

## RULES FOR AWARDING COSTS IN ARBITRATION

### (1) *Agreement*

The parties shall be free to agree on rules regarding the costs of the arbitration either directly or by reference to the AMINZ Guidelines for Awarding Costs in Arbitration.

### (2) *Costs*

The costs of the arbitration shall include but not be limited to:

- (a) the fees and expenses of the arbitral tribunal;
- (b) any fees and expenses of the appointing authority;
- (c) the costs of expert advice and of any other assistance requested by and provided to the arbitral tribunal;
- (d) the travel and other expenses of witnesses; and
- (e) the reasonable legal or other costs of the parties.

### (3) *Costs fixed and allocated by the arbitral tribunal*

Unless the agreement to arbitrate provides otherwise, either directly or by reference to institutional arbitral rules, the following rules apply:

- (a) *Authority to award costs of the arbitration* – the arbitral tribunal shall have the authority at any time during the arbitral proceedings to make an order or award fixing and allocating all or some of the costs of the arbitration between the parties if any party to the arbitral proceedings makes a claim for costs in the course of those proceedings.
- (b) *Consultation on costs allocation* – the arbitral tribunal shall consult the parties at the earliest appropriate time in the proceedings and invite them to consult each other with a view to agreeing on the approach to allocating costs.
- (c) *Fixing the costs of the arbitration* – unless the parties agree upon the amount of the costs incurred, the arbitral tribunal shall fix the reasonable costs of the arbitration, after considering all costs claimed on an item by item basis. In the award, the arbitral tribunal shall give its reasons for fixing the costs and the allocation of costs.
- (d) *Allocating costs of the arbitration* – unless the parties agree otherwise, the costs of the arbitration shall in principle be borne by the unsuccessful party. However, at its discretion, the tribunal may:
  - (i) apportion such costs, in whole or in part, between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case, or
  - (ii) otherwise, depart from this principle for special reasons.

Where the tribunal departs from this principle that costs follow the event, it shall provide reasons for doing so.

- (e) *Circumstances of the case* – where the arbitral tribunal decides to apportion costs between the parties, the circumstances to be considered may include, but not be limited to:
  - (i) any interim cost orders;
  - (ii) the degree of success of the parties (including, for example, whether the successful party has failed on issues on which significant time has been spent);
  - (iii) the conduct of the parties (for example increasing cost or prolonging the arbitration); or
  - (iv) any other factor the arbitral tribunal deems relevant.

(4) *Settlement offers*

- (a) If:
  - (i) a party makes an offer to another party to settle the dispute, or part of the dispute, and
  - (ii) the offer is not accepted, and
  - (iii) the award of the tribunal is no more favourable to the other party than the offer,the arbitral tribunal, in fixing and allocating the costs and expenses of the arbitration, may take the fact of the offer into account in awarding costs and expenses in respect of the period from the making of the offer to the making of the award
- (b) The fact that an offer to settle has been made shall not be communicated to the arbitral tribunal until it has made a final determination of all aspects of the dispute other than the fixing and allocation of costs and expenses under this rule.