to the existence or validity of the arbitration agreement, and for that purpose:
- (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
 - (b) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.
- (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than the submission of the statement of defense; however, a party, shall not be precluded from raising such plea merely because he has participated in the arbitration proceedings.
- (3) The arbitral tribunal may, in case referred to in sub-rule (2) of Rule 12, admit a later plea if it considers the delay justified.

- (4) The arbitral tribunal shall decide on the plea referred to in sub-rule (2) of Rule 12 and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

13. INTERIM MEASURES BY ARBITRAL TRIBUNAL

The arbitral tribunal may, at the request of a party, order a party, to take any interim measure of protection in respect of the subject-matter of the dispute and the arbitral tribunal shall have the same power for making orders, as the Court has for the purpose of, and in relation to, any proceedings before it.

14. REPRESENTATION OF PARTIES

Each party shall advise, in writing, the other party, the Registrar, KFCRI and the arbitral Tribunal of:

- (a) the names and addresses of persons who will represent or assist him/them,
and
- (b) the capacity in which those person(s) will act.

15. EQUAL TREATMENT OF PARTIES

The parties shall be treated with equality and each party shall be given due opportunity to present their case.

16. DETERMINATION OF RULES OF PROCEDURE

- (1) Subject to these rules, the arbitral tribunal may conduct its proceedings in the manner it considers appropriate.
- (2) The power of the arbitral tribunal under sub-rule (1) of Rule 16, includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

17. PLACE or JURIDICAL SEAT OF ARBITRATION

- (1) The Place or Juridical Seat of arbitration shall be Chennai or such other place where any of the Regional/Branch Offices of KFCRI are situated, as the parties may agree; Provided that the Committee may decide such other place of arbitration as it thinks fit.
- (2) The arbitral tribunal may, after consulting the Registrar, KFCRI meet at any place it considers appropriate for consultation among its members: for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

18. LANGUAGE

- (1) Where the arbitration agreement does not provide for the language to be used in the arbitral proceedings, the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.
- (2) The agreement or determination unless otherwise specified, shall apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.
- (3) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language agreed upon by the parties or determined by the arbitral tribunal.

19. PLEADINGS

- (1) Within thirty days of the constitution of the arbitral tribunal, the claimant shall send to the Registrar, KFCRI and the respondent a statement of the facts supporting the claim, the points at issue and the relief or remedy sought, and the respondent shall, within thirty days after receipt of statement of claim, send to the Registrar, KFCRI and the claimant -
 - (a) their statement of defense in respect of these particulars;
 - (b) a statement of facts supporting the counter claim, if any, the points at issue and the relief or remedy sought.
- (2) Within fifteen days of the receipt of statement of defense of the respondent and of the statement referred to in clause (b) of sub-rule (1) of Rule 19, the claimant shall send to the Registrar, KFCRI and the respondent the rejoinder if any, to the said statement of defense and the statement of defense to the counter claim.
- (3) Within fifteen days of the receipt of statement of defense to the counterclaim, the respondent shall send to the Registrar, KFCRI and the claimant the rejoinder if any, to the said statement.
- (4) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.
- (5) Either party may amend or supplement their claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.
- (6) Notwithstanding the time stipulated in sub-rules 1, 2 and 3, the arbitral tribunal at its sole discretion may extend the time as it deems fit.

20. MODE OF HEARINGS

- (1) The arbitral tribunal may hold a pre-hearing proceeding
 - (a) to discuss with the parties, the procedure to be followed in the arbitration,
 - (b) to fix or determine any periods of time referred to in these rules,
 - (c) to discuss hearing dates, and
 - (d) to determine any other matter required or permitted under these rules to help to ensure the efficient progress of the arbitral proceedings.
- (2) The arbitral tribunal will decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials.
- (3) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property; Provided that the arbitral tribunal will hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held.
- (4) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party, shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.
- (5) If a party intends to give evidence through a witness, they shall, within the time determined by the arbitral tribunal, communicate to the tribunal and to the other party
 - (a) the names and addresses of the witnesses they intend to present, and

- (b) the subject upon which, and the language in which, those witnesses will give their testimony.
- (6) The Registrar, KFCRI shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if it is either -
- (a) deemed necessary by the tribunal under the circumstances of the case, or
 - (b) the parties have agreed to it and have communicated such agreement to the tribunal at least twenty days before the hearing.

21. DEFAULT

Where, without showing sufficient cause: -

- (1) the claimant fails to communicate his statement of claim in accordance with sub-rule (1) of Rule 19, the arbitral tribunal shall terminate the proceedings;
- (2) the respondent fails to communicate their statement of defense or the claimant fails to communicate their defense to the counter-claim in accordance with Rule 19, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations made in the statement of claim or of counter-claim as the case may be and shall have the discretion to treat the right of the respondent to file such statement of defense as having been forfeited;
- (3) a party fails to appear at an oral hearing or to produce a witness or documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

22. APPOINTMENT OF EXPERT

- (1) The arbitral tribunal may –
 - (a) appoint one or more experts from the panel of experts to report to it on specific issues to be determined by the arbitral tribunal, and
 - (b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his/her inspection.
- (2) If a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his/her written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him/her and present expert witnesses in order to testify on the points at issue.
- (3) The expert shall, on the request of a party, make available to that party for examination of all documents, goods or other property in the possession of the expert with which he/she was provided in order to prepare his report.

23. APPLICABILITY OF SUBSTANTIVE LAW

- (1) Where the place or juridical seat of arbitration is situated in India:
 - (a) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;
 - (b) in an international commercial arbitration-

- i. the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;
 - ii. any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws/rules;
 - iii. failing any designation of the law under clause (b)(i) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.
- (2) The arbitral tribunal will decide ex aequo et bono or as amiable compositeur only if the parties have expressly authorized it to do so.
- (3) In all cases, the arbitral tribunal will decide in accordance with the terms of the contract and will take into account the usages of the trade applicable to the transaction.

24. DECISION MAKING PROCESS

- (1) In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by majority of all its members.
- (2) Notwithstanding sub-rule (1) of Rule 24, if authorized by the parties or all the members of the arbitral tribunal, questions on procedure may be decided by the chairman/presiding arbitrator.

25. SETTLEMENT

- (1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (2) An arbitral award on agreed terms shall be made in accordance with Rule 26 and shall state that it is an arbitral award.
- (3) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award.

26. FORM AND CONTENTS OF ARBITRAL AWARD

- (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.
- (2) For the purposes of sub-rule (1) of Rule 26, in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.
- (3) The arbitral award shall state the reasons upon which it is based, unless -
 - (a) the parties have agreed that no reasons are to be given, or
 - (b) the award is an arbitral award on agreed terms under Rule 25.
- (4) The arbitral tribunal shall state its date and the place or juridical seat of arbitration referred to in Rule 17 and the award shall be deemed to have been made at that place or juridical seat.

- (5) After the arbitral award is made, a signed copy thereof shall be delivered to each party.
- (6) The arbitral tribunal shall deposit the original award, together with record of arbitration proceedings, with the Registrar, KFCRI authorizing him/her to produce the award to be filed in the court of competent jurisdiction when required.
- (7) Where so requested by a party, the arbitral tribunal may, at any time during the arbitral proceedings, make an interim award on any matter with respect to which it may make a final arbitral award.

27. INTEREST

- (1) Where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum, (for which the award is made) an interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the dates on which the cause of action arose and the date on which the award is made.
- (2) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent higher than the current rate of interest prevalent (Bank Lending Rate) on the date of award, from the date of award to the date of payment.

28. SCRUTINY OF THE AWARD BY THE COMMITTEE

Before signing any Award, the Arbitral Tribunal shall submit it in draft form to the Committee. The Committee may lay down modifications as to the form of the Award and, without affecting the Arbitral tribunal's liberty of decision, may also draw its attention to

points of substance. No Award shall be rendered by the Arbitral Tribunal until it has been approved by the Committee as to its form.

29. NOTIFICATION, DEPOSIT AND ENFORCEABILITY OF THE AWARD

- (1) Once an Award has been made, the Registrar, KFCRI shall notify to the parties the text signed by the Arbitral Tribunal, provided that the costs of the arbitration have been fully paid to KFCRI by the parties or by one of them.
- (2) Additional copies certified true by KFCRI shall be made available on request and at any time only to the parties and the arbitral tribunal.
- (3) By virtue of notification made in accordance with sub-rule (1) of Rule 29, the parties waive any other form of notification or deposit on the part of the Arbitral Tribunal.
- (4) An original of each award made in accordance with these rules shall be deposited with KFCRI as contemplated under sub-rule (6) of Rule 26.
- (5) Every award shall be binding on the parties. By submitting the dispute to arbitration under these rules, the parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse in so far as such waiver can validly be made.

30. COSTS

- (1) The costs of arbitration shall be fixed by the arbitral tribunal in accordance with the fees and charges specified in Appendix I and II.

- (2) The arbitral tribunal shall determine which party shall bear the costs taking into account the circumstances of the case and may apportion the costs between the parties if it is reasonable to do so.

"costs" means costs relating to -

- i. The fees and expenses of the arbitrators and witnesses,
- ii. legal fees and expenses,
- iii. the administrative fees and charges of KFCRI, and
- iv. any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

31. TERMINATION OF PROCEEDINGS

- (1) The arbitral proceedings shall stand terminated on making of the final arbitral award pursuant to Rule 28 or by an order of the arbitral tribunal under sub-rule (2) of Rule 31.
- (2) The arbitral tribunal shall make an order for the termination of the arbitral proceedings where-
- (a) the claimant withdraws the claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on the part in obtaining a final adjudication of the dispute,
 - (b) the parties agree on the termination of the proceedings, or
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The arbitral tribunal shall send a copy of the order made under sub-rule (2) to each party.

- (4) Upon termination of the arbitral proceedings, the arbitral tribunal shall deposit the file of the case containing the record of the arbitral proceedings and the arbitral award or the order made under sub-rule (2) of Rule 31, to KFCRI.
- (5) Subject to Rule 32 and any order of court of competent jurisdiction in proceedings before it in respect of the award, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

32. CORRECTION AND INTERPRETATION OF AWARD & ADDITIONAL AWARD

- (1) Within thirty days from the receipt of the arbitral award –
- (a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of similar nature occurring in the award, and
 - (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point of part of the award.
- (2) If the arbitral tribunal considers the request made under sub-rule (1) of Rule 32 to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.
- (3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-rule (1) of Rule 32, on its own initiative, within thirty days from the date of the arbitral award.

- (4) A party, with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.
- (5) If the arbitral tribunal considers the request made under sub-rule (4) of Rule 32, to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.
- (6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-rule (2) or sub-rule (5) of Rule 32, as the case may be.
- (7) Rule 26 shall apply to a correction or interpretation of the arbitral award / or to an additional arbitral award made under this rule.

33. DEPOSITS

- (1) The arbitral tribunal will, upon its constitution, in consultation with the Registrar of KFCRI direct each party to deposit with the KFCRI an equal amount as an advance for the costs referred to in Rule 30, which it expects will be incurred; Where apart from the claim, a counter-claim has also been submitted to the arbitral tribunal, it may fix separate amount of deposit for the claim and counter-claim.
- (2) During the arbitration proceedings, the arbitral tribunal may, in consultation with the Registrar, KFCRI direct supplementary deposits with KFCRI in an equal amount from each party for the costs referred to in sub-rule (1) of Rule 33.
- (3) If the required deposits under sub-rules (1) and (2) of Rule 33 are not made in full in respect of the claim or counter-claim within thirty days, the arbitral tribunal will inform the parties in order that one or the other party may make the required deposit

and if the required deposit is not made the arbitral tribunal may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration as regards the claim or counterclaim for which the deposit is not made.

- (4) KFCRI shall hold any deposits required under this Rule.
- (5) KFCRI may, from time to time, pay to the arbitral tribunal from any deposit it holds under this Rule any amount it considers reasonable and appropriate for fees earned or expenses incurred by the tribunal in the arbitral proceedings.
- (6) Upon termination of the arbitral proceedings, KFCRI shall, in accordance with the final award, apply any deposits it holds to the costs of the proceedings, render an account to the parties of the deposits received and applied and return any unexpended balance to the parties.

34. ADMINISTRATIVE ASSISTANCE

KFCRI will arrange the administrative services specified in Chapter II, if

- (a) the parties designate KFCRI for arranging such services, in the arbitration agreement;
- (b) the parties, or the arbitral tribunal with the consent of the parties, request KFCRI to arrange such services.

35. AMENDMENT

KFCRI may revise, amend or alter these rules or the schedule of fees and other monies to be charged and paid as and when expedient and necessary.

36. INTERPRETATION

If any question relating to interpretation of these rules or any procedural matters, there under, the decision of the Committee shall be final and binding on the parties.

37. IMMUNITY

The Committee, Officers and Secretarial Staff of KFCRI and the arbitral tribunal, or any member thereof shall not be liable for any act or omission in whatever capacity they may have acted in connection with or in relation to an arbitration under these rules. No party shall bring or prosecute any suit or proceedings whatever in respect thereof.

CHAPTER II

SERVICES OF KFCRI

38. SERVICES AS APPOINTING AUTHORITY

To facilitate the conduct of arbitral proceedings that the parties have agreed to conduct under the Arbitration Rules, KFCRI will -

- (1) perform the functions of the appointing authority whenever -
 - (a) KFCRI has been so designated by the parties in the arbitration clause of their contract or in a separate agreement, or
 - (b) the parties have agreed to submit a dispute to KFCRI under the Arbitration Rules without specifically designating it as the appointing authority; and
- (2) provide the administrative services herein specified when required by the agreement, or when requested by all parties, or by the arbitral tribunal with the consent of the parties.

39. SERVICES AS THE REGISTRY

- (1) On receiving a request in pursuance of Rule 3(1) the Registrar, KFCRI will register the request and intimate in writing to the parties the registration number of the case which shall be quoted by the party while making any subsequent communication to the Registrar, KFCRI and the arbitral tribunal.
- (2) The Registrar, KFCRI will scrutinize every request and the documents, make necessary entries in the register and prepare a file of the case.

40. ADMINISTRATIVE SERVICES

- (1) KFCRI may provide the administrative services specified in this Chapter –
 - (a) upon the request of the parties;
 - (b) upon the request of the arbitral tribunal with the consent of the parties; and
 - (c) if the parties designate KFCRI for providing such services.
- (2) All oral or written communications from a party to the arbitral tribunal except at the arbitral proceedings, may be directed to the Registrar, KFCRI which will transmit them to the arbitral tribunal and, where appropriate, to the other party.
- (3) Agreement by the parties that the KFCRI will provide the administrative services constitutes consent by the parties that, for purposes of compliance with any time requirements of the Rules, any written communications shall be deemed to have been received by the addressee when received by the Registrar, KFCRI. When transmitting communications to party, the Registrar, KFCRI will do so to the addresses provided by each of them to the Registrar, KFCRI for this purpose.
- (4) The Registrar, KFCRI will also assist in the exchange of information.
- (5) The Registrar, KFCRI will assist the arbitral tribunal to establish the date, time and place of meetings and will give the parties advance notice of such meetings.
- (6) The Registrar, KFCRI will provide a court room and retiring rooms for the arbitral tribunal and the parties or their counsel in the offices of KFCRI on the charges set out in the Appendix I - (2) and Appendix II - (2). These charges will be billed separately and are not included in the fee for administrative services. However, where these facilities are provided in any place other than the offices of KFCRI the charges will be determined by the Registrar, KFCRI and billed separately in each case.

(7) Upon request, the Registrar, KFCRI will make arrangements for reporter transcripts of the arbitral proceedings or hearings. The cost of reporter transcripts will be determined by the Registrar, KFCRI and billed separately and is not included in the fee for administrative services.

(8) Upon request, the Registrar, KFCRI will make arrangements for the services of interpreters or translators and the cost in respect thereof will be determined by the Registrar, KFCRI and billed separately and is not included in the fee for administrative services.

(9)

(a) KFCRI will hold advance deposits to be made towards the costs of the arbitral proceedings.

(b) On termination of the arbitral proceedings, KFCRI will apply the proceeds of the advance deposits towards any of its unpaid administrative fees and charges and the costs of the arbitral proceedings and will render an account to the parties of the deposits received and applied and return any unexpended balance to the parties.

(10)

(a) Upon request, the Registrar, KFCRI will provide other appropriate administrative services, the costs of which will be determined by the Registrar, KFCRI and billed separately and are not included in the fee for administrative services.

(b) The kinds of services which can be provided are as follows: -

- i. secretarial support and clerical assistance;
- ii. long distance and local telephone access, facsimile, tele-copier and video conferencing facilities;
- iii. photocopying and other regular office services.

(11)

- (a) The Registrar, KFCRI may require the party requesting one or more of the services referred to in sub-rules (6), (7), (8) or (10) of Rule 40, to deposit an amount specified by it as advance towards the costs of such services;
- (b) The Registrar, KFCRI may also require the parties to make supplementary deposits towards the costs of the services referred to in clause (a) of sub-rule (11) of Rule 40; and
- (c) If the required deposit under clause (a) or clause (b) of sub-rule (11) of Rule 40, is not made in full within the time specified by the party, KFCRI may not provide the services requested for.

41. ADMINISTRATIVE FEES

- (1) The fee of KFCRI for making appointment of arbitrators and for providing administrative services, other than those specified in sub-rules (6), (7), (8) and (10) of Rule 40 is based upon the amount in dispute as disclosed when the statement of claim is submitted to KFCRI in pursuance of sub-rule (1) of Rule 19. Items (1) of Appendix I and Item (2) of Appendix II contains KFCRI schedule of fees and charges. The fees shall be confined to five hearings and below for cases mentioned in Appendix I - (1) & (2) and Appendix II – (1) & (2). The cost of further hearing will be charged separately at the discretion of the Committee.
- (2) The Arbitration Rules provide that the costs of arbitration include the costs of the administrative fees or charges of KFCRI [Rule 30(a)]. These costs are, borne equally by the parties unless the arbitral award provides for a different apportionment [Rule 30 (b)].

APPENDIX I

DOMESTIC COMMERCIAL ARBITRATION

(1) Administrative fees referred to in Rule 41(1) and 41(2):

(Where KFCRI acts as an appointing authority and administrator)

<u>Amount in dispute</u> (in Rupees)	<u>Amount of Fees</u> (in Rupees)
(1) Below 50,000	2,000
(2) 50,001 – 1,00,000	3,000
(3) 1,00,001 – 5,00,000	4,000
(4) 5,00,001 - 10,00,000	5,000
(5) 10,00,001 - 50,00,000	10,000
(6) 50,00,001 – 1,00,00,000	15,000
(7) 1,00,00,001 – 5,00,00,000	20,000

Note:

- (1) Where the total amount in dispute exceeds Rs. 5,00,00,000 (or) the dispute cannot be expressed in terms of money, the Committee shall determine the amount of administrative fees, in its discretion, in each case.

- (2) Non - refundable fee referred to in Rule 41 (1) - Rs. 20,000 (Where KFCRI acts only as an appointing authority [or] only appoints/nominates the arbitrator)

(2) Arbitrator's fee referred to in Rule 30:

<u>Amount in dispute</u> (in Rupees)	<u>Amount of fee of sole arbitrator</u> (in Rupees)
(1) Below 50,000	5,000
(2) 50,001 – 1,00,000	7,500 + 4% of over and above 50,001
(3) 1,00,001 – 5,00,000	15,000 + 3% of over and above 1,00,001
(4) 5,00,001 - 10,00,000	40,000 + 2.5% of over and above 5,00,001
(5) 10,00,001 - 50,00,000	75,000 + 2% of over and above 10,00,001
(6) 50,00,001 – 1,00,00,000	1,50,000 + 1.5% of over and above 50,00,001
(7) 1,00,00,001 – 5,00,00,000	7,50,000 + 1% of over and above 1,00,00,001

Note - 1

- (1) The total amount in dispute exceeds Rs.5,00,00,000 or the dispute cannot be expressed in terms of money, the Committee shall determine the amount of fee in each case.
- (2) In the case of the arbitral tribunal consisting of more than one arbitrator the Arbitrator's fee shall be the same, in addition to that of the fees of the sole Arbitrator.
- (3) Charges for facilities: Rs. 2,500/- for one day or part thereof.

Note - 2

Where the facilities are provided in a place other than KFCRI offices, the charges will be determined in each case and billed separately.

APPENDIX II

INTERNATIONAL COMMERCIAL ARBITRATION

(1) Administrative fees referred to in Rule 41 (1) and 41 (2):

(Where the KFCRI acts as an appointing authority and administrator)

<u>Amount in dispute</u> (in US \$)	<u>Amount of Fee</u> (in US \$)
(1) Below 50,000	500
(2) 50,001-100,000	750
(3) 100,001 -250,000	125
(4) 250,001 – 500,000	2500
(5) 500,001 – 1,000,000	5000

Note:

- (1) Where the total amount in dispute exceeds USD 1,000,000 or the dispute cannot be expressed in terms of money, the Committee determine the amount of administrative fees, in its discretion, in each case.
- (2) Non - Refundable fee referred to in Rule 41(1) - US \$ 500. (Where KFCRI acts only as an appointing authority [or] only appoints/nominates the arbitrator)

(2) Arbitrator's fee referred to in Rule 30

<u>Amount in dispute</u> (in US \$)	<u>Amount of Fee</u> (in US \$)
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(1)	Below 50,000	1000
(2)	50,001-100,000	1500 + 3% of over and above 50,001
(3)	100,001 -250,000	2500 + 2% of over and above 1,00,001
(4)	250,001 – 500,000	4000 + 1.5% of over and above 2,50,001
(5)	500,001 – 1,000,000	7500 + 1% of over and above 500,001

Note - 1

- (1) Where the total amount in dispute exceeds USD 1,000,000 or the dispute cannot be expressed in terms of money, the Committee shall determine the amount of fee in each case.
- (2) In the case of the arbitral tribunal consisting of more than one arbitrator the Arbitrator's fee shall be the same, in addition to that of the fees of the Sole Arbitrator.
- (3) Charges for facilities: US\$ 150 for one day or part thereof.

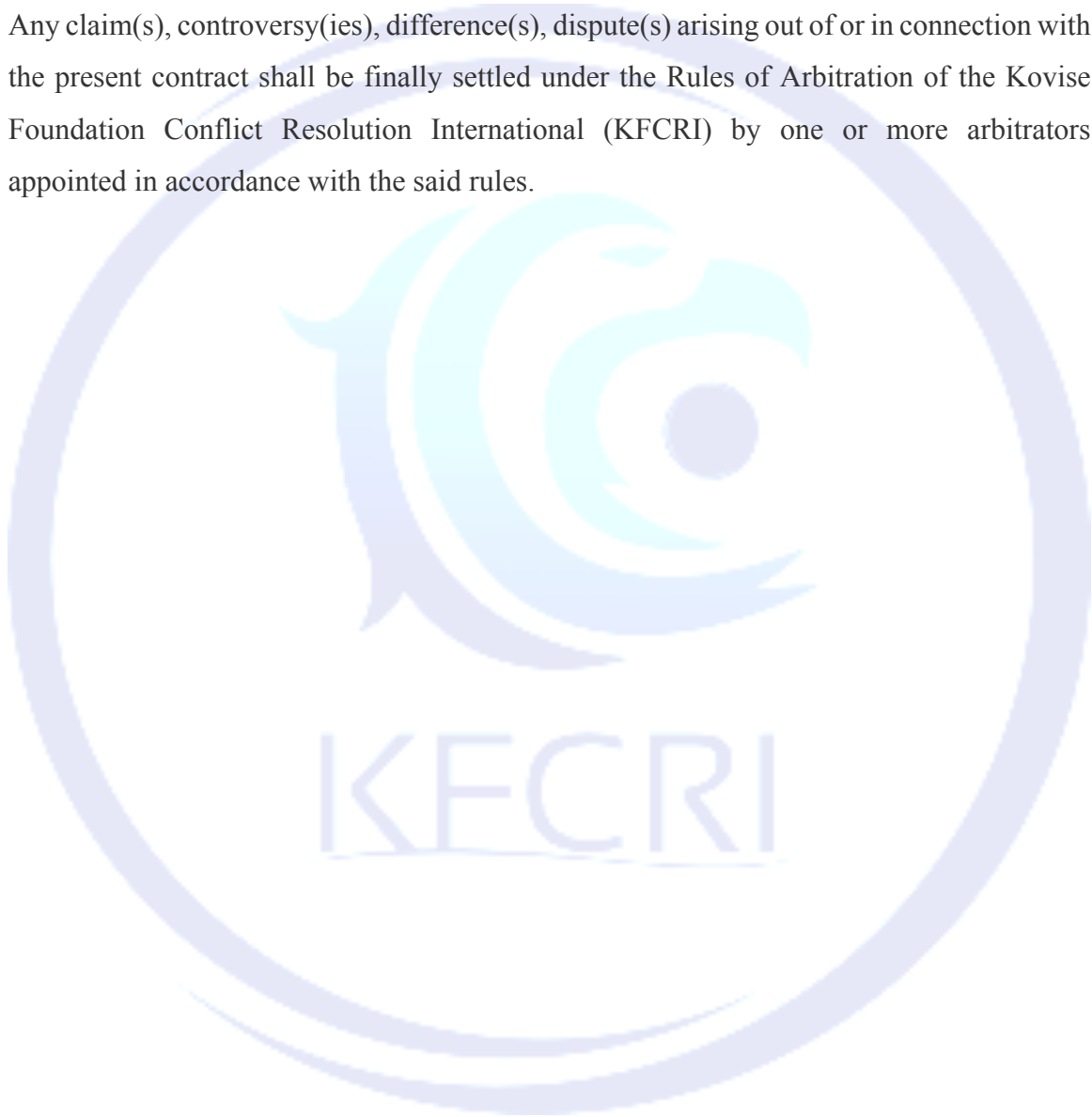
Note - 2

Where the facilities are provided in a place other than in KFCRI offices, the charges will be determined in each case and billed separately.

APPENDIX III

MODEL ARBITRATION CLAUSE

Any claim(s), controversy(ies), difference(s), dispute(s) arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the Kovise Foundation Conflict Resolution International (KFCRI) by one or more arbitrators appointed in accordance with the said rules.



APPENDIX IV

MODEL ARBITRATION AGREEMENT

This agreement made at _____ (place) on this _____ day of _____, between _____ (hereinafter called the party of the '**FIRST PART**') and the _____ (hereinafter called the party of the '**SECOND PART**')

The expression **FIRST AND SECOND PART** wherever it occurs shall mean and include the said party and their legal heirs, successors-in-office, administrators, executors and assigns thereof.

Whereas certain disputes have arisen and are subsisting between the aforesaid parties relating to _____ (details of contract to be given)

And Whereas the parties agree to submit their claim(s), controversy(ies), difference(s), dispute (s), to **KFCRI**, having its Office at _____.

Now the Parties hereby agree as follows:

1. The parties agree to submit their claim(s), controversy(ies), difference(s), dispute(s) to arbitration for resolution by sole / three Arbitrator(s).
2. The arbitrator(s) shall be appointed by **KFCRI**.
3. The arbitration shall be administered by **KFCRI**, in accordance with its Rules.
4. The place of arbitration shall be at _____ (City).
5. The Language of Arbitration shall be (English).

6. The award so rendered shall be final and binding on both the parties.

In Witness Whereof, the parties have signed on the day, month and year above written.

WITNESSES: -

1. **FIRST PARTY**

2. **SECOND PARTY**

Note: Include the following in International Arbitration Agreement(s).

7. The Governing Law of the contract shall be the substantive law of _____
(Country).

8. The Award for money shall be in _____ (Currency).