

# Arbitration Rules, 27 May 2006

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## **Definitions**

In these Rules, the terms below have the following meaning:

***the Arbitration Board:***

Stichting Raad van Arbitrage voor de Bouw (the Stichting Arbitration Board for the Building Industry in the Netherlands).

***Chairman:***

the chairman of the Arbitration Board or, in his absence or incompatibility of functions, the vice-chairman of the Arbitration Board.

***Council of Arbitrators:***

the arbitrators as appointed and in office in accordance with Article 13 of the Articles of Association of the Arbitration Board.

***Arbitration:***

the conduct of litigation as referred to in the fourth book of the Dutch Code of Civil Procedure.

***Arbitration Tribunal:***

an Arbitration Tribunal comprising one, three or five arbitrator(s), composed in accordance with Article 3 of these Rules.

***Secretariat:***

the office of the Arbitration Board.

## **Article 1**

These Rules, determined in accordance with the Articles of Association of the Arbitration Board, provide for the method of handling disputes that are submitted to the Arbitration Board or its Council of Arbitrators.

## **Article 2**

### **Object**

The object of the Council of Arbitrators is as follows:

to resolve disputes in the building industry, which also includes:

- a. Providing preliminary relief.
- b. Examining and determining the quality and/or of the condition of the work area, the work itself, any part thereof or any auxiliary work in accordance with the provisions in Section 1020 (4)(a) of the Dutch Code of Civil Procedure.
- c. Determining the amount of compensation or monetary amount owed, as referred to in Section 1020 (4)(b) of the Dutch Code of Civil Procedure.
- d. Supplementing or amending the legal relationship as referred to in Section 1020(1) in conjunction with (4)(c) of the Dutch Code of Civil Procedure.

The Council of Arbitrators is not required to settle disputes beyond the applicability of these Rules, unless a certificate of no objection has been issued by the chairman for the relevant arrangement in the context of which the dispute has arisen and for the arbitration rules contained in, or accompanying, the same. The chairman shall only proceed to do so upon adoption of a board resolution.

## **The Arbitration Tribunal**

### **Article 3**

1. The Arbitration Tribunal shall be comprised from the Council of Arbitrators and appointed by the chairman.

2. Within fourteen days after the date of the chairman's request to that end, the parties may provide the chairman, in writing, with the name/names of the arbitrator(s) for whom they have established a common preference for appointment in mutual consultation; when appointing the arbitrator(s), the chairman shall as much as possible take into account the common preference expressed by the parties.
3. If the parties have so agreed, each party may, within the period referred to in paragraph 2 of this article, require one of the three arbitrators to be appointed to belong to the lawyer-members of the Council of Arbitrators.
4. In cases other than as referred to in paragraph 3 of this article, the chairman may appoint one of the arbitrators from the lawyer-members of the Council of Arbitrators if he considers this desirable due to the nature of the dispute.
5. In the cases referred to in paragraphs 3 and 4 of this article, the Arbitration Tribunal shall always be comprised of three members, unless the parties have agreed to adjudication of the dispute by one lawyer-member. If, however, a party exercises its authority as referred to in Article 14(4) of these Rules, the Arbitration Tribunal shall always be comprised of three members.
6. To the extent possible, the Arbitration Tribunal shall be appointed by the chairman no later than two months after the statement of defence has been filed or the final date specified for doing so has expired without being used.
7. The appointed Arbitration Tribunal shall elect the seat of the Arbitration Board as the place of arbitration as referred to in Section 1037 of the Dutch Code of Civil Procedure.
8. If the claim is for payment of a sum of money in the amount of EUR 50,000 or less, the Arbitration Tribunal shall be comprised of one arbitrator, unless
  - a. the chairman decides that due to the nature of the dispute it is desirable to have three arbitrators adjudicate;
  - b. both parties desire/have agreed adjudication by three arbitrators.After one arbitrator has been appointed, the chairman may yet proceed to appoint three arbitrators if he considers this desirable in connection with the course of the dispute or if both parties so request.
9. If the claim is solely for payment of a sum of money in a principal amount of more than EUR 50,000, the Arbitration Tribunal shall be comprised of three arbitrators, unless
  - a. the chairman decides that due to the simple nature of the dispute, adjudication by one arbitrator is desirable;
  - b. both parties desire/have agreed adjudication by one arbitrator.
10. The amount referred to in paragraphs 8 and 9 of this article may be adjusted by the Board of Directors of the Arbitration Board in line with the index of construction costs, published by the Bureau Documentatie Bouwwezen (Dutch Documentation Bureau for Building).
11. If the claim, in full or part, is for other than monetary payment, the chairman shall decide whether the Arbitration Tribunal should be comprised of one or three arbitrators, unless the parties express a common preference in this regard.
12. The chairman may only be appointed as arbitrator in an Arbitration Tribunal comprised of at least three arbitrators. If and as soon as the chairman acts as arbitrator, the vice-chairman shall act in his place insofar as any action is required of the chairman with regard to the dispute.

13. If the assignment to one or more of the appointed arbitrators ends before the Arbitration Tribunal has completed its task, the chairman may make a new appointment, without prior notice to the parties.
14. In these Rules, the words 'arbitrator(s)', 'Arbitration Tribunal', etc. are not – unless the text indicates otherwise – not only used with regard to legal arbitration, but also with regard to binding advice, i.e. 'binding advisor(s)', 'advisory committee', etc.

#### **Article 4**

1. The members of the Council of Arbitrators who are appointed as arbitrators shall report to the chairman as soon as possible after receiving their appointment whether they accept their appointment or whether they are unable to accept their appointment, stating the reason(s).
2. The validity of the reason(s) for being unable to accept shall be determined by the chairman.
3. The arbitrator who accepts his appointment shall so notify the secretariat in writing as soon as possible; as soon as all members of the Arbitration Tribunal have accepted their appointment, the secretariat shall so notify the parties in writing as soon as possible.

#### **Article 5**

1. Members assigned to a case in which an arbitral decision or binding advice is to be issued shall be relieved of their assignment by termination of their membership, unless the termination of membership ensues from the expiry of the calendar year in which the relevant member has reached the age of seventy, or from resignation by the member of his membership.
2. Members assigned to a case in which an arbitral decision or binding advice is to be issued shall be relieved of their assignment by suspension of their membership by the chairman on account of serious non-performance.

#### **Article 6**

1. An arbitrator can be relieved of his duties upon the joint request of the parties. If an arbitrator is no longer able to perform his assignment de jure or de facto, he may be relieved of his assignment at the request of any of the parties. At the request of the most diligent party, the assignment to the Arbitration Tribunal may be terminated if there is good cause to do so, including the reasons referred to in Section 1031 (2) of the Dutch Code of Civil Procedure. The chairman of the Arbitration Board shall decide on such requests. Should the request be granted, the relevant arbitrator or, as the case may be, Arbitration Tribunal shall be replaced in accordance with the provisions in Article 3, paragraph 13 of these Rules.
2. If a member of the Council of Arbitrators is exempted from accepting his appointment as arbitrator due to valid reasons, as well in the event of the death or any impediment barring an arbitrator from continuing to carry out his assignment as arbitrator, including the situations referred to in Article 5, the new appointment shall be made in the manner determined in Article 3(13) of these Rules.

#### **Article 7**

A lawyer listed in a file maintained by the Arbitration Board as referred to in Article 15 of the Articles of Association of the Arbitration Board shall be officially added as secretary to the Arbitration Tribunal. The secretary has an advisory vote in that respect.

## **The conduct of proceedings**

### **Article 8**

1. Every dispute must be properly described and explained in writing by either one of the parties or by both parties and filed with the Arbitration Board to initiate arbitration.
2. The date on which arbitration is initiated shall be the date as referred to in paragraph 1 of this article, on which the notice of initiation of arbitration proceedings has been received by the secretariat for the attention of the chairman.
3. If a party has itself represented vis-à-vis the Arbitration Board in the proceedings by an authorised agent who is not an attorney, the relevant agent must submit a written power of attorney to litigate, in accordance with the provisions of Section 1038(1) of the Dutch Code of Civil Procedure.
4. Pending the proceedings, each claimant is authorised to change, increase or reduce the claim. A change or increase of claim can only be permitted by the Arbitration Tribunal if the defendant has had the opportunity to comment on it, in writing or verbally, and if the Arbitration Tribunal does not consider the change or increase of claim unreasonable vis-à-vis this party.
5. The proceedings shall be conducted in the Dutch language, unless the parties have explicitly agreed otherwise and the Arbitration Tribunal has consented.

### **Article 9**

When the intermediation of the Arbitration Board's is requested, the chairman shall invite the requesting party or parties to pay a sum of money to secure payment of the costs of the arbitral decision, the amount of which shall be determined by the chairman for each case separately.

### **Article 10**

1. The dispute shall be set out in writing. Each of the parties is authorised to submit a statement to the Arbitration Tribunal.
2. The Arbitration Tribunal may allow the submission of a second statement, both in the original action and in any counterclaim action.
3. If the defendant wishes to lodge a counterclaim, that proceeding may be initiated by including a counterclaim no later than in the statement of defence, and the Arbitration Tribunal appointed to the original case can also deal with the counterclaim. In that event, the defendant shall also be considered a 'requesting party' and the chairman is authorised to demand that a deposit as referred to in Article 9 of these Rules be paid.
4. The manner and periods within which the statements must be submitted shall be determined by the Arbitration Tribunal; in the event that the Arbitration Tribunal is not yet, or no longer, constituted, the chairman shall determine with regard to the submission of statements.
5. In the event that the deposit, or a supplement to the deposit requested by the Arbitration Tribunal, has not been paid by the date specified for payment, the Arbitration Tribunal may suspend the proceedings, without prejudice to the provisions in Article 11 of these Rules; in the event that the Arbitration Tribunal is not, or no longer, constituted, the chairman has such authority.

6. The Arbitration Tribunal is authorised to do anything it considers conducive to the proper decision of the proceedings.

### **Article 11**

1. If, in the opinion of the Arbitration Tribunal, either party or both parties fail to submit their statements and/or other documents in good time or, in general, in the opinion of the Arbitration Tribunal delay the process unnecessarily, the Arbitration Tribunal may declare that litigation will be continued without waiting for the absent statements and/or documents or acts to be performed, and then render its decision.
2. The provisions in this article do not affect the Arbitration Tribunal's authority to render its decision or, with the chairman's approval, to declare the instance to have lapsed if the claimant, despite repeated warnings, is guilty of the delay referred to in paragraph 1 or remains in default of paying or supplementing the deposit. Article 13 of these Rules is applicable to such a declaration.
3. If no Arbitration Tribunal is yet fulfilling its functions or if, for any reason, a previously appointed Arbitration Tribunal is no longer fulfilling its functions, that authority shall accrue to the chairman.

### **The Ruling**

#### **Article 12**

1. The Arbitration Tribunal shall decide as amiables compositeurs, unless the parties have agreed otherwise, and by a majority of votes.
2. In derogation of the first paragraph, the Arbitration Tribunal shall decide in disputes regarding the contracting of work, deliveries and services, which fall within the scope of rules that include the implementation of the current Directive of the Council of the European Union on the coordination of procedures for the award of public work, supply and service contracts in accordance with the rules of law.
3. The decision shall be rendered in the form of an arbitral award, with the exception of the provisions in paragraph 4 of this article.
4. If the parties have agreed to resolution by way of binding advice, the Arbitration Tribunal shall render a decision in the form of binding advice.
5. The Arbitration Board is authorised to make the decision public.

#### **Article 13**

1. When rendering a decision on the dispute, the Arbitration Tribunal shall also determine the amount of the costs of the dispute and which of the parties shall bear these costs in full or in part. The Arbitration Tribunal may include in the costs of the dispute such a contribution to the costs of assistance in the proceedings of one party by the other as the Arbitration Tribunal deems fair.
2. When determining the costs, the Arbitration Tribunal is not bound by the amount of the deposit as referred to in Article 9 of these Rules.
3. The Arbitration Tribunal may deduct the amount of the fees owed to the arbitrators and further costs incurred by the Arbitration Tribunal from the deposit. If the deposit does not suffice, the Arbitration Tribunal may request additional payment; the Arbitration Tribunal shall not be held to render its decision before such additional payment has been made.

4. If, despite repeated demands, one of the parties or both parties should fail to pay the costs referred to in this article, the chairman is authorised to claim the amount due at law.
5. The costs related to a request for the examination and determination of the quality and/or condition of the work area, the work itself, auxiliary work or any part thereof shall be paid by the party or parties requesting such examination and determination; compensation of these costs can be claimed in a dispute involving examination and determination.

## **Fast-track disputes**

### **Article 14**

1. The following may be deemed to be fast-track disputes:
  - a. requests for preliminary relief in conjunction with Section 1051 of the Dutch Code of Civil Procedure;
  - b. requests for examination and determination of the quality and/or condition of a work area, work, auxiliary work, or any part thereof;
  - c. disputes regarding the contracting of work;
  - d. disputes regarding other subjects which, in the opinion of the chairman, qualify as such.including any claims for (additional) payment in relation to the cases referred to in (c) and (d) of this article.
2. Articles 3 to 13, inclusive, of these Rules shall apply to fast-track disputes, albeit with due observance of the following provisions of this article.
3. Leave must be obtained from the chairman to handle the dispute as a fast-track dispute; if he grants such leave, he shall decide whether the dispute is assigned to one or three arbitrators. Before making such decisions, the chairman may give the defendant(s) the opportunity to inform him in this regard. The consultation between the parties as referred to in Article 3, paragraph 2 of these Rules, shall lapse.
4. In disputes as referred to in paragraph 1 (c) of this article, each of the parties may demand that one arbitrator be a lawyer-member of the Council of Arbitrators. In accordance with Article 3, paragraph 5, the Arbitration Tribunal shall then always be comprised of three arbitrators and the chairman's authority, as referred to in Article 14, paragraph 3, to determine whether the dispute is to be resolved by one or three arbitrators, shall lapse. The party that wishes to exercise its authority as referred to in the first sentence of this paragraph must so notify the chairman no later than on the day of the writ mentioned below or, as the case may be, the notice of initiation of arbitration proceedings, either in the notice of initiation of arbitration proceedings or by means of written telecommunication.
5. Disputes as referred to in paragraph (c) of this article shall always be considered fast-track disputes upon any request to that end, which request must be made in the notice of initiation of arbitration proceedings; the chairman's leave as referred to in paragraph 3 of this Article shall then be deemed to have been granted immediately.
6. The dispute can be submitted for arbitration by means of written telecommunication, subject to the provisions in Article 8 of these Rules.
7. For disputes as referred to in paragraph 1 (a) and (c) of this Article, the notice of initiation of arbitration proceedings, along with any exhibits, must be served on the other party by bailiff's writ no later than the date of receipt of the notice of initiation of arbitration proceedings at the Arbitration Board. The bailiff's writ must be submitted to the proceedings no later than at the oral hearing.

8. The chairman shall determine the deposit and the date by which this must be paid.
9. Written statements may only be submitted if the Arbitration Tribunal deems this necessary.
10. The parties shall, in any event, be given the opportunity to set out the dispute in an oral statement.
11. The Arbitration Tribunal can settle such disputes itself or – if the Arbitration Tribunal does not consider such disputes to qualify as fast-track disputes – refer them, in full or in part, to regular arbitration resolution, subject to the provisions in paragraph 12 of this Article.
12. The Arbitration Tribunal shall always settle disputes as referred to in paragraph 1 (c) of this Article itself, the only exception to this being where a claim is for compensation of damages, in which case the Arbitration Tribunal may refer the dispute, in full or in part, to regular arbitration resolution.
13. If possible and opportune, such in the exclusive discretion of the Arbitration Tribunal, the Arbitration Tribunal shall render an oral decision even on the day of the oral hearing or on a date to be determined by the Arbitration Tribunal, without prejudice to the provisions in Article 12 of these Rules.
14. In the event of examination and determination as referred to in paragraph 1 (b) of this Article, the members of the Council of Arbitrators, charged with the examination and determination, shall be eligible for appointment as arbitrators in a dispute involving such examination and determination.

## **Joinder of parties and intervention**

### **Article 15**

1. At the request of a third party that has any interest in arbitral proceedings as referred to in these Rules, the Arbitration Tribunal may allow such party to join, or intervene in, such proceedings.
2. This request – properly described and explained in writing – must be submitted to the Arbitration Tribunal in a timely manner, and a copy thereof must simultaneously be sent by the requesting party to the parties.
3. A request for joinder or intervention in a fast-track dispute as referred to in Article 14 (a) and (c) of these Rules can be regarded as timely if this request has been received by the Arbitration Tribunal at no later than 3 p.m. on the working day before the day of the oral hearing of the fast-track dispute.
4. The request can only be considered by the Arbitration Tribunal if the requesting third party sufficiently proves that an arbitration agreement, referring to the Arbitration Board, has been concluded between him and one of the parties in the relevant arbitral proceedings; the arbitration agreement shall then, in conjunction with the Arbitration Board's Articles of Association and these Rules, be considered a written agreement as referred to in Section 1045 (3) of the Dutch Code of Civil Procedure.
5. The Arbitration Tribunal is authorised to invite the requesting party to pay a deposit, the amount and the payment deadline of which is determined by the Arbitration Tribunal.



6. The Arbitration Tribunal shall hear the parties in arbitral proceedings and then render a decision on the request for the joinder or intervention of the third party.
7. If the Arbitration Tribunal allows the requested joinder or intervention, the joinder or intervention shall be handled by the same Arbitration Tribunal as appointed in the arbitral proceedings referred to in paragraph 1 of this Article.
8. The oral hearing of the allowed joinder or intervention of the aforementioned third party shall take place on the same day as the one set for the oral hearing of the arbitral proceedings mentioned in paragraph 1 of this Article.
9. Articles 3 to 14, inclusive, of these Rules shall apply correspondingly to the handling of the joinder or intervention, unless the relevant provisions entail otherwise.

### **Third-party proceedings**

#### **Article 16**

1. A party in arbitral proceedings may request the Arbitration Tribunal for leave to issue a third party notice, simultaneously sending a copy of such request to the other party; the request must state the reasons.
2. If the request is made by the defendant, it shall be inadmissible if the request is not made prior to the submission of any defence, no on the date set for submission of the statement of defence at the latest. If the request is made by the claimant, it shall be inadmissible if the request is not made on the date set for submission of the statement of reply at the latest.
3. Furthermore, the request can only be handled if the requesting party makes a reasoned argument that an arbitration agreement, referring to the Arbitration Board and its Articles of Association, was concluded between it and the third party to be served a third party notice; the arbitration agreement between the requesting party and the third party to be served a third party notice shall then, in conjunction with the Arbitration Board's Articles of Association and these Rules, be considered a written agreement as referred to in Section 1045 (3) of the Dutch Code of Civil Procedure.
4. The Arbitration Tribunal shall hear the parties in respect of the request and then render a decision.
5. The provisions in Article 15, paragraph 5 of these Rules shall apply correspondingly to such request.
6. If the Arbitration Tribunal allows the service of a third party notice, the Arbitration Tribunal may also handle the dispute in third party proceedings, subject to the provisions in paragraph 7 of this Article.  
The Arbitration Tribunal shall invite the requesting party to submit a statement of claim in the third party proceedings to the Arbitration Tribunal.  
If the defendant wishes to lodge a counterclaim in the third party proceedings, this may be done by including a counterclaim in the statement of defence at the latest, and the Arbitration Tribunal may then also handle the counterclaim; in that case, the defendant in the third party proceedings shall also be considered a "requesting party", and Article 15 of these Rules shall apply accordingly.
7. If the arbitration agreement between the requesting party and the defendant in third party proceedings provides for authority as referred to in Article 3 (3) of these Rules, the chairman may upon request appoint a lawyer-member of the Council of

Arbitrators as arbitrator, by way of replacement of one of the arbitrators already appointed.

8. The oral hearing of the main action and of the third party proceedings shall be joined.
9. Articles 3 to 14, inclusive, of these Rules shall apply correspondingly to the third party proceedings, unless the provisions entail otherwise.

### **Joinder of proceedings**

#### **Article 17**

1. A party in arbitral proceedings initiated with the Arbitration Board whose subject-matter is linked to proceedings before another arbitration institute in the Netherlands may request these proceedings to be completely joined, provided that the other proceedings (hereinafter also: the proceedings to be joined) are conducted subject to the applicability of rules providing for the possibility of a complete joinder of arbitral proceedings in substantively corresponding manner. The request for joinder can already be made in the statement initiating the actual dispute before the Arbitration Board.
2. The parties in a dispute before the Arbitration Board expressly waive the possibility of making a request for the joinder of arbitral proceedings in accordance with the provisions in Section 1046 of the Dutch Code of Civil Procedure, if the rules applicable to the proceedings to be joined also provide for the possibility of a complete joinder of arbitral proceedings.
3. Requests seeking a partial joinder of arbitral proceedings before the Arbitration Board with proceedings before another arbitration institute in the Netherlands cannot be honoured.
4. Requests seeking the joinder of arbitral proceedings before the Arbitration Board with proceedings before another arbitration institute in the Netherlands shall be deemed not to have been filed pending a motion of lack of jurisdiction of the arbitration tribunal in any of those proceedings.
5. Requests seeking the joinder of a fast-track dispute before the Arbitration Board, as referred to in Article 14, paragraph 1 (a) and (c) of these Rules, with proceedings before another arbitration institute in the Netherlands cannot be honoured.
6. The request must be made in writing to the chairman of the Arbitration Board and must be accompanied by:
  - a. a statement of the address of the secretariat of the arbitration institute where the proceedings to be joined are pending;
  - b. if possible, a copy of the document with which the proceedings to be joined was initiated;
  - c. a copy of the arbitration rules that are applicable to the proceedings to be joined.

#### **Article 18**

1. Before rendering a decision on the request, the chairman shall give the party/parties in the proceedings before the Arbitration Board the opportunity to submit comments on the request within a term set by him, which term shall not exceed fourteen days. He shall send a copy of the request and the comments made to the chairman of the arbitration institute before which the proceedings to be joined are pending. If that arbitration institute has no chairman, the copy shall be sent to the body with the authority to appoint an arbitration tribunal, hereinafter also referred to as the appointing authority.

2. The request for joinder shall be jointly decided upon by the chairman and the chairman/appointing authority of the arbitration institute before which the proceedings are pending.  
If the joinder is ordered, they shall also determine the composition of the arbitration tribunal for the joined proceedings and – separately – which rules shall be applicable to the joined proceedings.
3. If the joinder is ordered, they shall furthermore determine what is due to the arbitrators who, as a result of the joinder, are relieved of their assignment regarding the work already performed by them. This shall also apply to the costs incurred by the secretariat of an arbitration institute, insofar as that secretariat no longer conducts the secretariat as a result of the joinder.
4. The chairmen referred to in the first paragraph or the chairman and the appointing authority, respectively, may deny a request for joinder in connection with the state of the proceeding or proceedings for which the joinder is sought.
5. If the chairman and the chairman/appointing authority of the arbitration institute before which the proceedings to be joined are pending notify that no agreement has been reached on whether or not to join the proceedings, or on the composition of the arbitration tribunal or the applicable rules, this shall create the possibility of making a request for the joinder of arbitral proceedings in accordance with the provisions of Section 1046 of the Dutch Code of Civil Procedure.
6. If the request for joinder concerns three or more proceedings to be joined before various arbitration institutes, then 'appointing authority' in the former paragraphs should read 'appointing authorities'.

### **Article 19**

The Arbitration Tribunal for the joined proceedings shall always handle those proceedings as a whole. However, it shall at all times be entitled to refer a dispute, or any part thereof, either ex officio or at the request of any party, to the original acting arbitration institute, after which referral the arbitration rules applicable to that dispute prior to the joinder shall once again be applicable.

### **Article 20**

An arbitral appeal against an award rendered by the arbitration tribunal in joined proceedings shall only be possible if and insofar as:

- a. all rules applicable to the original disputes provide for the possibility of an arbitral appeal, or
- b. the parties involved in the joined proceedings have provided contractually for the possibility of an arbitral appeal, or do yet make such provision.

### **Article 21**

The provisions in Articles 17 to 20, inclusive, shall apply correspondingly if a party in proceedings before another arbitration institute in the Netherlands requests those proceedings to be joined with proceedings before the Arbitration Board.

## **Appeal**

### **Article 22**

1. Each of the parties shall in principle be entitled to appeal against an award rendered by the Arbitration Board in the first instance.
2. An appeal against an arbitral award shall be ruled out if the award rendered – had it been rendered by a regular court – would not have been eligible for appeal.

3. An appeal against an arbitral award must be lodged by filing a statement of grounds for appeal with the secretariat within three months after the date of the relevant written award.
4. An appeal against an award in a fast-track dispute as referred to in Article 14 (a) or (c) must be lodged by filing a statement of grounds for appeal with the secretariat within one month after the date of the relevant written award. The chairman shall decide upon the fast-track handling of the appeal.
5. An appeal against an interim award and/or partial final award can only be lodged jointly with an appeal against the most recent final award, except if the Arbitration Tribunal – upon request or ex officio – has explicitly determined otherwise in the relevant award or if the parties have expressly agreed otherwise.
6. In the event that any party appeals in good time against an award rendered in proceedings as referred to in Articles 15, 16 and 17, the term of appeal for the other parties – insofar as these cannot lodge a cross-appeal – shall be extended by one month, during which extended term appeals may only be lodged on grounds related to the possible success of the appeal lodged in good time.
7. In the event that a cross-appeal was lodged by any party against an award rendered in proceedings as referred to in Articles 15, 16 and 17, an additional term shall commence for the parties not yet involved in the appeal of one month after the date the cross-appeal was lodged. The appellant who avails itself of the extra term shall be limited in its appeal to the grounds for appeal related to the success of the grounds for appeal of the cross-appellant.
8. There is no possibility of appeal against binding advice.

### **Article 23**

1. The appeal shall be handled by an Arbitration Tribunal comprised of three appeal arbitrators or – if both parties inform the chairman to have so agreed within the term of fourteen days referred to in paragraph 4 of this Article and the Arbitration Tribunal was comprised of three members in the first instance – five appeal arbitrators.
2. Expert-members and lawyer-members of the Council of Arbitrators can be appointed as appeal arbitrators.
3. An Appeal Arbitration Tribunal shall include at least one lawyer-member of the Council of Arbitrators.
4. An arbitrator who has participated in the handling of the dispute in the first instance cannot be appointed as an appeal arbitrator.
5. The secretary who was assigned to the Arbitration Tribunal in the first instance in accordance with Article 7 of these Rules may not be assigned to the Appeal Arbitration Tribunal as secretary.

### **Article 24**

1. Insofar as Articles 22 and 23 of these Rules do not entail otherwise, Articles 3 to 16 of these Rules shall be applicable to the appeal, it being understood that the lodging of a counterclaim as referred to in Article 10 (3) of these Rules, and the submission of a second statement as referred to in Article 10 (2), shall not be allowed and that a decision in appeal by way of binding advice shall be ruled out.

2. The party opposing the appellant shall have the right to lodge a cross-appeal, even after the term referred to in Article 22 paragraph 3 and paragraph 4, respectively, but no later than simultaneously with the statement of defence in appeal to be submitted by the opposing party; in that case, the party that first lodged an appeal shall be given the opportunity to submit a statement of defence in the cross-appeal.
3. The Appeal Arbitration Tribunal may allow a change, increase or reduction of claim lodged in the first instance if the defendant has had the opportunity to comment on the same, in writing or orally, and if the Appeal Arbitration Tribunal does not deem such to be unfair vis-à-vis such party. In any event claims may be filed for interest, rent, damages or costs which have become due or have arisen following the decision in the first instance.
4. A new defence can be presented, provided this is not contrary to the position adopted in the first instance by the party that presents such new defence.

### **Other provisions**

#### **Article 25**

The terms stated in these Rules are subject to the Dutch General Extensions of Time-limits Act.

#### **Article 26**

With regard to points relating to the adjudication of arbitration disputes that are not regulated in the Articles of Association and/or in these Rules, the Arbitration Tribunal shall decide.

#### **Article 27**

1. These Rules may be amended by the Arbitration Board's Board of Directors.
2. These Rules, and any amendment thereto, shall enter into force one month after they have been filed with the Amsterdam District Court.

Filed: 27 April 2006

In force as of: 27 May 2006