

# Arbitration Procedure 2011

*Approved by the Dispute Resolution Board of Engineers Ireland,  
19 May 2011*



## **Preamble**

This Arbitration Procedure has been prepared by Engineers Ireland principally for use in disputes arising out of engineering work, and in particular construction Contracts. However its use is not restricted to such work and it has been purposely written to allow for more general application. The Procedure has been specifically written for use with the Arbitration Act 2010 and thus it differs from the Engineers Ireland Arbitration Procedure 2000, which was intended for arbitrations conducted under the Arbitration Acts 1954 to 1998, and which may still be used for that purpose.

The 2000 version, and also the 1987 version of the Engineers Ireland Arbitration Procedure which preceded it, were based on the corresponding versions of the Institution of Civil Engineers Arbitration Procedure; when drafting this current Procedure the Board has used the UNCITRAL Arbitration Rules 2010 as a base and has had regard to the latest version of the ICE Procedure, as well as to current practice in this country.

The Arbitration Act 2010 has significantly extended the Arbitrator's authority and thus many of the provisions in the 2000 Procedure are no longer necessary and have been omitted from this document. The guiding principle has been to exploit the opportunity within the 2010 Act to streamline the arbitral process while at the same time providing for multi-party arbitrations and tribunals with more than one Arbitrator. In smaller and less complex disputes the Board suggests that the Engineers Ireland '100-Day Arbitration Procedure' may be appropriate in order to achieve a more expeditious outcome.

This document will not be produced in hard copy; instead, it will be made freely available on the Engineers Ireland website so that it may be downloaded and used by parties involved in arbitration. A contribution, as set out on the website, to the costs incurred by Engineers Ireland will be sought where the Procedure is used, without a Presidential appointment, by any person on an Engineers Ireland panel.

The document will be reviewed and updated as required and parties using it are advised to check that they are using the current version. Finally, the Board would welcome comments and suggestions from those using the document.

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May 2011

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## SECTION 1 INTRODUCTORY RULES

### Rule 1 Aims and objectives

- 1.1 The aim of this Procedure is to facilitate the fair, expeditious, efficient and cost-effective resolution of disputes by means of arbitration under the Arbitration Act 2010.
- 1.2 The Arbitrator has been given significant powers and is encouraged to use them to achieve the objectives set out above; the parties are also enjoined to use the process, chosen by them, to resolve the matters which divide them without unnecessary delay or expense.

### Rule 2 Definitions

- 2.1 The following definitions apply in this Procedure:
  - a) the 'Act' means the Arbitration Act 2010 and words defined therein shall have the same meaning in this Procedure. Any reference to a Section ('S.') shall be to a Section, while an Article ('Art.') means a reference to an Article of the UNCITRAL Model Law on International Commercial Arbitration included in Schedule 1 of the Act;
  - b) 'Arbitration' means an Arbitration governed by the Arbitration Act 2010 to which the Procedure applies;
  - c) 'Arbitration Agreement' means an agreement between the parties complying with the requirements of Option 1 of Art. 7;
  - d) 'Arbitrator' means a tribunal of one or more Arbitrators;
  - e) 'Contract' means a Contract between the parties, which incorporates the Arbitration agreement under which the dispute arises;
  - f) 'Court' means Court of competent jurisdiction pursuant to the provisions of the Act;

- g) 'Days' means calendar Days, less all public holidays, established under the Organisation of Working Time Act 1997, and Good Friday;
- h) 'Expert' means an Expert witness or person called to give Expert opinion evidence;
- i) 'President' means the President for the time being of Engineers Ireland or any Vice-President of the institution acting on behalf of the President, or such other entity as may have been nominated in the agreement to appoint the Arbitrator in default of agreement between the parties;
- j) 'Procedure' means Engineers Ireland Arbitration Procedure 2011 unless the context otherwise requires. If the Arbitration Procedure 2011 has been amended, the version current at the time of the appointment of the Arbitrator shall be used; and,
- k) 'Termination Order' means an order made by the Arbitrator under Art. 32 to bring the Arbitration proceedings to a close.

### **Rule 3 Application**

- 3.1 Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to Arbitration under the Procedure, then such disputes shall be settled in accordance with the Procedure subject to such modifications as the parties may agree.
- 3.2 The Procedure shall govern the Arbitration proceedings except that, where any of these Rules is in conflict with a provision of the Act, from which the parties cannot derogate, that provision shall prevail.

#### **Rule 4 Confidentiality**

- 4.1 Unless otherwise agreed in writing between the parties, the parties and the Arbitrator undertake to treat the Arbitration as confidential to the greatest extent possible. In particular all proceedings, materials and documents prepared or produced for the purpose of the arbitration shall be kept confidential unless they are already in the public domain, or their disclosure is required as part of a legal duty or to pursue a legal right, or to enforce or challenge an award. Such confidentiality shall not apply between a party and a superior entity to which it is answerable, such as a parent company or a government department, provided that superior entity in its turn agrees with all the parties on the same terms to keep confidential any such information provided to it.

#### **Rule 5 Communication and calculation of time**

- 5.1 All communication by the parties with the Arbitrator, other than at meetings or hearings, shall be in writing and may be sent by any means of communication that provides or allows for a record of its transmission. Any communication sent to the Arbitrator by a party shall be copied, at the same time, to all the other parties and shall be marked as such.
- 5.2 The provisions as regards the delivery of communications shall be as set out in Art. 3.
- 5.3 Any time period specified within this Procedure shall run from the day immediately after a notice has been received. If the final day of such a time period falls on a public holiday or a non-business day, the period shall be extended until the first business day which follows.

## **Rule 6 Reference to arbitration**

- 6.1 The party or parties initiating recourse to arbitration (the 'Claimant') shall communicate to the other party or parties (the 'Respondent') a notice of arbitration (a 'Notice to Refer').
- 6.2 The Arbitration shall be deemed to commence on the date on which the Notice to Refer is received by the Respondent.
- 6.3 The Notice to Refer shall include the following:
- a) a demand that the dispute be referred to arbitration;
  - b) the names and contact details of the parties;
  - c) the text of the Arbitration Agreement that is invoked;
  - d) identification of any Contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such Contract or instrument, a brief description of the relevant relationship;
  - e) a brief description of the claim and an indication of the amount involved, if any;
  - f) the relief or remedy sought; and,
  - g) a proposal as to the number of Arbitrators, and language and place of arbitration, if the parties have not previously agreed thereon.
- 6.4 The Notice to Refer shall be accompanied by the names of one or more persons being proposed as Arbitrator by the Claimant, together with contact details of each, for consideration by the Respondent.

## **Rule 7 Response to Notice to Refer**

- 7.1 Within 14 Days of the receipt of the Notice to Refer, the Respondent shall communicate to the Claimant a response to the Notice to Refer, which shall include:
- a) the name and contact details of the Respondent; and,
  - b) a response to the information set forth in the Notice to Refer under Rule 6, paragraphs 3(c) to 3(g).
- 7.2 The response to the Notice to Refer may also include:
- a) any plea that an arbitration to be constituted under this Procedure lacks jurisdiction;
  - b) a brief description of Counterclaims or claims for the purpose of a setoff, if any, including, where relevant, an indication of the amounts involved and the relief or remedies sought; and,
  - c) a Notice to Refer in accordance with Rule 6 in case the Respondent formulates a claim against a party to the Arbitration Agreement other than the Claimant.
- 7.3 The response shall be accompanied by a response to any names of persons proposed as Arbitrator by the Claimant under Rule 6. The Respondent may accept the Claimant's proposal as regards the Arbitrator or, alternatively, may reject it and put forward further names of persons to act as Arbitrator.
- 7.4 The appointment of the Arbitrator shall not be hindered by any controversy with respect to the sufficiency of the Notice to Refer, or the Respondent's failure to communicate a response to the Notice to Refer, or an incomplete or late response to the Notice to Refer, and any such matters shall be finally resolved by the Arbitrator as provided for in Art. 16.

## **SECTION 2 APPOINTMENT OF ARBITRATOR**

### **Rule 8 Appointment by agreement**

- 8.1 If, following the exchange of the names of prospective Arbitrators provided for in Rules 6 and 7, the parties are in agreement on the choice of Arbitrator, the Claimant shall write to the person, or persons, so selected, enclosing a copy of the Notice to Refer, and also the response to it, together with confirmation of the Respondent's agreement to the appointment.
- 8.2 If the person, or persons, so invited accept the appointment, that person, or persons, shall notify the Claimant and the Respondent in writing to that effect. The date of receipt of that communication shall be deemed to be the date on which the Arbitrator's appointment is completed.

### **Rule 9 Appointment by the President**

- 9.1 If the parties have failed to agree on an Arbitrator in accordance with Rule 8 within 21 Days from the service of the Notice to Refer, any party may then apply to the President to appoint an Arbitrator.
- 9.2 The application to the President shall be in writing, and copied to the other parties, and shall be accompanied by:
- a) a copy of the Notice to Refer;
  - b) the appropriate fee;
  - c) confirmation that any conditions precedent to arbitration contained in the Contract or Arbitration Agreement have been complied with; and,
  - d) any other relevant information.
- 9.3 The President shall, within 14 Days of receipt of the application, make the appointment and shall notify the parties and the Arbitrator in writing of the appointment.

- 9.4 Where the Arbitration Agreement provides for a tribunal with more than one Arbitrator, the President shall appoint one or more Arbitrators in accordance with that agreement. Where a party fails to exercise its right to appoint an Arbitrator, the President may, on the application of any other party, appoint such an Arbitrator.
- 9.5 If the person, or persons, accepts the Presidential appointment, that person, or persons, shall notify the Claimant and the Respondent in writing to that effect. The date of receipt of that communication shall be deemed to be the date on which the Arbitrator's appointment is completed.

#### **Rule 10 Independence and impartiality of Arbitrator**

- 10.1 Before accepting the appointment a prospective Arbitrator shall, in accordance with Art. 12, notify the parties of any circumstances that might give rise to justifiable doubts as to the Arbitrator's impartiality or independence. The Arbitrator shall be under a continuing duty to disclose in writing to the parties any such circumstances that may arise during the period of the Arbitrator's appointment.

#### **Rule 11 Challenge to Arbitrator**

- 11.1 Any challenge to an Arbitrator shall be dealt with as provided for in Art. 13.

#### **Rule 12 Replacement of Arbitrator**

- 12.1 Where an appointed Arbitrator is unable to continue, for whatever reason, a replacement Arbitrator shall be appointed in accordance with these rules, whether by agreement of the parties or, if necessary, by appointment by the President.
- 12.2 Where necessary, the replacement Arbitrator shall decide on how to continue the arbitration proceedings and may repeat any hearings previously held.

### **Rule 13 Exclusion of liability**

13.1 The Arbitrator, together with the President and Engineers Ireland, shall have the immunities provided for in S. 22.

## SECTION 3 ARBITRATION PROCEEDINGS

### Rule 14 General

- 14.1 Unless the parties have decided otherwise, the Arbitrator, in accordance with Art. 18 and subject to these Rules, may conduct the arbitration in such a manner as the Arbitrator considers appropriate, provided that the parties are treated with equality and, at an appropriate stage of the arbitration proceedings, each party is given a reasonable opportunity of presenting its case. The Arbitrator, in exercising this discretion, shall conduct the arbitration proceedings so as to avoid unnecessary delay and expense, and to provide a fair and efficient process for resolving the parties' dispute.
- 14.2 The Arbitrator may, in accordance with Art. 19, decide all procedural and evidential matters, except where the parties have decided otherwise, and this power shall include but is not limited to:
- a) what form of written statements of claim, Counterclaim and Defence are to be used and when these should be supplied;
  - b) whether any, and if so what, questions should be put to and answered by the parties in advance of a hearing and when and in what form this should be done;
  - c) whether, and to what extent, there should be oral or written evidence or submissions;
  - d) whether, when and to what extent, Expert evidence should be adduced;
  - e) whether, and to what extent, evidence should be given under oath or affirmation;
  - f) the manner in which the evidence of witnesses should be taken, including whether they should be physically present or may give evidence by video conferencing or other method; and,
  - g) when, and where, any part of the hearing is to be held.
- 14.3 Where the parties have not done so, the Arbitrator shall decide the place of arbitration, and also the language or languages to be used in the arbitration proceedings, in accordance with Art. 20 and Art. 22.

- 14.4 Unless otherwise agreed by the parties, the Arbitrator may deal with liability and quantum separately, and may make more than one award at different times on different aspects of the matters to be determined, including making an award relating to any issue affecting the whole or part of any Claim or Counterclaim.
- 14.5 The Arbitrator 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 and accepts the application of this Procedure, 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. The Arbitrator may make a single award or several awards in respect of all parties so involved in the arbitration.

#### **Rule 15 Arbitration timetable**

- 15.1 At the outset of the arbitration the Arbitrator shall establish a timetable for the process, following consultation with the parties, and this timetable shall be updated and amended as required in order to ensure the expeditious conduct of the arbitration.
- 15.2 As soon as possible after appointment, the Arbitrator may convene a preliminary meeting of the parties and, during the course of the arbitration, may convene such further procedural meetings as the Arbitrator deems necessary. The Arbitrator may determine whether such procedural meetings should be carried out in person or whether they should be done remotely by video link, teleconference or similar method.
- 15.3 Any party may at any time apply to the Arbitrator to deal with any procedural matter, and the Arbitrator shall do so either by means of a meeting or in correspondence or otherwise at the Arbitrator's discretion.

15.4 At the preliminary meeting the parties, and the Arbitrator, shall consider how the arbitral process may be streamlined and in particular whether, and to what extent:

- a) this Procedure and these Rules should be amended to meet the particular requirements of the arbitration;
- b) the Engineers Ireland 100-Day Arbitration Procedure should be used;
- c) the arbitration should proceed on a documents only basis;
- d) some of the issues should be decided in advance of others in order to save time and costs;
- e) evidence of Experts may be necessary or desirable;
- f) what, if any, disclosure of documents is appropriate;
- g) recoverable costs should be limited, whether by agreement, or by decision of the Arbitrator; and,
- h) any hearing should be recorded and the method of any such recording.

#### **Rule 16 Statement of Claim**

16.1 Within 30 Days of the completion of the Arbitrator's appointment, or such other time set by the Arbitrator, the Claimant shall deliver to the Respondent and the Arbitrator its Statement of Claim as provided for in Art. 23.

16.2 The Statement of Claim shall include the following particulars:

- a) the names and contact details of the parties;
- b) a statement of the facts supporting the claim;
- c) the points at issue;
- d) the relief or remedy sought; and,
- e) the legal grounds or arguments supporting the claim.

16.3 A copy of any Contract or other legal instrument out of, or in relation to which, the dispute arises, and of the Arbitration Agreement shall be annexed to the Statement of Claim.

16.4 The Statement of Claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the Claimant, or contain references to them.

16.5 The Claimant may elect to treat its Notice to Refer as set out in Rule 6 as its Statement of Claim, provided that it includes all of the information as required under this Rule.

### **Rule 17 Statement of Defence; Counterclaim**

17.1 The Respondent shall communicate its Statement of Defence in writing to the Claimant and the Arbitrator within 30 Days of receipt of the Statement of Claim, or such other time set by the Arbitrator. The Statement of Defence shall respond to the issues raised in the Statement of Claim, and it shall raise any other relevant issues, including any Counterclaims that are to form part of the arbitration.

17.2 The requirements as regards the provision of information, set out in Rule 16, shall also apply to the Statement of Defence and in particular it should, as far as possible, be accompanied by all documents and other evidence relied upon by the Respondent, or contain references to them.

17.3 The Respondent may elect to treat its response to the Notice to Refer, as set out under Rule 7, as its Statement of Defence, provided all of the other requirements of this Rule have been complied with.

17.4 Where the Claimant elects to treat its Notice to Refer as its Statement of Claim, the Respondent shall communicate its Statement of Defence within 30 Days of receipt of the Claimant's election, or 30 Days of completion of the Arbitrator's appointment, whichever is the later, or such other time set by the Arbitrator.

17.5 Where a Counterclaim is made by the Respondent, the Claimant shall communicate its defence to that Counterclaim within a further 30 Days, or such other time set by the Arbitrator. The defence to the Counterclaim shall comply with the requirements of Rule 17.2.

### **Rule 18 Amendments to the Claim or Defence**

18.1 During the course of the arbitration proceedings, a party may amend or supplement its Claim or Defence, including a Counterclaim, as provided for in Art 23(2). However, a Claim or Defence, including a Counterclaim, may not be amended or supplemented in such a manner that the amended or supplemented Claim or Defence falls outside the jurisdiction of the Arbitrator.

### **Rule 19 Jurisdiction**

19.1 Any issues raised as regards the Arbitrator's jurisdiction shall be determined in accordance with Art. 16.

### **Rule 20 Further information**

20.1 In addition to the statements of Claim or Defence, the Arbitrator shall decide whether and to what extent any further written statements are required, and shall also fix the time periods for the provision of such statements.

20.2 The statements of Claim or Defence shall be provided in sufficient detail for the other party to know the case it has to meet. Requests for further information may be granted by the Arbitrator at any time, to meet that objective, and shall be responded to by the other party within time limits set by the Arbitrator.

### **Rule 21 Default**

21.1 Subject to what the parties may agree, the Arbitrator may issue directions to the parties to set and modify the time for each stage and element of the arbitration proceedings, including any times set out in these Rules. The Arbitrator shall use this power in an effort to streamline the arbitration proceedings.

21.2 If, without showing sufficient cause, a party fails to comply with the Arbitrator's directions, the Arbitrator:

- a) shall proceed, where appropriate, as set out in Art. 25;
- b) may draw such adverse inferences from the party's non-compliance as the circumstances justify; and,
- c) shall consider making an order or interim award requiring the defaulting party to pay the costs of the arbitration incurred as a result of its non-compliance. In the case of such an order or award, the Arbitrator may decide the basis for such costs and, if the Arbitrator deems it appropriate, determine the amount of such costs. This is an exception to the provision on costs in Rule 34.

## **Rule 22 Interim measures and preliminary orders**

22.1 The power of the Arbitrator to grant interim measures or preliminary orders shall be as set out in Art. 17.

## **Rule 23 Evidence**

23.1 The Arbitrator may order any party to submit, in advance of the hearing, a list of the witnesses it intends to call; however, that party shall not be bound to call any witness so listed.

23.2 Expert evidence shall be adduced only with the consent of the Arbitrator, and that consent may be given on such terms and conditions as the Arbitrator thinks fit. Unless ordered otherwise by the Arbitrator, Expert reports shall be exchanged simultaneously between the parties, and provided to the Arbitrator, within a reasonable time before the hearing.

23.3 Unless otherwise agreed or directed, the parties shall exchange simultaneously, and shall also provide to the Arbitrator, a witness statement from each of its witnesses of fact. Each witness statement shall be cogent and shall contain the factual evidence to be adduced by that witness.

23.4 Any witness statement or Expert report delivered in accordance with this Rule shall be taken as the evidence in chief of that witness, and the other parties shall be given an opportunity to cross-examine the witness on it at any hearing. The Arbitrator may also, at any time before cross-examination at a hearing, order the witness or Expert to deliver written answers to questions arising out of any statement or report.

23.5 The Arbitrator may order that Experts appear at the hearing separately or concurrently, so that the Arbitrator may examine them inquisitorially, provided always that at the conclusion of the Arbitrator's questions, the parties shall have the opportunity to put such further questions to the Experts (or any one of them) as they may reasonably require.

23.6 Prior to any hearing the Arbitrator may also:

- a) order that the parties meet in order to agree, in so far as they can, all factual matters;
- b) order the parties to prepare and agree a paginated bundle of all documents relied upon by the parties. The agreed bundle shall be deemed to have been entered into evidence without further proof and without being read out at the hearing, provided always that the inclusion of any document within the agreed bundle shall not imply that it is genuine or admissible;
- c) order that any Experts, whose reports have been exchanged, should meet and prepare a joint report identifying the points in issue and any other matters, covered by the reports, upon which they are in agreement and those upon which they disagree, stating the reasons for any disagreement; and,
- d) may view the site or works, the subject matter of the arbitration, provided that the parties have been given advance notice.

## **Rule 24 Disclosure of documents**

24.1 'Document' means a written text, communication, picture, drawing, programme or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means.

- 24.2 Subject to what the parties may decide, the Arbitrator may order the production of any document in the possession, custody or control of a party subject to the following:
- a) the Arbitrator shall have regard to the specificity, relevance, materiality and proportionality of the documents to be produced; and,
  - b) the Arbitrator shall not order the production of documents covered by legal privilege or where there are grounds such as commercial sensitivity, which the Arbitrator determines to be compelling. If the Arbitrator deems it necessary, the Arbitrator may review any document in order to determine if it should be produced.

- 24.3 If a party fails, without satisfactory explanation, to comply with the Arbitrator's order to produce documents, the Arbitrator may infer that such documents would be adverse to the interests of that party.

### **Rule 25 Hearings**

- 25.1 Any hearing shall be private unless the parties agree otherwise. In addition, subject to Art. 4 and unless the parties have agreed otherwise, the Arbitrator may:
- a) decide when and where to hold hearings and may adjourn the hearing for any period as the Arbitrator thinks fit;
  - b) determine the order in which the parties present their cases and/or the order in which the issues are to be heard and determined; and,
  - c) allocate the time available at the hearing between the parties where they have agreed it shall be limited. In the event that a party fails to adhere to the time allocated, the Arbitrator may allow further time at the discretion of the Arbitrator and upon such conditions as the Arbitrator sees fit.

### **Rule 26 Arbitrator-appointed Experts**

- 26.1 The Arbitrator may appoint one or more Experts as provided for in Art. 26, but before doing so shall consult with the parties and shall provide them with a copy of the Expert's terms of reference as well the qualifications of the prospective Expert.

26.2 A party may object to the appointment of any Expert within seven Days of receipt of the information, described in Rule 26.1 above, on the grounds of qualifications, impartiality or independence, with reasons for such objection. Any such objection shall be determined promptly by the Arbitrator, whose decision shall be final.

### **Rule 27 Closure of hearings**

27.1 The Arbitrator may enquire of the parties if they have any further evidence to offer and, if there is none, may declare the hearings closed.

27.2 In exceptional circumstances, the Arbitrator may, either at the request of a party or at the Arbitrator's own initiative, reopen the hearings at any time before the award is made.

### **Rule 28 Waiver of right to object**

28.1 In addition to the waiver in Art. 4, a failure by any party to object promptly to any non-compliance with these Rules shall be deemed to be a waiver of the right of such party to make such an objection.

## **SECTION 4 THE AWARD**

### **Rule 29 Form and effect of the award**

29.1 The form and contents of any award shall be in accordance with Art. 31.

29.2 All awards shall be final and binding on the parties. The parties shall carry out the provisions of all awards without delay.

### **Rule 30 Applicable law**

30.1 The Arbitrator shall determine all matters in dispute in accordance with the requirements of Art. 28.

### **Rule 31 Settlement or other grounds for termination**

31.1 The arbitration proceedings may be terminated by settlement as provided for in Art. 30. Where such settlement gives rise to an agreed consent award, this shall be made by the Arbitrator as provided for in Art. 31 except that reasons need not be given.

31.2 The arbitration proceedings may also be terminated by means of a final award or Termination Order as provided for in Art. 32.

### **Rule 32 Correction and interpretation of award; additional award**

32.1 The making of an additional award, as well as the correction or interpretation of any award, shall be dealt with as provided for in Art. 33.

### **Rule 33 Arbitrator's fees and expenses**

33.1 The fees and expenses of the Arbitrator shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the Arbitrator and any other relevant circumstances of the case.

33.2 Promptly after appointment, the Arbitrator shall provide the parties with terms of appointment including the basis for the Arbitrator's fees and expenses.

33.3 The Arbitrator shall be entitled to withhold delivery of an award pending payment of the Arbitrator's fees. The Arbitrator may require a deposit from one or more parties as security of costs during the arbitration proceedings to cover the anticipated fees and expenses. If such advance payments are not made, the Arbitrator may direct the suspension or termination of the arbitration proceedings at any time, on giving reasonable notice, until the payments are made. On completion of the arbitration, the Arbitrator shall render an account to the parties of the deposits received and return any unexpended balance to the parties.

### **Rule 34 Costs**

34.1 In any award, the Arbitrator may as provided for in S. 21:

- a) allocate the costs of the arbitration between the parties; and,
- b) direct the basis upon which the costs are to be determined.

34.2 The Arbitrator shall allocate costs on the general principle that costs should follow the event, in other words should be borne by the unsuccessful party or parties, except where it appears that in the circumstances this is not appropriate in relation to the whole or part of the costs.

34.3 In default of agreement by the parties, the amount of the recoverable costs shall be determined by a Taxing Master of the High Court, or the County Registrar, as appropriate.