



Sovereign Debt Arbitration Rules - Modifications

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New Rule: Application of these rules D

These rules apply where the parties agree to conduct the arbitration in accordance with the Debt Arbitration Rules.

Rule 1 Commencement of arbitration D

- 1 (1) The arbitration begins when both parties have agreed in writing to arbitrate in accordance with the Sovereign Debt Arbitration Rules and the agreement is filed with the Scottish Arbitration Centre.
- (2) Once a case has been filed, there is an automatic stay on loan enforcement.

Rule 5 Number of arbitrators D

- 5 (1) The tribunal shall be composed of three arbitrators who are members of the Debt Arbitration Panel.

Rule 6 Method of appointment D

- 6 (1) The tribunal shall be composed of:
 - (a) one member appointed by the applicant;
 - (b) one member appointed by the respondent;
 - (c) the other member appointed by agreement between the parties.
- (2) Parties in the same interest shall appoint a member of the tribunal by agreement.
- (3) The tribunal is deemed to have been constituted once all three arbitrators have been appointed.
- (4) Any vacancy shall be filled in the manner prescribed for the initial appointment.

Rule 26 Transparency D

- 26 (1) Arbitrations will be conducted according to principles of transparency and openness.
- (2) The tribunal shall conduct hearings in public and it shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. The tribunal shall make appropriate arrangements to protect confidential information from disclosure.
- (3) Disclosure by the tribunal, any arbitrator or a party of information relating to the arbitration is not to be actionable as a breach of an obligation of confidence unless the disclosure regards information agreed upon by both parties and the tribunal as confidential.
- (4) The tribunal and the parties must take reasonable steps to prevent unauthorised disclosure of confidential information by any third party involved in the conduct of the arbitration.
- (5) The tribunal must, at the outset of the arbitration, inform the parties of the obligations which this rule imposes on them.
- (6) "Information", in relation to an arbitration, means any information relating to—
 - (a) the dispute,

- (b) the arbitral proceedings,
 - (c) the award, or
 - (d) any civil proceedings relating to the arbitration in respect of which an order has been granted under section 15 of this Act, which is not, and has never been, in the public domain.
- (7) Any disputing party may designate certain information as confidential information at the time it is first submitted to the tribunal. A disputing party must, at the same time as submitting the confidential information, submit a redacted version of the information which may be released to the public.
- (8) The other disputing party may challenge the designation of certain information as confidential information. The tribunal will decide any challenge and determine whether information can be classified as confidential information.

Rule 34 Experts and Participation of non-disputing parties D

- 34 (1) The tribunal may obtain an expert opinion on any matter arising in the arbitration.
- (2) The parties must be given a reasonable opportunity—
- (a) to make representations about any written expert opinion, and
 - (b) to hear any oral expert opinion and to ask questions of the expert giving it.
- (3) Non-disputing parties may apply to make a written submission as an *amicus curiae* to the tribunal on a matter within the scope of the arbitration.
- (4) An application
- (a) must be made within 60 days of the constitution of the tribunal.
 - (b) must be no longer than 2 pages, and
 - (c) must address the suitability of the non-disputing party to make a contribution to the arbitration.
- (5) After consultation with the disputing parties, the tribunal may decide to approve the application of a non-disputing party to submit a written submission to the tribunal regarding a matter within the scope of the arbitration.
- (6) The tribunal may specify the conditions of a written submission, including deadline for submission and length of submission.
- (7) The participation of non-disputing parties is at the discretion of the tribunal which shall take into account the need not to cause inordinate delay in the arbitration process.
- (8) Disputing parties must be given the opportunity to make comments on the submissions of non-disputing parties.

Rule 47 Rules applicable to the substance of the dispute D

- 47 (1) The tribunal is granted the power to, and must, decide the dispute *ex aequo et bono*, on the basis of general considerations of justice, fairness, equity, and law.
- (2) When deciding the dispute, the tribunal must have regard to—

- (a) the provisions of any contract relating to the substance of the dispute,
- (b) the normal commercial or trade usage of any undefined terms in the provisions of any such contract,
- (c) any established commercial or trade customs or practices relevant to the substance of the dispute,
- (d) matters of sustainable development and economic assessments, human rights, and the protection of basic state obligations to meet the essential needs and services of its citizens, and
- (e) any other matter which the parties agree is relevant in the circumstances.

Rule 49 Other remedies available to tribunal D

49 The tribunal's award may—

- (a) be of a declaratory nature,
- (b) order a party to do or refrain from doing something (including ordering the performance of a contractual obligation, that is maintaining an existing debt arrangement),
- (c) order the rectification or reduction of any deed or other document (other than a decree of court). For example:
 - (i) a freezing or reduction of interest rates.
 - (ii) a restructuring of the debt arrangement covering the time over which the debt is to be repaid and/or the amount of debt that is to be repaid.
 - (iii) a total cancellation of the existing debt arrangement.
 - (iv) a change in the conditions attached to an existing loan, or
- (d) incorporate an alternative award agreed upon by both parties.

Rule 57 Arbitration to end on last award or early settlement D

- 57 (1) An arbitration ends when the last award to be made in the arbitration is made (and no claim, including any claim for expenses or interest, is outstanding), or otherwise as the parties may agree.
- (2) But this does not prevent the tribunal from ending the arbitration before then under rule 20(3) or 37(1).
- (3) The parties may end the arbitration at any time by notifying the tribunal that they have settled the dispute.
- (4) On the request of the parties, the tribunal may make an award reflecting the terms of the settlement and these rules (except for rule 51(2)(c) and Part 8) apply to such an award as they apply to any other award.
- (5) The fact that the arbitration has ended does not affect the operation of these rules (in so far as they apply) in relation to matters connected with the arbitration.