

## **Rules of Arbitration and Mediation**

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## Y. Mediation

### A. Introduction

#### 1. Application

"ITRO" mediation or arbitration will comply with the provisions of the Arbitration Law, 5728-1968, and the regulations derived thereof, and with the provisions of the Courts Law [Combined Version], 5744-1984, and the regulations derived thereof, subject to the Rules set forth below.

Parties referring to "ITRO" for assistance in settling disputes through the Institute shall be considered to have accepted the following articles, comprising binding Rules of arbitration. The content of these articles shall be considered an agreement among the parties and between them and "ITRO".

#### 2. Definitions

In these Rules, the following terms shall bear the meaning presented beside them:

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| <b>"International Arbitration"</b>      | - Arbitration proceeding in which the domicile of one of the parties is outside of Israel or where ruling relates to matters or assets outside of Israel. |
| <b>"Annulment of Arbitration Award"</b> | - Court annulment of an arbitration award based on grounds set forth in Article 24 of the Law.  |
| <b>"the Parties"</b>                    | - The parties to the dispute consenting to the ITRO arbitration or mediation proceeding.  |
| <b>"the Arbitrator"</b>                 | - A sole judge or panel of arbitrators, in an appeal proceeding as well, appointed by the ITRO directorate pursuant to these Rules.                       |

- "the Institute" or "ITRO"** - ITRO - The Institute for Consent Arbitration Ltd.
- "the Directorate" or "the Director"** - The ITRO directorate consists of the ITRO director, chairman and another member thereby appointed.
- "Arbitration Agreement"** - An agreement or clause included in an agreement by which the parties agreed to conduct an arbitration proceeding or an agreement for the appointment of an arbitrator from a list of ITRO arbitrators or for the appointment of an arbitrator by the Directorate pursuant to these Rules.
- "Arbitration Law" or "the Law"** - Arbitration Law, 5728-1968, including Amendment 2 of the Law.
- "Mediator"** - Anyone appointed as a mediator from the ITRO list of mediators, pursuant to these Rules.
- "Appeal Panel"** - One or three arbitrators appointed to deliberate on an appeal of an arbitration award subject to these Rules.
- "Appeal" or "Appeal before an Arbitrator"** - The process of appealing an arbitration award pursuant to Article 21A of the Arbitration Law, by which an arbitration award may be appealed before a different arbitrator, while the ruling of the initial arbitrator must be grounded and well documented.

- "Court Leave to Appeal"** - The process of court leave to appeal an arbitration award in which the parties agreed that the arbitration award would comply with the law and they may appeal it upon leave from the court, within 30 days, pursuant to Article 29B of the Arbitration Law.
- "Arbitration Award"** - The award handed down by the arbitrator, including an award derived of an appeal set forth in accordance with these Rules.
- "List of Arbitrators"** - A list of ITRO arbitrators approved by the directorate.
- "List of Mediators"** - A list of ITRO mediators approved by the directorate.
- "List of Experts"** - A list of ITRO experts approved by the directorate.

## **B. The Institute and its Objectives**

### **1. Objective**

ITRO aims to promote the concept of arbitration and mediation and to assimilate it among the public as a tool for amicably settling disputes without going to court, and to help the parties reach a consensus in a rapid and efficient process or arbitration or mediation.

### **2. The Directorate and its Authorities**

ITRO aims to promote the concept of arbitration and mediation and to assimilate it among the public as a tool for amicably settling disputes without going to court, and to help the parties reach a consensus in a rapid and efficient process or arbitration or mediation.

### **3. Principle of Efficacy**

The arbitration and mediation proceedings will be conducted upon the supervision of the Directorate, with the aim of settling the dispute between the Parties in a swift, efficient and just manner, while minimizing costs borne by the parties. This principle will serve as an interpretive principle where these Rules fail to provide a solution or where there is doubt as to the interpretation of these Rules.

## **C. Contacting ITRO and Registration**

### **4. Application for Arbitration**

A party or parties wishing to conduct arbitration proceedings at ITRO will apply in writing or through the Institute website, noting their consent to settlement through ITRO, or will attach an Arbitration Agreement or any other document consenting to submit the dispute to arbitration, such as an arbitration clause in an agreement, court session protocol containing consent thereto or a court ruling to refer the parties to arbitration or an arbitration clause in a the articles of a corporation or any other correspondence binding the parties to conduct arbitral proceedings. The said application must stipulate whether there is a preference to the arbitrator's area of expertise and the position of the opposing party regarding the arbitration proceedings.

### **5. Application Details**

The application will stipulate the names and addresses of the parties, the names and addresses of their representatives, a short description of the essence of the dispute, including the amount under dispute and the required remedies.

### **6. Selecting a Course of Arbitration**

The application will note the course of deliberation by which the arbitration proceedings will take place: 1) **Course A** – The arbitral award may not be appealed, but may be annulled by a court subject to the grounds set forth in Article 24 of the Arbitration Law. 2) **Course B** – The arbitral award may be appealed before an appeal instance of arbitrators, as set forth in Article 21A of

the Law. 3) **Course C** – The arbitrator must Rule in accordance with the law and the ruling is subject to appeal in court under certain grounds, as set forth in Article 29B of the Law. Where the parties do not stipulate the course selected, they will be deemed to have selected **Course B**.

#### **7. Attaching Documents to the Application**

Where an application for arbitration was submitted after a claim was filed in court, parties must attach the judicial documents, appendices thereto and any other documents submitted to the court, as well as the protocol of the court deliberation.

#### **8. Consent to Arbitration by ITRO**

Upon receiving the application, ITRO shall register the parties with the Institute, the parties shall sign an arbitration agreement with ITRO pursuant to one of the courses mentioned in Rule 8 above and a fee shall be paid as set forth in the Institute price list.

#### **9. Agreement Validity**

Where the parties sign the arbitration agreement with ITRO, they shall be considered to have accepted these Rules and shall be subject to a binding agreement among them and between them and the Institute.

#### **10. Refusal to Accept and Arbitration Case**

The Directorate shall be authorized to refuse to conduct arbitration through ITRO and such a decision shall be submitted to the parties shortly after receiving the application for arbitration.

## **D. Selecting and Appointing Arbitrators**

### **13. Selection of an Arbitrator by the Parties**

Where the parties agreed to the identity of the arbitrator or arbitrators appearing on the ITRO arbitrator list in advance, they shall state their choice in their arbitration application. Where the parties selected an arbitrator in the appellate course – they shall declare the arbitrators selected for the appeal instance no later than 30 days after signing the arbitration agreement.

### **14. Selection by the Directorate**

Where the parties failed to reach an agreement as to the identity of the arbitrator from the arbitrator list, or where they did not wish to select the arbitrator on their own, the Directorate shall appoint the arbitrator within 14 days of the application, upon its sole discretion. In selecting the arbitrator, the Directorate shall consider the essence of the dispute, its scope, the desire of the parties and the expertise required for solving the dispute.

### **15. Appointing the Arbitrator**

Upon obtaining arbitrator consent, the arbitrator shall be appointed by the Directorate and notice of the appointment and the date for the first session shall be sent to the parties.

### **16. Reservations to Arbitrator Appointment**

Any party to arbitration may submit its reservations of the appointment to the Directorate on grounds of incompetence or lack of expertise in the dispute area, fear of prejudice or bias or any other reason, no later than 10 days after receiving notice of arbitrator appointment. The Directorate will rule on the issue upon its discretion and its ruling shall be handed down as quickly as possible.

### **17. Appointing Arbitrators in Appeal**

The appointment of arbitrators in an appeals instance shall comply with the Rules above, *mutatis mutandis*.

## **18. Arbitrator Declaration**

An arbitrator who has agreed to preside over the arbitration shall submit a written declaration, prior to arbitration commencement, by which he has no prejudice or bias towards any of the parties, he has no interest or involvement in the dispute and he undertakes to uphold all rules of the Institute and to conduct himself accordingly. Consent to preside as an arbitrator is equivalent to agreeing to accept the Institute's rules of arbitration.

## **19. Chairman of an Arbitration Panel**

Where a panel of three arbitrators has been decided, in the first arbitration instance or in the appeals instance, the oldest arbitrator shall be appointed chairman. Where the panel includes a retired judge or retired judges, the senior of the justices shall preside as chairman. Chairman of the panel shall be authorized to hand down rulings on administrative issues.

## **E. Submitting Arguments**

### **20. Statement of Claim**

Within 30 days of selecting the arbitrator and paying the fee, the later instance, the plaintiff will submit his statement of claim to ITRO, presenting the arguments, the facts and the claim amount and, where the remedy is not of a monetary nature – an explanation of the required remedy. Documents required in order to prove the claim, must be attached to the statement of claim.

### **21. Statement of Defense**

Within 30 days of receiving the statement of claim, the respondent will provide ITRO with his statement of defense, presenting the arguments and facts that he admits and the arguments and facts that he denies. Documents required in order to prove the claim, must be attached to the statement of defense.



## **22. Counterplea**

Within 15 days of receiving the statement of defense, the plaintiff may submit a counterplea to ITRO, including the documents required as proof.

## **23. Statement of Counterclaim**

A respondent who wishes to submit a counterclaim, will attach his claim to the statement of defense under the heading "Statement of Counterclaim". The said statement of counterclaim shall be subject to the provisions of Rule 20 relating to a statement of claim and it shall be submitted within the 30 days set forth therein.

## **24. Statement of Counterplea**

A plaintiff may submit his defense to a statement of counterplea within 15 days or receipt thereof, by way of a "Statement of Counterplea" that shall be subject to the provisions of Rule 21 relating to a statement of defense.

## **25. Details in Judicial Documents**

Any petition or statement of arguments submitted to ITRO shall include details of the Institute case file, the name of the parties, details of legal representatives and an address for delivering judicial documents, including telephone and fax numbers, and e-mail addresses.

## **26. Attaching Documents for the Institute**

All documents submitted to the arbitrator shall also be transferred to a file on the Institute website, noting the proceeding number.

## **27. Contesting Arbitrator Authority**

A claim of arbitrator *non-competens* regarding the claim or any part thereof, must be raised within the statement of defense or the statement of counterplea, as the case may be, and it must be raised before the arbitrator at the preliminary hearing.

## **F. Preliminary Hearing**

### **28. Setting a Date**

The arbitrator will set a date for the first hearing with the parties within 15 days of appointing the arbitrator (hereinafter: "**Preliminary Hearing**").

### **29. Venue**

The Preliminary Hearing shall take place at ITRO offices, unless agreed otherwise with the arbitrator. The location of the ensuing sessions will be determined by the arbitrator.

### **30. Aim of the Preliminary Hearing**

During the Preliminary Hearing, the arbitrator shall delineate the dispute between the parties and make an effort to reduce it, determine the guidelines for arbitration, summoning witnesses and presenting evidence, and will determine any other matter required for efficient arbitration proceedings.

### **31. Authorities**

At the Preliminary Hearing, the arbitrator may permit the parties to submit questionnaires, require them to introduce additional details and disclose documents or take any other measure required for efficient arbitration proceedings. The arbitrator may order the submission of arguments supported by affidavits.

### **32. Additional Sessions**

At the Preliminary Hearing, the arbitrator will determine the order of the ensuing arbitration sessions.

## **G. Dates**

### **33. Session Dates**

The arbitrator will schedule the arbitration sessions as closely as possible, while considering the desire of the parties.

### **34. Arbitration Conclusion**

Arbitration sessions will be scheduled so that the proceeding will end no later than 4 months after the Preliminary Hearing as set forth in Rule 28. The arbitrator may extend this period for an additional two months, subject to special considerations.

### **35. Extending Dates**

The arbitrator may, upon his initiative or at the request of the parties, postpone meeting dates or any other date scheduled for the submission of a document or execution of a certain act, and he may require the party requesting the extension to cover the expenses of the opposing party.

### **36. Vacation Days**

Official vacation days and holidays customary in Israel shall not be considered when determining the dates set forth in these Rules.

## **H. Arbitration Process**

### **37. Substantive Law**

The arbitrator shall be subject to substantive law unless stipulated otherwise in the arbitration agreement.

### **38. Procedural Law**

Subject to these Rules, the arbitrator shall not be subject to evidentiary law and to legal procedures customary in court, unless stipulated otherwise in the arbitration agreement.

### **39. Arbitration Process**

In conducting the arbitration process, the arbitrator will act as he deems to be best and most efficient for achieving a swift and just solution for the dispute between the parties.

#### **40. Obtaining Consent**

The arbitrator shall invest his best efforts toward creating accords between the parties. The parties to arbitration shall do all that they can to consensually promote the arbitration matters in order to conduct an efficient arbitration proceeding.

#### **41. Compromise Proposal**

During the arbitration proceeding, the arbitrator may present the parties with compromise proposals for settling the dispute between them, without it being considered taking a stand on the matter subject of arbitration. A settlement accepted by the parties shall be validated by the arbitrator as an arbitration award.

#### **42. Arbitration Language**

The arbitration proceedings shall take place in Hebrew, unless all of the parties requested that the arbitration, or any part thereof, be held in a foreign language and the arbitrator has consented thereto. The parties shall bear the expense of conducting the arbitration in the foreign language, including document translation and authentication, and simultaneous translation.

### **I. Documenting Arbitration Sessions**

#### **43. Registration**

All arbitration proceedings in the first instance and appeal instance shall be documented in writing or typed into a protocol. The parties, upon arbitrator consent, may agree to a recorded protocol that will later be transcribed. The parties shall equally share the expense of recording and transcription.

#### **44. Conference Call**

Upon consent by the parties and the arbitrator, arbitration sessions or testimony may be heard via conference call, by phone, video or any other manner.

#### **45. Confidentiality**

Arbitration hearings shall be held only in the presence of the parties and in the presence of anyone required for the purposes of the arbitration, subject to arbitrator consent. The hearings shall be confidential.

### **J. Document Discovery**

#### **46. Document Submission**

Documents submitted to arbitration shall be presented in a number of copies adequate for all parties and arbitrators, in addition to one copy for the Institute. The document submitted to the Institute must be uploaded to the file on the ITRO website, under the respective proceeding number.

#### **47. Address for Submission**

Documents shall be discovered through the Institution, unless the arbitrator instructed otherwise. The abovementioned does not release the parties from the duty of submitting one copy of the documents set forth in Rule 45 to ITRO.

#### **48. Discovery via E-mail**

Where the parties agreed, upon arbitrator consent, to submit or receive documents via e-mail or the Institute website, such submission shall be carried out in a manner requiring delivery confirmation and in PDF form only, and only then shall be considered due discovery.

#### **49. Date of Document Receipt**

A document delivered in person to the address of the addressee shall be considered to have been received upon delivery thereof. A document sent to the parties by registered mail shall be considered to have been received after 3 days of being sent, with proof of delivery serving as evidence. A document transmitted by fax shall be considered to have been received one day after receipt by the fax of the addressee.

## **50. Address for Judicial Documents**

The addresses of the parties for the purpose of serving judicial documents during the arbitration proceeding shall be the addresses set forth in the parties' arguments. Where the address of a party has changed, it shall notify the arbitrator and the other parties to the deliberation.

## **K. Testimony**

### **51. Summoning Witnesses**

The arbitrator may order the summoning of witnesses upon the request of the parties or upon his initiative, determine the manner for questioning them and submitting their testimony and rule on their expenses.

### **52. Warning**

A witness testifying in arbitration shall be warned that he must testify the truth or else be subject to the penalties set forth by law regarding perjury.

### **53. Privilege**

A witness testifying in arbitration shall be bound by obligations relating to a witness testifying in court and his testimony shall be protected by privilege granted to witnesses testifying in court.

### **54. Questioning Witnesses**

The arbitrator and parties may question any witness who has submitted his testimony or affidavit during the arbitration, including an expert witness who has testified on behalf of the parties or on behalf of the arbitrator.

### **55. Expert Witness on behalf of the Arbitrator**

The arbitrator may call an expert witness on his behalf to set forth a written or oral opinion. The parties shall cooperate with the expert and provide all of the information required in order to formulate the opinion. A copy of the expert opinion shall be submitted to the parties.

## **56. Questioning the Expert**

The parties may question any expert who has testified or submitted an opinion to the arbitrator in the manner by which questioning is conducted of an expert witness on behalf of the court.

## **57. Expert Witness Expenses**

The arbitrator shall determine the fee of the expert witness thereby called and the parties will equally bear the said fees, unless the arbitrator stipulates otherwise.

# **L. Temporary Relief**

## **58. Authority**

The arbitrator shall be authorized to grant temporary relief, including in ex parte circumstances. Petitions and rejoinders relating to temporary relief shall be elaborated and supported by an affidavit verifying the facts on which they are based.

## **59. Guarantee**

The arbitrator shall be authorized to condition the temporary relief on depositing guarantees and providing collateral for guaranteeing the rights of the other party or the rights of a third party and any person who may be impaired by granting the requested relief.

## **60. Relief Annulment**

The arbitrator may, at any time, annul, alter or amend his ruling on temporary relief or grant any other temporary relief.

## **M. Failure to Appear and Failure to Obey an Order**

### **61. Arbitrator Authority**

Where one party failed to appear to a scheduled session for which notice was delivered, or where one of the parties to arbitration failed to obey an order from the arbitrator or failed to meet the dates stipulated in these Rules regarding the submission of arguments, the arbitrator may, upon providing notice and allotting a time period for correcting the omission, rule on the dismissal or acceptance of the claim, fully or partially, or the continuation of the session despite the absence of a party, or reach any other decision.

### **62. Expenses**

Failure to attend an arbitration session to which a party was invited shall not release the said party from payment of the expenses thereto and shall not prevent the meeting from going on.

## **N. Mediation Proceeding during Arbitration**

### **63. Appointing a Mediator**

The arbitrator may, upon the consent of the parties, appoint a certified mediator or mediators for the settlement of the disputes between them.

### **64. Limiting the Mediation Period**

The mediation proceeding shall not exceed 45 days unless extended upon the consent of the parties for an additional 45-day period. Where the mediation proceeding did not end successfully, the parties will return to the arbitration proceeding.

### **65. The Arbitrator as a Mediator**

The arbitrator shall be unauthorized to serve as a mediator between the parties, but this will not preclude him from offering an agreed compromise settlement during arbitration, as set forth in Rule 41.



## **O. Summations**

### **66. Submission Date**

30 days after hearing the evidence, the arbitrator will schedule a date for submission or hearing party summations.

### **67. Summations**

The summation of arguments will be made orally, unless the arbitrator permitted their submission in writing.

## **P. Arbitration Award**

### **68. Essence of the Award**

The arbitrator may hand down a declarative award, mandatory and prohibitive injunction, an order of specific remedy, an order of monetary payment and any other remedy that the court may hand down. He is further authorized to issue an interim award and temporary or partial rulings and temporary remedies as per Rule 58.

### **69. Date**

The arbitration award shall be granted within 30 days of concluding the arbitration proceedings and after all summations were submitted by the parties. The arbitrator shall be entitled to extend this date by an additional 30 days, based on grounds to be recorded.

### **70. Form**

The arbitral award shall be set forth in writing and submitted to the parties signed by the arbitrator and noting the date of his signature.

### **71. Elaboration**

In an arbitration proceeding pursuant to Article 21A of the Law, where an arbitral award may be appealed before another arbitrator, the arbitral award shall be elaborated. Arbitration that may not be appealed before another arbitrator, as set forth in Article 24 of the Law, the arbitral award shall be elaborated unless the parties have agreed that the arbitrator may not elaborate

his ruling. In arbitration where the arbitral award must comply with the law and which can be appealed in court – the arbitral award shall be elaborated.

#### **72. Linkage Differentials and Interest**

Where the arbitral award includes payment of a monetary amount, it shall include provisions relating to linkage differentials and/or interest.

#### **73. Arbitration Expenses**

The arbitral award shall include provisions on the payment of arbitration expenses and attorney retainer fees.

#### **74. Submission of Arbitral Award**

The arbitral award or any other decision shall be sent to each of the parties and the Institute upon payment of all amounts due for the arbitration. The arbitrator is not required to read the award or his decision before the parties.

#### **75. Arbitral Award in Settlement**

The arbitrator may, upon consent of the parties, rule in a dispute between the parties by way of compromise, as set forth in Rule 41, and in such case, he shall be required to provide grounds for the ruling, unless the parties agreed otherwise.

### **Q. Appeal**

#### **76. Right of Appeal**

The arbitral award shall be subject to appeal before an instance of arbitrators pursuant to Article 21A of the law unless the parties have selected a no-appeal arbitration course. Where the parties have selected the no-appeal course, the arbitral award can be annulled by the court upon grounds set forth in Article 24 of the Law, or upon appeal in court – provided the parties have agreed, under Article 29B, that the arbitral award shall be in accordance to law and subject to appeal before the court. An arbitral award handed down in settlement, pursuant to Rule 75, shall not be subject to appeal unless the parties have agreed otherwise. Where the parties did not appeal the arbitral

award within the said period, the arbitral award shall be considered the final award..

#### **77. Interim Decision**

An interim decision by the arbitrator shall not be subject to appeal except under the appeal against the arbitral award itself.

#### **78. Date**

The appeal of an arbitral award subject to appeal before a different arbitrator shall be submitted within 30 days of handing down the arbitral award to the parties and deliberation thereof shall be scheduled within 30 days of submitting the appeal. A petition to annul an arbitration award by the court, pursuant to Article 24 of the Law, shall be submitted within 45 days. An appeal of an arbitration award before a court, pursuant to Article 29B of the Law, shall be submitted within 30 days of handing down the arbitration award.

#### **79. Composition of Appeal Panel**

The appeal instance shall be comprised of a single arbitrator or a panel of three arbitrators, subject to consent by the parties. Where the parties did not agree to the appeal panel, the Directorate shall appoint a single arbitrator to deliberate over the appeal.

#### **80. Form**

An appeal shall be submitted in writing, stating the names and addresses of the parties and their representatives, the name of the arbitrator or arbitrating panel for the first instance, grounds for the appeal and date of handing down the arbitration award. The grounds for the appeals and arguments thereto shall be based on documents and/or information within the arbitration file only. The submission of additional documents shall be subject to approval by the appeals instance only. The arbitral award shall be attached to the appeal and shall comprise an integral part thereof.

### **81. Statement of Counterplea**

The respondent shall submit a statement of counterplea to the appeal within fifteen days of submission of the appeal, detailing the grounds and arguments, based on documents and/or information in the arbitration file. In his counterplea, the respondent may submit a counter appeal.

### **82. Applicability of Arbitration Rules**

The arbitration rules shall apply to the appeal proceeding, *mutatis mutandis*.

### **83. Legal Procedures**

The legal procedures of appeal shall be subject to the provisions of these Rules, *mutatis mutandis*.

### **84. Deliberation of Factual Findings**

The appeal instance shall not deliberate on factual findings ruled upon in the first instance arbitration award, unless so required in order to prevent the miscarriage of law and for reasons to be noted, or when it is found that a matter of essential to settling the dispute was not settled by the first instance, or where the parties have agreed thereto in the arbitration agreement.

### **85. Authorities of the Appeal Instance**

The appeal instance may reject the appeal, fully or partially, or sustain it, fully or partially, approve the arbitration award, complete it, correct it, amend it, annul it or return it to the arbitrator who handed it down along with instructions. The appeal instance shall be authorized to grant temporary relief.

### **86. Arbitral Award in Appeal**

The appeal instance will hand down its ruling within 30 days of completing the summations of the appeal, and it shall be well grounded and decided by a majority of the arbitrators on the panel and, in the absence of a majority for one opinion, the chairman shall have a deciding vote.

### **87. Status of the Arbitral Award in Appeal**

The arbitral award in appeal shall replace the arbitral award in the first instance and shall comprise the "Arbitral Award" for all intents and purposes.

### **88. Expenses**

The appeal instance shall rule expenses pursuant to the arbitration outcome at realistic rates, unless it found justification for deducting of the said expenses on grounds to be noted.

## **R. International Arbitration**

### **89. Language**

International arbitration shall be conducted in Hebrew, unless the parties have agreed and obtained the arbitrator's consent to conduct it in a different language.

### **90. Failure to take Legal Measures**

The parties agree that upon signing the arbitration agreement, they will avoid seeking legal measures in the courts of their countries regarding the dispute, unless the arbitration is unable to prevail.

### **91. Expenses**

Expenses relating to conducting the arbitration in a language other than Hebrew or the language so decided, shall be borne by the party demanding translation of the arbitration, however the arbitrator may consider the said expenses when charging the parties, considering the outcome of the arbitration.

## **S. Confidentiality and Document Retention**

### **92. Confidentiality**

The Institute's work is confidential by nature, thus all employees or individuals involved in Institute operations must maintain absolute confidentiality regarding any information obtained regarding Institution activities and the content of the arbitration files. The Institute website shall be barred to parties unrelated to the proceedings under these Rules.

### **93. Document Retention**

All documents submitted to the Institute, including applications for arbitration, correspondence between the parties, arbitrator and Institute decisions and other documents submitted to the arbitration file, shall be kept in the Institute archive or website for the period of retention duly required.

## **T. Payments and Expenses**

### **94. Fee**

The parties to the mediation or arbitration proceeding shall equally bear the fee due to the Institute as set forth in the price list, plus VAT as valid upon commencing the arbitration. Where the matter of dispute is found to be incorrectly assessed by the parties or not subject to monetary quantification, the Directorate shall determine the amount.

### **95. Update Fee Amounts**

The Institute Directorate shall be authorized to update the fee amounts considering an increase in the consumer price index and other matters.

### **96. Payment by the other party**

Where one party paid its share of the fee and the other party failed to make payment within 15 days of referring to the Institute, the paying party may also pay the fee for the defaulting party, while reserving its rights to claim repayment of the amount from the other party under the arbitration proceedings.

**97. Arbitrator Fee**

The fee for the arbitrator or arbitrators in the first instance or the appeal panel shall be equally paid by the parties as set forth in the ITRO price list. The arbitrator's fee shall be paid directly to ITRO. The arbitrator must submit a report to ITRO with the work hours and sessions for which a retainer fee is demanded. No further arbitration sessions will be scheduled where the parties failed to pay their debt.

**98. Date of Payment of Arbitrator Fee**

The arbitrator shall be entitled to his fee immediately upon the conclusion of each of the arbitration sessions or in any other manner determined in consultation with the parties.

**99. Decisive Authority**

In any dispute between the arbitrator and the parties as related to his fee, the ITRO Directorate shall decide after hearing all of the parties.

**100. Expenses**

The arbitrator may charge the parties with payment of special expenses, such as incidentals and retainer fees for an expert on behalf of the arbitrator, payment for protocol typing, recording and transcription and payment to a translator, etc., and determine the dates for executing such payments. Expenses relating to an expert witness or another service provider required by one of the parties shall be paid by the said party.

**101. Payment**

Expenses for experts and other service providers required by the parties shall be paid directly to them. Payment to experts and service providers required by the arbitrator shall be effected by the Institute. No ne

## **102. Guarantee**

Upon the request of a party or upon his discretion, the arbitrator may require the other party to deposit a guarantee in favor of the requesting party and/or the Institute in order to ensure payment of the arbitration expenses or the arbitration fee or the fees. Failure to deposit a guarantee shall be deemed default of payment under Rule 103. The arbitrator may alter his ruling, whether upon his initiative or upon the request of one of the parties during arbitration, provided that he granted the parties the opportunity to present their arguments in this regard.

## **103. Default on Arbitration Expenses**

Where a party to a proceeding failed to pay the total amounts due for the fee, arbitrator fee and expenses, it shall be considered as failure to appear to the deliberation and the provisions of Rule 61 shall apply.

The Director or arbitrator may order a stay of proceedings or of rulings until the matter of payment is settled.

## **104. Payment of Arbitrator Fee and Expenses by the Other Party**

The party that paid the amounts due shall be entitled to pay the share of the other party, where the other party failed to do so within 15 days of the call for payment. The paying party may demand repayment of the amount from the other party under the arbitration proceedings.

# **U. Secretariat**

## **105. Authority**

The Institute secretariat, headed by the CEO, shall ensure execution of all administrative matters under these Rules and, as such, shall monitor the dates set forth in these Rules, shall handle all payments and execution of all administrative matters.



## **106. Confidentiality**

Institute employees shall be bound by the duty of confidentiality set forth in Rule 92.

# **V. Arbitrator Competence and Appointment**

## **107. Arbitrator List**

Arbitrators presiding under these Rules shall be appointed from the Institute arbitrator list only. An arbitrator shall be included in the Institute list only upon approval by the Directorate and subject to Institute certification.

## **108. Competence to Serve as an Arbitrator**

The considerations by which the Directorate shall approve the inclusion of the arbitrator in the Institute arbitrator list are: Arbitrator registration in the Israel Bar Association registry; Experience with judging positions or others; Instructing law or other subjects at a university or college; Experience with business or the capital market; Competence as a land assessor or actuary; Licensed CPA; Experience with presiding over arbitration and medication; Experience with handing down opinions; Professional public record and serving in public service positions, including governmental committees and others.

## **109. Candidates and Approvals**

The Directorate shall discuss the candidacy of an applicant and shall be permitted to demand any information and details required for its decision. In the application for being included on the Institute list, the applicant will waive any privilege in the matter and shall authorize the Directorate to obtain any possible information. The information reaching the Directorate shall be confidential.

#### **110. Disqualifying Candidates**

Where a person was convicted of a disciplinary offense by the disciplinary court of the Israel Bar Association or any other association, subject to a final, non-contestable ruling, and where less than ten years have passed since the conviction or the sentence has not yet been served in full, he shall be disqualified as an arbitrator. A person convicted of a criminal offense reflecting moral turpitude shall not be appointed as arbitrator.

#### **111. Appeal of Disqualification**

A person whose candidacy has been rejected by the Institute may submit one appeal to the Directorate and the ruling of the Directorate shall be final.

#### **112. Consent to Inclusion in Arbitration List**

Anyone approved for the arbitrator list by the Directorate shall be included on the list after signing an undertaking and consent of inclusion on the Institute list online and shall attach his photo and CV to be published on the website. Such consent shall also be considered acknowledgement of these Rules as a binding agreement between the arbitrator and the Institute.

#### **113. Serving in Two Positions**

Anyone serving as an arbitrator in the appeal instance shall be able to concurrently serve as an arbitrator in a first instance or a mediator in other cases.

#### **114. Institute Assignment of a Case to an Arbitrator**

The Institute Directorate shall appoint an arbitrator from the Institute arbitrator list upon the request of the following entities: courts, parties and any party interested in arbitration.

#### **115. Approval of Arbitrator Appointment**

The arbitrator may commence arbitration in a case upon confirming the following:

- A. Confirming in writing his consent to preside as an arbitrator in the dispute between the parties, and that he will refrain from representing them in any matter for a period of 12 months after handing down the final arbitration award.
- B. The arbitrator shall undertake in writing to accept all of the Rules and the authority of the Directorate, and any Directorate decision or ruling, including his replacement, his retainer fee as an arbitrator and the timetable for arbitration.
- C. The arbitrator shall confirm that he is in no way involved in the conflict or dispute between the parties and that neither of the parties is or was his client, or a client in a firm at which he served as an employee, partner or otherwise, and that he has no stake or interest with the parties regarding the conflict or dispute.

#### **116. Arbitrator Obligations**

The arbitrators shall be bound, inter alia, by the following obligations.

- A. To submit the arbitration award to the Institute immediately upon handing it down.
- B. To providing the Institute with a list of payments collected or to be collected from the parties.
- C. Where the arbitration goes on for over 6 months, submitting a report presenting the reason for the lengthy deliberations.
- D. To detail and update his details on the Institute arbitrator list.
- E. To pay his dues to the Institute.
- F. To obtain insurance coverage for professional liability.

### **117. Personal Liability**

Each and every arbitrator bears full and exclusive personal and professional liability toward the parties to arbitration. The Institute or Institute Directorate does not bear any direct or vicarious liability regarding the acts or rulings of the arbitrator.

### **118. Insurance**

Every arbitrator appearing on the Institute arbitrator list must obtain professional liability insurance coverage against negligence. The Institute is not professionally or otherwise liable for acts of the arbitrator or the manner of performance or the essence of the facts thereby executed.

## **W. Arbitrator Replacement, Removal and Disqualification**

### **119. Leave of Absence and Death**

Where the arbitrator is unable to fulfill his responsibilities due to illness, death or another reason, another arbitrator shall be appointed under these Rules, unless agreed otherwise by the parties.

### **120. Arbitrator Suspension and Removal from Office**

The Institute Directorate may replace an arbitrator, remove him from office, suspend him for a fixed period or remove him from the arbitrator list pursuant to a well grounded decision based on the following:

- A. The arbitrator was convicted, by peremptory ruling, of a disciplinary or criminal offense of moral turpitude or demonstrating flawed integrity.
- B. The arbitrator served in a dispute tainted by conflict of interest.
- C. The arbitrator conducts himself in arbitration in a manner that, according to the Directorate, may impair the purpose of the arbitration.
- D. The arbitrator delays the arbitration proceedings in an unreasonable manner.

E. The arbitrator does not comply with the rules of arbitration.

**121. Right of Appeal**

An arbitrator removed from office or disqualified from the arbitrator list shall be entitled to appeal to the Directorate within 30 days of receiving notice of the said removal from office. The decision of the Directorate is subject to appeal before a court.

**122. Further Arbitration after Arbitrator Replacement**

Where an alternate arbitrator has been appointed for a replaced arbitrator, the proceedings will continue from the point reached by the first arbitrator, unless the new arbitrator decides otherwise after hearing the arguments of the parties.

**X. Arbitrator Rules of Ethics**

**123. Application**

The content of these Rules adds to the provisions of court statutes or rulings relating to arbitrator obligations. Any matter that is not mentioned in these Rules shall be subject to acceptable ethical norms and to the rules of Jewish heritage.

**124. Fiduciary Loyalty and Justice**

An arbitrator, presiding over a proceeding, shall judge equitably, shall not prevent justice and shall remain loyal to the laws of the state.

**125. Prejudice**

An arbitrator shall not display favoritism in a trial and shall not display bias or prejudice under the law.

**126. Independence**

In filling his position, the arbitrator shall be dependent on no one and shall not be affected by criticism by others or public pressure, and he shall be bound by the fear of law and not the fear of man.

## **127. Conflict of Interest**

- A. An arbitrator shall not accept an arbitration case and shall avoid, during the proceedings, handling any matter to which is personally related and which may comprise a conflict of interest. An arbitrator shall not preside in a case where he has a family, business or social relationship with the parties or their representative or a witness questioned therein, or where a family member of his has a financial or personal stake in the arbitration or the results thereof.
- B. An arbitrator shall not preside in a proceeding where an attorney who is a partner, who works in his firm or for a relative of the arbitrator, appears as a representative.
- C. An arbitrator shall avoid taking measures that may lead to conflict of interest and will not create an impression by which one party receives preferential treatment due to his relations therewith.

## **128. Conducting Arbitration**

- A. The arbitrator will conduct the arbitration in a relevant manner and will apply absolute equality toward the parties and their representatives.
- B. The arbitrator shall hold the deliberations on the dates and times scheduled thereto, while meticulously adhering to the rules of arbitration.
- C. The arbitrator shall not delay the deliberation and his ruling and shall avoid any delay of justice to the parties.

## **129. Respect for Others**

When presiding in law, the arbitrator shall conduct himself with courtesy, patience and moderation and shall not be strict, but rather set a pleasant atmosphere for the parties taking part in the deliberation, avoiding any offense to their dignity or the dignity of another arbitrator.

### **130. Etiquette**

The arbitrator shall demonstrate integrity, shall be dedicated to his position and shall avoid any matter that is not worthy of his position and the position of the Institute.

### **131. Confidentiality**

The arbitrator shall be obligated to maintain confidentiality of all of the information revealed to him in his capacity as an Institute arbitrator.

## **Y. Mediation**

### **132. Definitions**

- "Mediation"** - A process in which a mediator meets with the parties in order to achieve consent to settle the dispute, without having the authority to decide in its regard.
- "Mediation Settlement"** - An agreement between the parties for settling the dispute between them, achieved upon conclusion of the mediation proceeding.
- "Mediator"** - An individual who assists the parties toward reaching a mediation settlement based on free negotiations and without having the authority to decide in its regard.

### **133. Application**

The mediation proceedings shall be subject to the provisions of the Courts Law [Combined Version], 5744-1984 (hereinafter: "**the Law**"), and the Court Regulations (Mediation) 5753-1193 (hereinafter: "**the Regulations**"). These rules of arbitration shall apply to the mediation proceedings unless stated otherwise in these Rules or where the context herein implies otherwise.

#### **134. Mediator List**

Under these Rules, mediators shall only be appointed from the Institute mediator list as approved and certified by the Directorate.

#### **135. Competence to Serve as a Mediator**

Among the considerations applied by the Directorate toward including a mediator in the Institute Mediator List is the question of whether or not he appears in the list of mediators appointed pursuant to the Court Regulations (Appointing a Mediator) 1996, has completed a mediation course pursuant to the regulation or has completed another mediation course equivalent in scope and requirements to the course set forth in the regulations. Mediator competence shall be subject to the provisions applying to arbitrators, *mutatis mutandis*.

#### **136. Acceptance to Mediator List**

Acceptance of candidates to the Institute mediator list shall be subject to the provisions applying to arbitrators, *mutatis mutandis*.

#### **137. Obligations, Liability and Insurance**

The provisions applying to arbitrators regarding their obligations toward the Institute, their professional liability and duty to obtain professional insurance coverage shall apply, *mutatis mutandis*, to mediators as well.

#### **138. Disqualification, Removal from Office and Suspension**

Mediator disqualification and removal from office or exclusion from the mediator list shall be subject to the provisions applying to arbitrators, *mutatis mutandis*.

#### **139. Mediation Application**

An application for ITRO mediation shall be subject to the provisions applicable to the arbitration application, *mutatis mutandis*.



**140. Mediation Agreement with the Institute**

Upon approval of ITRO mediation, the parties shall be registered in the Institute and a mediation agreement shall be prepared with the Institute upon payment of the fees.

**141. Existing Agreement**

The agreement existing between the parties and the mediator, pursuant to Regulation 3(F) of the Mediation Regulations shall apply to the parties and the mediator, unless stipulated otherwise in the mediation agreement.

**142. Appointing the Mediator**

The appointment of a mediator from the Institute Mediator List shall be subject to the provisions applying the arbitrators, *mutatis mutandis*.

**143. Judicial Process in Mediation**

The judicial process in mediation shall be subject to the Court Regulations (Mediation) 5753-1993 and these Rules, where they do not contradict the said regulations.

**144. Mediation Proceedings**

The content of these Rules adds to the provisions of court statutes or rulings relating to arbitrator obligations. Any matter that is not mentioned in these Rules shall be subject to acceptable ethical norms and to the rules of Jewish heritage.

**145. Application**

- A. The goal of mediation proceedings is to settle the dispute between the parties in the most efficient and timely manner. To streamline proceedings when commencing mediation, the mediator shall explain to the parties, as necessary, the essence of mediation, as opposed to arbitration, and the details of the existing agreement.
- B. The mediator shall determine the judicial process, where not determined by law, and the location and date of every session.

C. The mediator may keep a file of documents and record a protocol of the mediation sessions to be used by him alone and not open to perusal by the parties.

**146. Meeting with the Parties**

The mediator may meet with the parties, together or separately, and upon the consent of the party – in the absence of his attorney, as well as with anyone related to the dispute, including separately with the lawyer for a party.

**147. Evidence**

Material submitted to the mediation proceedings will not serve as evidence in a civil court proceeding.

**148. Expert**

The mediator may consult with an expert and obtain an expert opinion.

**149. Mediator Authority**

The mediator may propose solutions for the dispute and present the parties with offers for a mediation agreement.

**150. Termination of Mediation by the Parties**

A party may terminate the mediation proceeding at any time after submitting written notice to the other parties and to the mediator.

**151. Termination of Mediation by the Mediator**

The mediator may terminate mediation where he believes that one of the following has occurred:

- A. The matter, in his opinion, is not suitable for mediation;
- B. The parties or any one of them do not conduct themselves with equity or good faith, or do not cooperate with the mediator;
- C. The parties or any one of them fail to disclose the information required for conducting mediation;

- D. The mediator believes that there is no reasonable chance of the parties reaching a mediation settlement;
- E. The mediation settlement toward which the parties are progressing is illegal, immoral or contradictory of public regulations;
- F. The mediation settlement toward which the parties are progressive is clearly unfair;
- G. The mediation settlement toward which the parties are progressing fails to consider the interest of a minor or an incapacitated individual related to the dispute;
- H. The mediation settlement may cause real damage to a third party;
- I. The parties fail to pay the mediator's retainer fee or expenses in kind.

Where the mediator has decided to terminate the proceedings, he shall notify the Institute thereof and where mediation was referred by the court – he shall notify the court as well. The mediator shall not provide the court with his reasoning and shall not express his opinion on any matter relating to the mediation, unless so agreed by the parties.

#### **152. Parties' Obligations**

- A. Parties to mediation shall be obligated to conduct themselves fairly and in good faith throughout the mediation, to cooperate with the mediator and disclose the information required for settling the dispute by way of mutual consent.
- B. The parties shall not call upon the mediator to indirectly testify, whether orally or in writing, in the mediation proceeding.
- C. The parties shall not disclose to the court statements made during the mediation process and will not present documents raised, directly or indirectly, within the mediation proceeding.

- D. The parties shall not sue the mediator on grounds of the mediator's failure to achieve a mediation settlement or their dissatisfaction with the settlement reached with the mediator.

### **153. Mediator Obligations**

- A. The mediator may not rule or hand down a binding decision on issues under dispute between the parties.
- B. In performing his responsibilities, the mediator shall conduct himself fairly, in good faith and without prejudice.
- C. The mediator shall refuse to accept an appointment: where there was any prior professional or business relationship with one of the parties, unless he disclosed this information to the other parties and they have consented to his appointment in writing; where he may, in his opinion, find himself, directly or indirectly, in a conflict of interest during the mediation. Where a conflict of interest was detected during mediation, the mediator shall discontinue mediation and notify the Institute that he is unable to serve as a mediator.
- D. The Mediator shall instruct the parties of the need to consider the interests of a minor or an incapacitated individual related to the dispute.
- E. The mediator shall not use any information provided during the mediation, which he could not have otherwise obtained with reasonable effort, except for the purpose of the mediation.
- F. The mediator shall not disclose any information obtained during mediation to another person who is not a party to the mediation.
- G. Where a party provided the mediator with information in confidence, the mediator shall maintain confidentiality toward the other party, unless the discloser has waived confidentiality.

- H. The mediator shall not advise the parties on any professional manner outside of his field of expertise and shall not offer a professional opinion on a question requiring expertise that arose during the mediation, even where it is subject of his field of expertise.
- I. In the absence of approval by the other parties, the mediator shall not provide the parties any professional services in the future on matters relating to the dispute subject of mediation.

#### **154. Mediation Settlement**

- 154.1 Where the parties have reached a mediation settlement, the parties or mediator shall prepare it in writing, setting forth the conditions by which the dispute shall be settled; the parties shall sign the mediation settlement and mediator shall validate it with his signature.
- 154.2 Where the mediation settlement has been signed, the mediator shall notify the Institute and, where mediation was referred by the court, shall notify the court as early as possible. Where the parties requested that the settlement be granted the force of judgment, the mediator shall attach a copy thereof to his notification.

#### **155. Retainer Fee, Fees and Expenses**

- A. The retainer fee paid to the mediator by the parties shall not be calculated according to the value of the dispute and shall not be contingent upon mediation outcomes and it shall be paid to the mediator whether or not the parties have reached a mediation settlement.
- B. Upon commencing mediation, the mediator will notify the parties of the retainer fee thereby set and the manner of payment thereof: the retainer fee shall not include expenses in kind.

- C. The parties shall agree in advance on how to share the mediator's retainer fees and expenses in kind, including expenses related to consulting with anyone relating to the dispute or obtaining an expert opinion. In the absence of such agreement, the parties shall bear payment thereof in equal shares.
- D. The mediator's retainer fee, the fee to the Institution and the payment of expenses shall be subject to the provisions applying to arbitrators, *mutatis mutandis*.