

RULES OF CONCILIATION AND ARBITRATION

(First Edition)

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**PAKISTAN ENGINEERING COUNCIL
ISLAMABAD**

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PREFACE

Pakistan Engineering Council, the Statutory Regulatory body entrusted to regulate the engineering profession of Pakistan has undertaken among others, the standardization of "country specific" documents to regulate and streamline the award, execution of engineering consultancy services, procurement of works and resolution of disputes arising between the contracting parties. PEC Rules of Conciliation and Arbitration is one such document prepared by a team of experts comprising Employers, Constructors and Consultants and Legal Advisors in line with the advice by Planning Commission, Govt. of Pakistan. It is expected that use of this document will provide an equitable and just basis for settlement of disputes pertaining to construction and consultancy contracts expeditiously.

Recognizing the value of conciliation and arbitration as methods of amicable settlement of disputes arising in the execution of Engineering Contracts, PEC is convinced that the establishment of conciliation and arbitration rules that are acceptable to the parties with different interests would significantly contribute to the development of harmonious relations. Noting the efficacy of conciliation and arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); PEC has modeled its rules for conciliation on the principles and lines of the said rules taking into consideration essential elements of Pakistan Arbitration Act, 1940 and relevant provisions of PEC Regulatory Regime.

These Rules were adopted in 1976, after extensive deliberations, by the United Nations Commission on International Trade Law, This Commission consists of 36 member states representing the different legal, economic and social systems and geographic regions of the world. In the preparation of these Rules, various interested organizations and leading arbitration experts were consulted. The General Assembly of the United Nations has recommended the use of these Rules for inclusion in international commercial contracts, and these Rules have become widely known and been accepted around the world. PEC gratefully acknowledges the UNCITRAL, for making use of their draft.

Pakistan Engineering Council wishes to place on record its deep appreciation for the tremendous work done by the Experts Committee on Standards and Quality and in finalizing this document. Various Engineering Organizations and Departments are requested to refer this document for settlement and resolution of disputes of construction and consultancy contracts. Any suggestions to improve this document are welcomed which may please be addressed to:

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**INSTRUCTIONS TO
USERS OF THIS
DOCUMENT**

INSTRUCTIONS TO USERS OF THIS DOCUMENT

1. The Rules specified in the this document shall be applicable for all construction and engineering services (consultancy) contracts to be executed in Pakistan irrespective of their source of financing and/or nationality of the constructors/consultants (engineering service providers).
2. Conciliation and Arbitration under this document shall be mandatory only when in the contract such provisions are incorporated. Arbitration Clause for such provision shall include among others, the reference to “PEC Rules of Conciliation and Arbitration” and place of arbitration.
3. In the event of a dispute arising out of or relating to a contract, the parties wish to seek an amicable settlement of that dispute by conciliation, the conciliation shall take place in accordance with Pakistan Engineering Council (PEC) Rules of Conciliation.
4. Any dispute, controversy or claim arising out of or relating to a Contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the PEC rules of Arbitration in-force.

RULES OF CONCILIATION

PAKISTAN ENGINEERING COUNCIL
RULES OF CONCILIATION

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PEC RULES OF CONCILIATION

Rule 1: Application of the Rules

- (i) These Rules apply to conciliation of disputes arising out of or relating to a contractual or other legal relationship where the parties seeking an amicable settlement of their dispute have agreed that the PEC Conciliation Rules apply.
- (ii) Where any of these Rules are in conflict with the provision of relevant PEC Act, Bye-laws; the provision prevails.
- (iii) Where any of these Rules is in conflict with a provision of law from which the parties cannot derogate, that provision prevails.

Rule 2: Commencement of Conciliation Proceedings

- (i) The party initiating conciliation sends to the other party a written invitation to conciliate under these Rules, briefly identifying the subject of the dispute.
- (ii) Conciliation proceedings commence when the other party accepts the invitation in writing to conciliate.
- (iii) If the other party rejects the invitation, there will be no conciliation proceedings.
- (iv) If the party initiating conciliation does not receive a reply within fifteen days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate. If he so elects, he informs the other party accordingly.

Rule 3: Number of Conciliators

There shall be one conciliator unless the parties agree that there shall be odd number(s) of conciliators. Where there is more than one conciliator, they ought, as a general rule, to act jointly.

Rule 4: Appointment of Conciliators

- (i)
 - (a) In conciliation proceedings with one conciliator, the parties shall endeavour to reach agreement on the name of a sole conciliator;
 - (b) In conciliation proceedings with three conciliators, each party appoints one conciliator. The parties shall endeavor to reach agreement on the name of the third conciliator.

- (ii) For conciliation on construction and engineering services the qualification of the conciliator(s) shall be Professional Engineer. Parties may seek the assistance of PEC in connection with the appointment of conciliators. In particular:
 - (a) A party may request PEC to recommend the names of suitable individuals to act as conciliator; or
 - (b) The parties may agree that the appointment of one or more (odd number) conciliators be made directly by PEC.

In recommending or appointing individuals to act as conciliator, the PEC shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall preferably take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties (where at least one of the parties in dispute is foreign national).

Rule 5: Submission of Statements to Conciliator

- (i) The conciliator, upon his appointment, requests each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party sends a copy of his statement to the other party.
- (ii) The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party sends a copy of his statement to the other party.
- (iii) At any stage of the conciliation proceedings, the conciliator may request a party to submit to him such additional information as he deems appropriate.
- (iv) In this and all following Rules, the term "conciliator" applies to a sole conciliator, odd number(s) conciliators, as the case may be.

Rule 6: Representation and Assistance

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons are to be communicated in writing to the other party and to the conciliator; such communication is to specify whether the appointment is made for purposes of representation or of assistance.

Rule 7: Role of Conciliator

- (i) The conciliator assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
- (ii) The conciliator will be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the contract concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

- (iii) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.
- (iv) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

Rule 8: Administrative Assistance

In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance on techno-legal issues by PEC.

Rule 9: Communication between Conciliator and Parties

- (i) The conciliator may invite the parties to meet with him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.
- (ii) Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place will be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

Rule 10: Disclosure of Information

When the conciliator receives factual information concerning the dispute from a party, he discloses the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate. However, when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator does not disclose that information to the other party.

Rule 11: Co-operation of Parties with Conciliator

The parties will in good faith co-operate with the conciliator and, in particular, will endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

Rule 12: Suggestions by Parties for Settlement of Dispute

Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

Rule 13: Settlement Agreement

- (i) When it appears to the conciliator that there exist elements of a settlement which would be acceptable to the parties, he formulates the terms of a possible settlement and submits them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.
- (ii) If the parties reach agreement on a settlement of the dispute, they draw up and sign a written settlement agreement. If requested by the parties, the conciliator draws up, or assists the parties in drawing up, the settlement agreement.
- (iii) The parties by signing the settlement agreement put an end to the dispute and are bound by the agreement.
- (iv) The parties may wish to include in the settlement agreement a clause that any dispute arising out of or relating to the settlement agreement shall be submitted to arbitration.

Rule 14: Confidentiality

The conciliator and the parties must keep confidential all matters relating to the conciliation proceedings. Confidentiality extends also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

Rule 15: Termination of Conciliation Proceedings

The conciliation proceedings are terminated:

- (i) By the signing of the settlement agreement by the parties, on the date of the agreement; or
- (ii) By a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or
- (iii) By a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
- (iv) By a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

Rule 16: Resort to Arbitral or Judicial Proceedings

The parties undertake not to initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings.

Rule 17: Costs

- (i) Upon termination of the conciliation proceedings, the conciliator fixes the costs of the conciliation and gives written notice thereof to the parties. The term "costs" includes only:
 - (a) The fee of the conciliator which shall be reasonable in amount;
 - (b) The travel and other expenses of the conciliator;
 - (c) The travel and other expenses of witnesses requested by the conciliator with the consent of the parties;
 - (d) The cost of any expert advice requested by the conciliator with the consent of the parties; and
 - (e) The cost of any assistance provided pursuant to Rule 4, paragraph (ii)(b), and Rule-8.
- (ii) The costs, as defined above, are borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party are borne by that party.

Rule 18: Deposits

- (i) The conciliator, upon his appointment, may request each party to deposit an equal amount as an advance for the costs referred to in Rule 17, paragraph (i) which he expects will be incurred.
- (ii) During the course of the conciliation proceedings the conciliator may request supplementary deposits in an equal amount from each party.
- (iii) If the required deposits under paragraphs (i) and (ii) of this Rule are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination to the parties, effective on the date of that declaration.
- (iv) Upon termination of the conciliation proceedings, the conciliator renders an accounting to the parties of the deposits received and returns any unexpended balance to the parties.

Rule 19: Role of Conciliator in other Proceedings

The parties and the conciliator undertake that the conciliator will not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings. The parties also undertake that they will not present the conciliator as a witness in any such proceedings.

Rule 20: Admissibility of Evidence in other Proceedings

The parties undertake not to rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings:

- (i) Views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- (ii) Admissions made by the other party in the course of the conciliation proceedings;
- (iii) Proposals made by the conciliator
- (iv) The fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

Rule 21: Time Period for Conciliation

Upon commencement of Conciliation Proceedings pursuant to Rule 2 hereof, the whole proceedings and agreement thereof shall have to be completed within 90 days failing which either party shall have option to go to arbitration or litigation provided the parties in dispute agree to extend the period of conciliation prior to the expiration of the 90 days.

RULES OF ARBITRATION

PAKISTAN ENGINEERING COUNCIL

RULES OF ARBITRATION

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PAKISTAN ENGINEERING COUNCIL (PEC) RULES OF ARBITRATION

SECTION I: INTRODUCTORY RULES

Rule 1: Scope of Application

- (i) Where the parties to a contract have agreed in writing that disputes in relation to that contract shall be referred to arbitration under the PEC Arbitration Rules, then such disputes shall be settled in accordance with these Rules.
- (ii) These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

Rule 2: Notice, Calculation of Periods of Time

- (i) For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.
- (ii) For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Rule 3: Request and Notice of Arbitration

- (i) The party initiating recourse to arbitration (hereinafter called the 'Claimant') shall submit a request for arbitration to PEC which shall give to the other party (hereinafter called the 'Respondent') a notice of arbitration along with a complete copy of the request.
- (ii) Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the Respondent.
- (iii) The request for arbitration shall include the following:
 - (a) A demand that the dispute be referred to arbitration;

- (b) The names and addresses of the parties;
 - (c) A reference to the arbitration clause or the separate arbitration agreement that is invoked;
 - (d) A reference to the contract out of or in relation to which the dispute arises;
 - (e) The general nature of the claim and an indication of the amount involved, if any;
 - (f) The relief or remedy sought; and
 - (g) A proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon.
- (iv) The request for arbitration may also include:
- (a) The proposals for the appointments of a sole arbitrator and an appointing authority referred to in Rule 6, paragraph (i);
 - (b) The notification of the appointment of an arbitrator referred to in Rule 7; and
 - (c) The statement of claim referred to in Rule 18.
- (v) Pleadings and all other communications submitted by the parties as well as all documents shall be addressed to PEC and shall be in a number of copies sufficient to provide one copy to each party plus one for arbitrator(s) and one for PEC.
- (vi) A request to commence arbitration must be accompanied by processing fee of Rs. 10,000. Such payment shall be non-refundable and shall not be credited to the Claimant's portion of advance on costs as provided in Rule 41 hereinafter. The request shall not be entertained if the said processing fee is not paid.

Rule 4: Representation and Assistance

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the PEC and the other party; such communication must specify whether the appointment is being made for purposes of representation or assistance.

SECTION II: COMPOSITION OF THE ARBITRAL TRIBUNAL

Rule 5: Number of Arbitrators

Unless the parties have previously agreed on the number of arbitrators (i.e. one or three), the reference shall be to Sole arbitrator approved by PEC

within 30 days of the receipt of notice of arbitration by the Respondent. The delay in approval shall have to be for a reason to be recorded in writing.

Appointment of Arbitrators (Rules 6 to 8)

Rule 6

- (i) If a sole arbitrator is to be appointed, either party may propose:
 - (a) The names of one or more persons, one of whom would serve as the sole arbitrator; and
 - (b) If no appointing authority has been agreed upon by the parties, then PEC shall propose one or more institutions or persons one of whom would serve as appointing authority.
- (ii) If within thirty days after receipt by a party of a proposal made in accordance with paragraph (i) the parties have not reached agreement on the choice of a sole arbitrator, the sole arbitrator shall be appointed by the PEC on a request by either party.
- (iii) In making the appointment the PEC shall use the following list-procedure, unless both parties agree that the list-procedure should not be used or unless the PEC determines in its discretion that the use of the list-procedure is not appropriate for the case:
 - (a) For arbitration on construction and engineering services the qualification of the arbitrator(s) shall be Professional Engineer. At the request of one of the parties the appointing authority shall communicate to both parties an identical list containing at least three names;
 - (b) Within fifteen days after the receipt of this list, each party may return the list to the PEC after having deleted the name or names to which he objects and numbered the remaining names on the list in the order of his preference;
 - (c) After the expiration of the above period of time the PEC shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
 - (d) If for any reason the appointment cannot be made according to this procedure, the PEC may exercise its discretion in appointing the sole arbitrator.
- (iv) In making the appointment, the PEC shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a national other than the nationalities of the parties, if one of the parties is a

foreign national.

Rule 7

- (i) If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal.
- (ii) If within fifteen days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator he has appointed, the first party may request the PEC to appoint the second arbitrator who may exercise its discretion in appointing the arbitrator.
- (iii) If within fifteen days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the PEC in the same way as a sole arbitrator would be appointed under Rule 6.

Rule 8

- (i) When PEC is requested to appoint an arbitrator pursuant to Rule 6 or Rule 7, the party which makes the request shall send to the PEC a copy of the notice of arbitration, a copy of the contract out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the contract. The PEC may require from either party such information, as it deems necessary to fulfill its function.
- (ii) Where the names of one or more persons are proposed for appointment as arbitrators, their full names, addresses and nationalities shall be indicated, together with a description of their qualifications.

Challenge of Arbitrators (Rules 9 to 12)

Rule 9

A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment, any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to PEC unless it has already been informed by him of these circumstances.

Rule 10

- (i) Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
- (ii) A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.

Rule 11

- (i) A party who intends to challenge an arbitrator shall send notice of his challenge within fifteen days after the appointment of the challenged arbitrator has been notified to the challenging party or within fifteen days after the circumstances mentioned in Rules 9 and 10 became known to that party.
- (ii) The challenge shall be notified to the PEC, the other party and to the arbitrator who is challenged and to the other members of the arbitral tribunal. The notification shall be in writing and shall state the reasons for the challenge.
- (iii) When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in Rules 6 or 7 shall be used in full for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise his right to appoint or to participate in the appointment.

Rule 12

- (i) If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made:
 - (a) When the initial appointment was made by an appointing authority, by that authority;
 - (b) In other cases, by the PEC.
- (ii) If the PEC sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in Rules 6 to 9 except that, when this procedure would call for the designation of an appointing authority, the appointment of the arbitrator shall be made by the appointing authority which decided on the challenge.

Rule 13: Replacement of an Arbitrator

- (i) In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Rules 6 to 9 that was applicable to the appointment or choice of the arbitrator being replaced.
- (ii) In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his performing his functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding Rules shall apply.

Rule 14: Repetition of Hearings in the Event of the Replacement of an Arbitrator

If under Rules 11 to 13 the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated; if any other arbitrator is replaced, such prior hearings may be repeated at the discretion of the arbitral tribunal.

SECTION III: ARBITRAL PROCEEDINGS

Rule 15: General Provisions

- (i) Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.
- (ii) If either party so requests at any stage of the proceedings, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
- (iii) All documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party.

Rule 16: Place of Arbitration

- (i) Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration.
- (ii) The arbitral tribunal may determine the locale of the arbitration within the country agreed upon by the parties. It may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.
- (iii) The arbitral tribunal may meet at any place it deems appropriate for the inspection of goods, works, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.
- (iv) The award shall be made at the place of arbitration.

Rule 17: Language

- (i) Unless the parties have agreed otherwise the language to be used in the proceedings shall be English. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.
- (ii) The arbitral tribunal may order that any documents annexed to the statement of

claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Rule 18: Statement of Claim

- (i) Unless the statement of claim was contained in the notice of arbitration, within a period of time to be determined by the arbitral tribunal, the claimant shall communicate his statement of claim in writing to PEC, the respondent and to each of the arbitrators. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.
- (ii) The statement of claim shall include the following particulars:
 - (a) The names and addresses of the parties;
 - (b) A statement of the facts supporting the claim;
 - (c) The points at issue;
 - (d) The relief or remedy sought.

The claimant may annex to his statement of claim all documents he deems relevant or may add a reference to the documents or other evidence he will submit.

Rule 19: Statement of Defence

- (i) Within a period of time to be determined by the arbitral tribunal which shall not exceed forty five days, the respondent shall communicate his statement of defence in writing to the claimant and to each of the arbitrators.
- (ii) The statement of defence shall reply to the particulars (b), (c) and (d) of the statement of claim (rule 18, para. (ii)). The respondent may annex to his statement the documents on which he relies for his defence or may add a reference to the documents or other evidence he will submit.
- (iii) In his statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counter-claim arising out of the same contract or rely on a claim arising out of the same contract for the purpose of a set-off.
- (iv) The provisions of rule 18, paragraph (ii), shall apply to a counter-claim and a claim relied on for the purpose of a set-off.

Rule 20: Amendments to the Claim or Defence

During the course of the arbitral proceedings but not later than fifteen days of statement of defence submitted under the provision of rule 19 hereof, either party may amend or supplement his claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a

manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

Rule 21: Pleas as to the Jurisdiction of the Arbitral Tribunal

- (i) The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.
- (ii) The arbitral tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of rule 21, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.
- (iii) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counter-claim, in the reply to the counter-claim.
- (iv) In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in their final award.

Rule 22: Further Written Statements

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

Rule 23: Periods of Time

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed ninety days. However, the arbitral tribunal may extend the time-limits if it concludes that an extension is justified.

Rule 24: Evidence and Hearings (Rules 24 and 25)

- (i) Each party shall have the burden of proving the facts relied on to support his claim or defense. This burden may be discharged through production of documentary or oral evidence.
- (ii) The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his statement of claim or statement of defense.

- (iii) At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine.

Rule 25

- (i) In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.
- (ii) If witnesses are to be heard, at least fifteen days before the hearing each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses he intends to present, the subject upon and the languages in which such witnesses will give their testimony.
- (iii) The arbitral tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the tribunal at least fifteen days before the hearing.
- (iv) Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal is free to determine the manner in which witnesses are examined.
- (v) Evidence of witnesses may also be presented in the form of written statements signed by them.
- (vi) The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Rule 26: Interim Measures of Protection

- (i) At the request of either party, the arbitral tribunal may take any interim measures it deems necessary in respect of the subject-matter of the dispute, including measures for the conservation of the goods forming the subject-matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.
- (ii) Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for the costs of such measures listed as under:
 - a) The preservation, interim custody or sale of any goods which are subject-matter of the reference.
 - b) Securing the amount in difference in the reference.

- c) The detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein and authorizing for any of the aforesaid purposes any person to enter upon or into any land or building in the possession of any party to the reference, or authorizing any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.
 - d) Interim injunctions or the appointment of a receiver.
 - e) The appointment of a guardian for a minor or person of unsound mind for the purposes of arbitration proceedings.
- (iii) A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Rule 27: Experts

- (i) The arbitral tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
- (ii) The parties shall give the expert any relevant information or arrange for his inspection of relevant works or produce for his inspection any relevant documents or goods that he may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
- (iii) Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his report.
- (iv) At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of Rule 25 shall be applicable to such proceedings.

Rule 28: Default

- (i) If, within the period of time fixed by the arbitral tribunal, the Claimant has failed to communicate his claim without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the arbitral tribunal, the Respondent has failed to communicate his statement of defence without showing sufficient cause for such failure, the arbitral tribunal shall order that the proceedings continue.

- (ii) If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
- (iii) If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Rule 29: Closure of Hearings

- (i) The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
- (ii) The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

Rule 30: Waiver of Rules

A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance, shall be deemed to have waived his right to object.

SECTION IV: THE AWARD

Rule 31: Decisions

- (i) The arbitral tribunal shall formally notify the parties of the completion of hearing.
- (ii) The time limit within which the arbitral tribunal shall render its award after completion of hearing, and submit the same to PEC is thirty days. However, total time period from notice of arbitration pursuant to Rule-2 hereof and submission of award to PEC shall not exceed six calendar months. PEC shall communicate the award to the parties within fifteen days of the deposit of all costs by the parties or any of them. However where for reasons to be recorded in writing by the arbitral tribunal if it is not possible to conclude arbitration proceeding within the said period of six calendar months the same may therefore be concluded within a maximum further period of six month. The arbitral tribunal shall organize the hearings during the said extended period in a manner to ensure the conclusion of the arbitration proceedings latest by the expiry of the said extended period and in case the tribunal is of the view that a party has been guilty of delay in the conduct of the proceedings, this shall be duly reflected in the award of appropriate costs against such party.
- (iii) When there are three arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.

- (iv) In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide on his own, subject to revision, if any, by the arbitral tribunal.

Rule 32: Form and Effect of the Award

- (i) In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory, or partial awards.
- (ii) The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay. The award shall provide for the payment of markup/interest on the awarded sum at the rate decided in the award for the period from the date of award up-to the date of payment.
- (iii) The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
- (iv) An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.
- (v) The award may be made public only with the consent of both parties.
- (vi) Copies of the draft award by the arbitrators shall be submitted to the PEC who may examine or arrange the draft award examined by an expert as to legal binding and then communicate it to the parties after signatures by the arbitrator(s) but subject to the payment of fees and costs.
- (vii) If the arbitration law of the country where the award is made requires that the award be filed or registered with the competent court or legal authority, it shall comply with this requirement within the period of time required by law except that it shall be a condition precedent for the losing party to deposit the sum awarded, whether under an interim or final award, with PEC before initiating any legal action whatsoever before any court having jurisdiction. PEC, however, shall release such deposit to the winning party against an acceptable bank guarantee to cover possible amendment of the award by a final judgment of a court of law.

Rule 33: Applicable Law, *Amiable Compositeur*

- (i) The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- (ii) The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono*

only if the parties have expressly authorized the arbitral tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.

- (iii) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Rule 34: Settlement or Other Grounds for Termination

- (i) If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
- (ii) If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph (i), the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.
- (iii) Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be submitted by the arbitral tribunal to PEC who shall then communicate to the parties. Where an arbitral award on agreed terms is made, the provisions of Rule 32, paragraphs (ii) and (iv) to (vii), shall apply.

Rule 35: Interpretation of the Award

- (i) Within fifteen days after the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of the award.
- (ii) The interpretation shall be given in writing within fifteen days after the receipt of the request. The interpretation shall form part of the award and the provisions of Rule 32, paragraphs (ii) to (vii), shall apply.

Rule 36: Correction of the Award

- (i) Within fifteen days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within fifteen days after the communication of the award make such corrections on its own initiative.
- (ii) Such corrections shall be in writing, and the provisions of Rule 32, paragraphs (ii) to (vii) shall apply.

Rule 37: Additional Award and Finality

- (i) Within fifteen days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
- (ii) If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within thirty days after the receipt of the request.
- (iii) When an additional award is made, the provisions of Rule 32, paragraphs (ii) to (vii), shall apply.
- (iv) An award after interpretation, correction pursuant to Rules 35 and 36 or the additional award when delivered shall be deemed the final award.

Costs (Rules 38 to 40)

Rule 38

The arbitral tribunal shall fix the costs of arbitration in its award. The term 'costs' includes only:

- (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with Rules 39 and 41;
- (b) The travel and other expenses incurred by the arbitrators;
- (c) The costs of expert advice and of other assistance required by the arbitral tribunal;
- (d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- (e) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
- (f) Any fees and expenses of the appointing authority as well as the administrative expenses of the PEC.

Rule 39

- (i) The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.

- (ii) If an appointing authority has been agreed upon by the parties and if that authority has issued a schedule of fees for arbitrators, the arbitral tribunal in fixing its fees shall take that schedule of fees into account to the extent that it considers appropriate in the circumstances of the case.
- (iii) In other cases the arbitral tribunal shall charge in accordance with the Appendices hereto which may be amended by PEC from time to time.

Rule 40

- (i) Except as provided in paragraph (ii), of this Rule, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
- (ii) With respect to the costs of legal representation and assistance referred to in Rule 38, paragraph (e), the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.
- (iii) When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in Rule 38 and Rule 39, paragraph (i), in the text of that order or award.
- (iv) No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under Rules 35 to 37.

Rule 41: Deposit of Costs

- (i) The PEC on acceptance of a request for arbitration shall request each party to deposit an equal amount as an advance for the costs referred to in rule 38. The mode of payment shall be either cash or bank draft in the name of Registrar, Pakistan Engineering Council, Islamabad.
- (ii) During the course of the arbitral proceedings the PEC may request supplementary deposits from the parties.
- (iii) If an appointing authority has been agreed upon by the parties and when a party so requests and the appointing authority consents to perform the function, the PEC shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority which may make any comments to the PEC which it deems appropriate concerning the amount of such deposits and supplementary deposits.
- (iv) If the required deposits are not paid in full within thirty days after the receipt of

the request, the PEC shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the PEC may order the suspension or termination of the arbitral proceedings.

- (v) After the award has been made, the PEC shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

SECTION V: APPENDICES

The Appendices hereto are and shall be deemed an integral part of these Rules.

APPENDIX-1

Pakistan Engineering Council (PEC)

1. Function

Pakistan Engineering Council (PEC) is the Statutory Regulatory Body enacted by the Parliament of Pakistan in 1976 (Act No. V of 1976), entrusted to regulate the engineering profession in Pakistan. Accordingly Pakistan Engineering Council has established Techno-legal Cell to deal with matters related to construction and consultancy contracts. For the purpose of these Rules, the functions of the PEC shall be performed as provided herein below.

2. Composition of the PEC

- 2.1 Decision making body of the PEC is the Executive Committee constituted under Article-9 of the above said Act.
- 2.2 Panel list of arbitrators shall be approved by the Executive Committee.
- 2.3 Arbitrator(s) shall be nominated by the Chairman, PEC from the Panel-list of persons/organization.
- 2.4 Any matter of disputes shall be referred to the Techno-legal Cell PEC for appropriate decisions.

3. Session

- 3.1 The Enrolment Committee shall meet once a month.
- 3.2 Notwithstanding sub para 3.1 above, if required, the Chairman may convene the session of the Enrolment Committee. Attendance of at least two members shall form the quorum.

4. Confidentiality

The work of the Enrolment Committee shall be confidential which must be respected by all participants in whatever capacity. The Executive Committee shall lay down the rules regarding the persons who are entitled to have access to the materials submitted to the PEC.

5. Scrutiny of Award

The PEC itself or through an expert may scrutinize the draft awards submitted to it pursuant to Rule 32 of the Rules, it considers to the extent practicable, to fulfill and to conform to the requirements of the applicable law.

6. Modification

The PEC may modify these Rules as and when deemed necessary.

APPENDIX-2

Costs and Fees

1. The advance on costs shall be subject to adjustment at any time during the arbitration in particular to take into account fluctuations in the amount of dispute arising from claims, counter claims and additional claims, changes in the amount of the estimated expenses of the arbitrator or the evolving difficulty or complexity of arbitration proceedings.
2. PEC shall fix the fees of the arbitrators in accordance with the scale hereafter set out, or where the sum in dispute is not stated, at its discretion.
3. In settling the arbitrator's Fee, PEC shall take into consideration the diligence of the arbitrator, the time spent, the rapidity of the proceedings and the complexity of the dispute so as to arrive at a figure within the limits specified or at a figure higher or lower than those limits.
4. When a case is submitted to more than one arbitrator, the PEC, at its discretion shall have the right to increase the total fees upto a maximum which shall not exceed three times the fees of one arbitrator.
5. The arbitrator's fees and expenses shall be fixed exclusively by the PEC. Separate fee arrangements between the parties and the arbitrator are prohibited.
6. The PEC shall fix the administrative expenses of each arbitration in accordance with the scales hereinafter set out or when sum in dispute is not stated, at its discretion.
7. If an arbitration terminates before the rendering of final award, the PEC shall fix the costs of arbitration at its discretion taking into account the stage attained by the arbitral proceedings and other relevant circumstances.
8. When an arbitration preceding is preceded by attempted conciliation, one-half of the administrative expenses paid for such conciliation shall be credited to the administrative expenses of the arbitration.
9. Scale of Administrative Expenses and Arbitrator's Fee is given in Table 2.1 below:

TABLE – 2.1 (A)

SUM IN DISPUTE (RS)			A. ADMINISTRATIVE EXPENSES (RS)		
Upto	2,000,000		100,000		
from	2,000,001 to	4,000,000	100,000	+ 2.00% of amt. over	2,000,000
from	4,000,001 to	20,000,000	140,000	+ 1.00% of amt. over	4,000,000
from	20,000,001 to	40,000,000	300,000	+ 0.75% of amt. over	20,000,000
from	40,000,001 to	80,000,000	450,000	+ 0.50% of amt. over	40,000,000
from	80,000,001 to	200,000,000	650,000	+ 0.25% of amt. over	80,000,000
from	200,000,001 to	400,000,000	950,000	+ 0.10% of amt. over	200,000,000
from	400,000,001 to	2,000,000,000	1,150,000	+ 0.05% of amt. over	400,000,000
from	2,000,000,001 to	3,000,000,000	1,950,000	+ 0.03% of amt. over	2,000,000,000
over	3,000,000,001		2,250,000	+ 0.01% of amt. over	3,000,000,000

TABLE – 2.1 (B)

B. ARBITRATOR'S FEES [total for the sole arbitrator] (RS)*					
Minimum			Maximum		
100,000			200,000 (Not over 10% of amount in dispute)		
100,000	+ 1.00% of amt. over	2,000,000	200,000	+ 5.00% of amt. over	2,000,000
120,000	+ 0.50% of amt. over	4,000,000	300,000	+ 2.5% of amt. over	4,000,000
200,000	+ 0.35% of amt. over	20,000,000	700,000	+ 1.5% of amt. over	20,000,000
270,000	+ 0.25% of amt. over	40,000,000	1,000,000	+ 1.0% of amt. over	40,000,000
370,000	+ 0.12% of amt. over	80,000,000	1,400,000	+ 0.5% of amt. over	80,000,000
562,000	+ 0.05% of amt. over	200,000,000	2,000,000	+ 0.25% of amt. over	200,000,000
662,000	+ 0.03% of amt. over	400,000,000	2,500,000	+ 0.10% of amt. over	400,000,000
1,142,000	+ 0.02% of amt. over	2,000,000,000	4,100,000	+ 0.05% of amt. over	2,000,000,000
1,342,000	+ 0.01% of amt. over	3,000,000,000	4,600,000	+ 0.02% of amt. over	3,000,000,000

*For a Panel of arbitrator the parties in dispute will determine and pay the fees of their respective arbitrators, whereas, the fees for the umpire will be paid by the parties in equal proportions.

LIST OF PEC CONTRACT DOCUMENTS

<u>Sr. No.</u>	<u>Name of the Document</u>	<u>Status</u>
(1)	Standard Form of Bidding Documents (Civil Works) <i>(to be used for estimated value of more than Rs. 25 Millions)</i>	Completed
(2)	Standard Form of Bidding Documents for Procurement of Works (E&M) <i>(to be used for estimated value of more than Rs. 25 Millions)</i>	Completed
(3)	Standard Form of Bidding Documents for Procurement of Works (For Smaller Contracts) <i>(to be used for all type of procurement for estimated value of not more than Rs. 25 Millions)</i>	Completed
(4)	Standard Form of Contract for Engineering Consultancy Services (For Large Projects) – Time Based Assignments <i>(to be used for consultancy fee over Rs. 2 Millions)</i>	Completed
(5)	Standard Form of Contract for Engineering Consultancy Services (For Large Projects) – Lump Sum Assignments <i>(to be used for consultancy fee over Rs. 2 Millions)</i>	Completed
(6)	Standard Form of Contract For Engineering Consultancy Services (For Smaller Projects) <i>(to be used for consultancy fee not more than Rs. 2 Millions)</i>	Completed
(7)	Standard Procedure for Pre-qualifications of Constructors	Completed
(8)	Standard Procedure for Evaluation of Bids for Procurement of Works	Completed
(9)	Standard Procedure for Pre-qualifications of Consultants	Completed
(10)	Standard Procedure for Evaluation of Proposals for Procurement of Engineering Services	Completed
(11)	Standard Procedure and Formula for Price Adjustment	Completed
(12)	PEC Rules of Conciliation and Arbitration	Completed
(13)	Standard Form of Bidding on BOT Basis	Under Completion
(14)	Standard Form of Bidding Documents for Operation and Maintenance Works	Under Completion
(15)	Standard Form of Joint Venture Agreements	Under Completion