THE COURTS ACT

Rules made by the Chief Justice, after consultation with the Rules Committee and the Judges, under section 198 of the Courts Act

1. Title

These rules may be cited as the Supreme Court (International Arbitration Claims) Rules 2013.

Part I – General

2. Interpretation

In these rules –

"Act" means the International Arbitration Act;

"arbitration claim" means any motion to the Supreme Court seeking relief under the Act or the Foreign Arbitral Awards Act;

"Designated Judge" has the same meaning as in the Act;

"enforcement claim" means a claim referred to in rule 15;

"Foreign Arbitral Awards Act" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act;

"interim measures application" means an application made under rule 14;

"PCA" has the same meaning as in the Act;

"Section 5 claim" means a claim referred to in rule 13;

"witness statement" means a statement made in accordance with rule 9.

3. Application of Rules

(1) Notwithstanding the Supreme Court Rules 2000 or any other rules, these rules shall apply to any application or matter arising under the Act or the Foreign Arbitral Awards Act.

(2) In interpreting and applying these rules, the Supreme Court shall not take account of the law or the procedure relating to domestic arbitration, save as expressly provided by the Act or these rules.

(3) (a) The Supreme Court shall not compulsorily refer the parties to any arbitration claim to mediation without their consent, and the Supreme Court (Mediation) Rules 2010 shall not apply to any arbitration claim.

(b) For the avoidance of doubt, the parties to any arbitration claim may agree to mediate any dispute at any time, whether by way of a clause to that effect in their contract or otherwise, and subparagraph (a) shall not be understood as preventing any such agreement to mediate or as preventing the Supreme Court from giving effect to any such agreement to mediate, including, where appropriate, by compulsory enforcement of the parties' agreement to mediate.

(4) These rules shall not apply to any application to the PCA under the Act, which shall be subject to such procedure as may be provided for by the PCA.

(5) Failure to comply with these rules shall not result in proceedings under the Act or the Foreign Arbitral Awards Act being a nullity, and the Court may, at any time and on such terms as to costs or otherwise as it considers appropriate, grant any amendment to cure any defect or error in the proceedings for the purpose of determining the real question or issue raised by or depending on the proceedings.

Part II – Arbitration claims

4. Application of this Part

This Part shall apply to all arbitration claims, except for Section 5 claims, interim measures applications and enforcement claims, where it shall only apply to the extent provided in Parts III, IV and V, respectively.

5. Starting an arbitration claim

An arbitration claim shall be started by way of motion and shall be accompanied by the appropriate fee specified in the Schedule.

6. Content of arbitration claim motion

(1) An arbitration claim motion shall consist of –

(a) the motion; and

(b) the written evidence on which the motion is based.

(2) The written evidence shall –

(a) include a concise statement of –

(i) the remedy claimed or relief sought; and

(ii) any question on which the applicant seeks the decision of the Supreme Court;

(b) give details of any arbitration award challenged by the applicant, identifying which part or parts of the award are challenged and specifying the grounds for the challenge;

(c) specify –

(i) the section of the Act under which the claim is made; or

(ii) whether it is an application for recognition and enforcement of an award under the Foreign Arbitral Awards Act;

(d) show that any applicable statutory requirement under the Act or the Foreign Arbitral Awards Act has been met;

(e) identify against which, if any, respondent or respondents a costs order is sought;

(f) where the motion is to be served on parties in addition to the respondents, such as members of a tribunal or any other third party, specify the capacity in which these additional parties should be served, and the reason therefor;

(g) where the claim is being made without notice to any respondent or additional party, specify the grounds relied upon for making the application without notice; and

(h) contain a Statement of Truth signed by the party or an identified representative of the party in the following form –

"I believe that the facts stated in this arbitration claim motion are true".

(3) The written evidence on which the motion is based may be either by way of affidavit or in the form of one or more witness statements accompanied by any supporting document.

7. Service generally

(1) Unless the Chief Justice orders otherwise, and subject to rule 8, an arbitration claim motion and the written evidence in support thereof shall be served within 30 days from the date on which the arbitration claim motion is filed.

(2) A copy of the arbitration claim motion shall be served on all parties to the arbitration claim, except where the arbitration claim is made without notice to any respondent or additional party under rule 6(2)(g).

(3) Service of any document in an arbitration claim shall be made –

(a) where a party has given an address for service, at that address;

(b) where a party has not given an address for service, personally or at the registered address of the party, as the case may be.

(4) Where the Chief Justice is satisfied that service under paragraph (3) is not possible, he may order that service on the party shall be –

(a) at his last known address;

(b) at a place where it is likely to come to his attention; or

(c) by substituted service in such other way as the Chief Justice considers appropriate, including, where appropriate, on a legal representative of the party.

(5) A document served in accordance with these rules shall be deemed to be received on the day on which it is delivered or on such other date as the Chief Justice orders.

8. Service out of jurisdiction

(1) The Chief Justice may grant leave to serve an arbitration claim motion and the evidence in support thereof out of the jurisdiction if –

(a) the juridical seat of the arbitration is or will be Mauritius; or

(b) the arbitration claim is in respect of an application under section 5, 6, 22 or 23 of the Act or under the Foreign Arbitral Awards Act, irrespective of whether the juridical seat of the arbitration is not or may not be Mauritius.

(2) For the purpose of paragraph (1)(a), the Chief Justice may, where the arbitral tribunal has not yet been constituted, make a provisional determination as to whether the juridical seat of the arbitration is or will be Mauritius, pending the determination of that issue by the arbitral tribunal, as provided under section 3C(2)(b) of the Act.

(3) An application for leave to serve an arbitration claim out of the jurisdiction shall be made by way of motion and shall –

(a) state the ground or grounds on which the application is made;

(b) specify the place or country in which the person to be served is, or is probably, to be found; and

(c) contain a Statement of Truth signed by the party or an identified representative of the party in the following form –

"I believe that the facts stated in this application are true".

(4) An order granting leave to serve an arbitration claim out of the jurisdiction shall specify –

(a) the period during which service shall be effected; and

(b) the period within which the respondent shall respond to the arbitration claim following service of the arbitration claim on it.

9. Witness statements

(1) A witness statement is a written statement, signed by a person, which contains the evidence which that person would give in Court if called to give evidence.

(2) A witness statement shall be headed with the title of the proceedings, and shall –

(a) be set out in numbered paragraphs;

(b) state the name and address of the person making the witness statement;

(c) state the party on behalf of which the statement is made; and

(d) state the number of the witness statement in relation to that person in the proceedings, that is, whether it is the first, second or subsequent statement.

(3) A witness statement shall be verified by a Statement of Truth signed by the maker of the witness statement in the following form –

"I believe that the facts stated in this witness statement are true."

(4) Where the maker of the witness statement is unable to read or sign the witness statement, the witness statement shall contain a certificate made and signed –

(a) in Mauritius, by an attorney;

(b) outside the jurisdiction, by a person who is able to administer oaths or take affidavits in the jurisdiction in which the witness statement is made; or

(c) by some other person where the Court is satisfied that it was not reasonably practicable to secure compliance with subparagraphs (a) and (b), and that the Court hearing the case can properly rely upon the certificate of the matters set out in paragraph (5).

(5) The certificate referred to in paragraph (4) shall certify that –

(a) the document has been read to the person signing it;

(b) that person appeared to understand it and approved its content as accurate;

(c) the Statement of Truth has been read to that person;

(d) that person appeared to understand the Statement of Truth and the consequences of making a false Statement; and

(e) that person signed or made his mark in the presence of the authorised person.

(6) Documents exhibited to witness statements shall be identified by an exhibit cover sheet, stating the title of the proceedings, the maker of the witness statement and the number of the exhibit, and listing the documents contained in that exhibit.

(7) Copies instead of original documents may be exhibited to witness statements, provided the originals are made available for inspection by the other parties before the hearing and by the Supreme Court at the hearing.

(8) A witness statement shall be admissible in evidence in an arbitration claim, and evidence adduced by way of witness statement shall be treated and be given the same weight as if that evidence had been adduced by way of affidavit.

10. Case management

(1) (a) This rule shall apply to any arbitration claim unless the Chief Justice orders otherwise, either on his own motion or upon application by any party to the arbitration claim.

(b) The Chief Justice may, in particular, adapt any time period set out in this rule to fit the circumstances of the case, bearing in mind the need for arbitration claims to be determined promptly.

(2) Subject to rule 8(4), a respondent who wishes to rely on evidence before the Supreme Court shall file and serve his written evidence in the form of one or more affidavits or witness statements, and any supporting documents, within 21 days after service upon him of the arbitration claim motion.

(3) An applicant who wishes to rely on evidence in reply to written evidence filed by the respondent shall file and serve his written evidence in the form of one or more affidavits or witness statements, together with any supporting documents, within 14 days after service of the respondent's evidence.

(4) Within 14 days after the service of the applicant's evidence in reply under paragraph (3), the parties shall seek to agree on the estimated length of hearing of the claim and shall file an agreed estimate or each party's estimate of the length of hearing with the Chief Justice.

(5) Within 21 days after the service of the applicant's evidence in reply under paragraph (3), the applicant shall file and serve an indexed and paginated hearing bundle or brief of all the evidence and other documents to be used at the hearing before the Supreme Court.

(6) (a) Upon receipt of the parties' time estimates under paragraph (4) or, if such time estimates are not filed or not filed in time, the Chief Justice shall, within 28 days after the service of the applicant's evidence in reply under paragraph (3), list the arbitration claim for hearing, taking into account any time estimates provided by the parties.

(b) The Chief Justice shall take into account, but not be bound by, the parties' time estimates, when listing the case for hearing.

(c) The Chief Justice shall, so far as possible, list the matter de die in diem (in one block of consecutive days).

(7) Not later than 15 days before the hearing date, the applicant shall file and serve –

(a) a skeleton argument which lists succinctly –

(i) the issues which arise for decision;

(ii) the grounds of relief or opposing relief to be relied upon;

(iii) the submissions of fact to be made with references to the evidence;

(iv) the submissions of law with references to the relevant authorities; and

(b) a bundle of the authorities relied upon by the applicant.

(8) Not later than 7 days before the hearing date, the respondent shall file and serve –

(a) a skeleton argument which shall list succinctly –

(i) the issues which arise for decision;

(ii) the grounds of relief or opposing relief to be relied upon;

(iii) the submissions of fact to be made with references to the evidence;

(iv) the submissions of law with references to the relevant authorities; and

(b) a bundle of any authorities relied upon by the respondent, not already included in the applicant's bundle of authorities.

11. Hearings before Supreme Court

(1) In any hearing before the Supreme Court of any arbitration claim, the Supreme Court shall be constituted by a panel of 3 Judges as required by section 42(1) of the Act, all of whom shall be Designated Judges.

(2) Arbitration claims shall be determined on the basis of the written evidence filed by the parties, whether by way of affidavit or witness statement, without the need for oral evidence, unless the Supreme Court orders otherwise.

(3) The Supreme Court may order that any part of an arbitration claim be heard in private in the circumstances provided in section 42(1B) of the Act.

(4) Any hearing of an arbitration claim may be facilitated in appropriate circumstances by means of secure telephone lines, secure video conferencing facilities or such other means of communication as the Court deems fit and proper.

12. Judgments, records and other documents

(1) Any judgment of the Court in any arbitration claim or upon any application under the Act–

(a) shall be delivered in the English language but may contain parts, including orders, in the French language; and

(b) shall be published, provided that it may be edited if the Court considers that this is necessary, taking into account all the circumstances of the case, including the existence of any sensitive information that may require protection.

(2) Any judgment, evidence and Court records and documents relating to an arbitration claim shall be kept by the Master in such manner as the Supreme Court may direct, taking into account any order of the Supreme Court under rule 11(3).

(3) The Master shall, upon payment of the appropriate fee specified in the Schedule, issue to a party to an arbitration claim a certified copy of the judgment, order or any other document.

(4) The Supreme Court may direct the Master to return any evidence and documents issued or adduced by a party in any arbitration claim upon an application by that party. The Master shall keep a certified copy of any returned evidence or document unless otherwise directed by the Supreme Court.

Part III – Applications under section 5 of Act

13. Applications for stay of Court proceedings in favour of arbitration under section 5 of Act

(1) Where a party to an action before a referring Court contends that the action is the subject of an arbitration agreement, it shall make an application ("a Section 5 claim") to that effect to that Court, supported by written evidence in the form of one or more affidavits or witness statements, together with any supporting documents.

(2) Where the application complies with paragraph (1) and section 5(1) of the Act, the referring Court shall immediately stay its proceedings and notify the Chief Justice who shall promptly constitute the adjudicating Court.

(3) The Section 5 claim shall be transferred to the adjudicating Court immediately after its constitution and shall continue as an arbitration claim under Part II, save that –

(a) the 21-day period for service of a respondent's evidence under rule 10(2) shall run from the date on which the parties are notified that the matter has been referred to the adjudicating Court;

(b) the time periods under rule 10 may be adapted either by the Chief Justice pursuant to rule 10(1)(b) or by the adjudicating Court itself applying rule 10(1) mutatis mutandis.

(4) The adjudicating Court shall first hear and determine, on a prima facie basis, whether a party has shown that there is a very strong probability that the arbitration agreement may be null and void, inoperative or incapable of being performed, as required under section 5(2) of the Act.

(5) If a party is not able to show, on a prima facie basis, that there is such a very strong probability, the adjudicating Court shall refer the parties to arbitration, subject only to paragraphs (7) and (8).

(6) If a party is able to show, on a prima facie basis, that there is such a very strong probability, the adjudicating Court shall then proceed finally to determine whether the arbitration agreement is null and void, inoperative or incapable of being performed, and if the adjudicating Court finds that the arbitration agreement –

(a) is null and void, inoperative or incapable of being performed, it shall transfer the matter back to the referring Court, which shall discharge the stay provided for in paragraph (2) and resume its proceedings;

(b) is not null and void, inoperative or incapable of being performed, it shall refer the parties to arbitration, subject only to paragraphs (7) and (8).

(7) Where the adjudicating Court refers the parties to arbitration under paragraph (5) or (6), it may order that a part of the action be transferred back to the referring Court for the referring Court to discharge the stay referred to in paragraph (2) and resume its proceedings in relation only to that part of the action.

(8) An order under paragraph (7) shall only be made where the adjudicating Court is satisfied that –

(a) the action includes a claim or claims which is or are not contended to be the subject of an arbitration agreement;

(b) the order relates only to such claim or claims; and

(c) it is necessary in the interests of justice for such claim or claims

to continue notwithstanding the referral of the parties to arbitration in relation to their other claim.

(9) In this rule –

"adjudicating Court" means the Supreme Court, consisting of 3 Designated Judges, to which an action is transferred under section 5(1) of the Act and paragraph (3);

"referring Court" means any Court which is considering whether to transfer an action to the Supreme Court under section 5(1) of the Act and paragraph (1), and includes the Judge in Chambers and the Supreme Court.

Part IV – Applications for interim measures under sections 6 and 23 of Act

14. Procedure for application for interim measures

(1) Save as otherwise provided for in this Part, any application for interim measures under sections 6 and 23 of the Act ("an interim measures application") shall be made by way of an arbitration claim.

(2) Unless section 23 of the Act provides that it can be made ex parte, an interim measures application shall be made on notice to the other parties and, where the arbitral tribunal has already been constituted, to the arbitral tribunal.

(3) Every interim measures application shall, in the first instance be made to, heard by, and initially determined by, pending the return hearing before a panel of 3 Designated Judges under paragraph (4)(b), a Judge in Chambers, who shall be a Designated Judge, on the basis –

(a) of the arbitration claim motion and of the evidence contained therein; and

(b) where the application has been made on notice, of such preliminary evidence as any other party may wish to place before the Judge in Chambers at that stage, which evidence may be either by way of affidavit or in the form of one or more witness statements.

(4) Following initial determination of the interim measures application by the Judge in Chambers –

(a) where the interim measures application was made on an ex parte basis, the arbitration claim motion and any order issued by the Judge in Chambers shall be served on the relevant parties on the day following the hearing, or as directed by the Judge in Chambers;

(b) the interim measures application shall be returnable before a panel of 3 Judges as required by section 42(1A) of the Act, all of whom shall be Designated Judges, and one of whom shall be the Judge in Chambers who initially heard the matter;

(c) for the purposes of that return hearing, the parties shall comply with rule 10, save that –

(i) the 21-day period for service of a respondent's evidence under rule 10(2) shall run from the latest of the date of the hearing before the Judge in Chambers, the date of any order issued by the Judge in Chambers and the date of service upon the respondent of the arbitration claim motion;

(ii) the time periods under rule 10 may be adapted either by the Chief Justice pursuant to rule 10(1)(b) or by the Judge in Chambers himself applying rule 10(1) mutatis mutandis.

Part V – Recognition and Enforcement of Arbitral Awards

15. Recognition and enforcement of awards

(1) An award may be recognised and enforced in the same manner as a judgment or order under the Foreign Arbitral Awards Act in accordance with this rule.

(2) Save as otherwise provided in this Part, an application under this paragraph shall be made by way of an arbitration claim under Part II ("an enforcement claim") and shall initially be made without notice to any respondent.

(3) The written evidence filed in support of an enforcement claim shall –

(a) exhibit the documents required by Article IV of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, set out in the Schedule to the Foreign Arbitral Awards Act;

(b) state the name and the usual or last known place of residence or business of the applicant and of the person against whom it is sought to enforce the award;

(c) state either –

(i) that the award has not been complied with; or

(ii) the extent to which it has not been complied with at the date of the application; and

(d) attach a proposed draft order granting recognition of the award and, where appropriate, authorising the enforcement of the award in the same manner as a judgment of the Court and containing a statement of –

(i) the right to make an application to set the order aside under paragraph (7)(a); and

(ii) the restrictions on enforcement under paragraph (7)(b).

(4) Where the party is a body corporate, references in this paragraph to the place of residence or business shall have effect as if the reference were to the registered address or the principal place of business of the body corporate.

(5) (a) Upon receipt of an enforcement claim, the Chief Justice shall verify compliance with paragraph (3) and issue a provisional order granting recognition of the award or authorising the enforcement of the award in the same manner as a judgment of the Court, in the terms requested by the applicant or in such amended terms as are necessary to ensure compliance with paragraph (3)(d).

(b) The Chief Justice may specify parties to the arbitration on whom the enforcement claim motion, comprising the notice of motion itself and the written evidence on which the motion is based, as well as the provisional order, shall be served in addition to the respondents and any additional party identified by the applicant.

(6) Within 14 days after receipt of the provisional order referred to in paragraph (5), the applicant shall cause the enforcement claim motion and the provisional order to be served on the respondent and on any additional party by any of the means provided in Part II.

(7) (a) Within 14 days after service of the enforcement claim motion and of the provisional order upon him or, if the enforcement claim motion and the provisional order are to be served out of the jurisdiction, within such other period as may be specified in an order under rule 8(4), a respondent may apply to set aside the provisional order.

(b) The award shall not be enforced until after –

(i) the end of the period referred to in paragraph (a); or

(ii) any application made by the respondent within that period has been finally disposed of.

16. Interest on awards

(1) Where an applicant in an enforcement claim seeks to enforce an award of interest the whole or any part of which relates to a period after the date of the award, he shall file a statement giving the following particulars –

(a) whether simple or compound interest was awarded;

(b) the date from which interest was awarded;

(c) specifying the periods of rest, if any;

(d) the rate of interest awarded; and

(e) a calculation showing –

(i) the total amount claimed up to the date of the statement; and

(ii) any sum which will become due on a daily basis.

(2) A statement under paragraph (1) shall be filed whenever the amount of interest has to be quantified for the purpose of enforcing such a judgment or order.

Part VI – Costs and Security for Costs in Arbitration Claims

17. Scope and interpretation

(1) This Part shall apply to all arbitration claims.

(2) A costs order shall be made against a party to the proceedings and not his legal representative, unless the order is made against a legal representative under rule 27.

(3) In this Part –

"detailed assessment" means the procedure by which the Master determines the amount of any costs to be paid pursuant to an order or orders about costs;

"paying party" means a party liable to pay costs;

"receiving party" means a party entitled to be paid costs;

"summary assessment" means the procedure by which the Court, when making an order about costs, determines the amount to be paid pursuant to the order or part thereof;

"wasted costs" means costs ordered by the Court under rule 27(2);

"wasted costs order" means an order made under rule 27.

18. Duty to notify client

Where –

(a) the Court makes an order against a party who is legally represented; and

(b) the party is not present in Court when the order is made,

the party's legal representative shall notify his client in writing of the costs order not later than 7 days after the legal representative receives notice of the order.

19. Exercise by Court of its discretion as to costs

(1) The Court has discretion as to –

(a) whether costs are payable by one or more parties to another party or parties;

(b) which parties are to pay costs to which other parties;

(c) whether the costs payable are all of the receiving party's costs of the proceedings, or only a proportion or part of those costs;

(d) whether the costs payable are to be the receiving party's costs of the proceedings or of part of the proceedings;

(e) the amount of those costs; and

(f) when they are to be paid.

(2) In deciding whether to make an order for costs –

(a) the general rule is that the unsuccessful party or parties shall be ordered to pay the costs of the successful party or parties; but

(b) the Court may make a different order.

(3) In deciding what order, if any, to make about costs, the Court shall have regard to all the circumstances, including –

(a) the conduct of all the parties;

(b) whether a party has succeeded on part of his case, even if he has not been wholly successful; and

(c) any admissible offer to settle made by a party which is drawn to the Court's attention.

(4) Where a party entitled to costs is also liable to pay costs, the Court may assess the costs which that party is liable to pay and either –

(a) set off the amount assessed against the amount the party is entitled to be paid and direct him to pay any balance; or

(b) delay the issue of a certificate for the costs to which the party is entitled to until he has paid the amount which he is liable to pay.

20. Payment on account of costs

(1) Where the Court has ordered a party to pay costs but has not determined the amount of those costs, it may order an amount to be paid on account before the costs are assessed.

(2) Any sum ordered to be paid on account of costs under paragraph (1) shall not exceed the sum which, on a brief prima facie view, the Court considers to be the minimum amount which is likely to be determined upon assessment.

21. Procedure for assessing costs

(1) Where the Court orders a party to pay costs to another party, it shall decide upon the basis of assessment under rule 22, and shall make a summary assessment of costs as provided under rule 23 unless it is not practicable to do so.

(2) If the Court does not make a summary assessment of the costs, the amount of the costs shall be determined by detailed assessment in accordance with rule 24.

22. Basis of assessment

(1) Where the Court makes an order for costs –

(a) the amount of the costs shall be assessed on the standard basis unless the Court orders that the costs are to be assessed on the indemnity basis; and

(b) the Court may order that the costs are to be assessed on the indemnity basis where it is satisfied, having regard to all the circumstances, that it is fair and reasonable to do so on the grounds that –

(i) the conduct of the paying party has been highly unreasonable; or

(ii) the circumstances of the case make it exceptional in some other way.

(2) The amount of costs allowed upon an assessment on the standard basis shall be the costs incurred by the receiving party to the extent that those costs were reasonably incurred and reasonable and proportionate in amount, with any doubt being resolved in favour of the paying party.

(3) The amount of costs allowed upon an assessment on the indemnity basis shall be the costs incurred by the receiving party to the extent that those costs were reasonably incurred and reasonable in amount with any doubt being resolved in favour of the receiving party.

(4) The amount of costs allowed on an assessment on either basis shall not exceed the amount of costs which the receiving party has paid or is liable to pay.

23. Summary assessment of costs

(1) A summary assessment is a determination of the amount payable under an order for costs by the Court which made the order for costs.

(2) A summary assessment shall be carried out at the hearing at which the order for costs is made.

(3) Not less than 24 hours before the hearing, each party which intends to claim costs to be assessed by summary assessment shall serve a summary schedule of the costs claimed on any party against which it intends to seek those costs, setting out the following information –

(a) the amount of costs claimed;

(b) the basis on which those costs have been calculated;

(c) a summary of the disbursements claimed.

24. Detailed assessment of costs

(1) A detailed assessment of costs is a determination of the amount payable under an order for costs, other than a summary assessment.

(2) The determination referred to in paragraph (1) shall be made by the Master pursuant to the following procedure –

(a) not later than 6 weeks from the date of the order for costs, or such other period as may be ordered by the Court which made the order for costs, the receiving party shall serve upon each paying party a detailed schedule of the costs claimed, including the following information –

(i) the amount of costs claimed;

(ii) the basis on which those costs have been calculated;

(iii) a breakdown of the time spent by each fee-earner into units of not more than one hour and the amount charged per hour or for that work, as the case may be; and

(iv) a breakdown of the disbursements claimed;

(b) not later than 14 days from service of the schedule under paragraph (a), each paying party shall serve upon the receiving party a counter-schedule setting out any items which the paying party asserts should be reduced or disallowed and a brief statement of the grounds for that assertion;

(c) if the parties cannot reach an agreement as to the amount payable by the paying party, the receiving party shall within 30 days of the service of any counter-schedules inform the Court in writing that agreement has not been possible, and the matter shall be referred to the Master for assessment;

(d) the general rule is that the Master shall make an assessment of the amount payable by the paying party without a hearing;

(e) if the Master considers that a hearing is necessary, he shall list a hearing at which the parties may make submissions for the Master to determine the amount of costs payable. The determination of the amount payable may be made either at the hearing itself if practical, or immediately following the hearing;

(f) the Master may give reasons for any decision which he makes upon a detailed assessment but shall not be required to do so, and there shall be no appeal from his decision;

(g) within 7 days of the conclusion of a detailed assessment under paragraph (d) or (e), the Master shall prepare and serve on any paying party and any receiving party a certificate of the amount assessed to be payable, together with the reasons for his decision, if any.

25. Time for complying with order for costs

Unless the Court orders otherwise, a party shall comply with an order for the payment of costs within 14 days of –

(a) the date of the judgment or order if it states the amount of those costs; or

(b) if the amount of those costs or part of them is decided later, the date of the order determining the amount or the certificate issued under rule 24(g).

26. Special situations

(1) Where the Court makes an order which does not mention costs, no party shall be entitled to costs in relation to that order.

(2) Subject to any order of the Court which ordered the transfer, where proceedings are transferred from a Court to a panel of 3 Judges, the panel of 3 Judges to which they are transferred may deal with all the costs, including the costs before the transfer.

(3) Subject to any order of the Judge in Chambers, where proceedings are returnable before a panel of 3 Judges on an interim measures application as provided in section 42(1A) of the Act and in rule 14(4), the panel of 3 Judges may deal with all the costs, including the costs incurred before the Judge in Chambers on the initial hearing held pursuant to rule 14(3).

27. Wasted costs' orders

(1) This rule shall apply where the Court is considering whether to make a costs order against the legal representative(s) of a party.

(2) The Court may order a legal representative to meet some or all of the costs of the proceedings, where such costs have been incurred by a party –

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative; or

(b) which, in the light of any such act or omission occurring after they were incurred, the Court considers it is unreasonable to expect that party to pay.

(3) The Court shall give the legal representative a reasonable opportunity to attend a hearing to give reasons why it should not make a wasted costs order.

(4) For the purposes of this rule, the Court may direct that privileged

documents are to be disclosed to the Court, and, if the Court so directs, to the other party to the application for a wasted costs order.

(5) When the Court makes a wasted costs order, it shall specify the amount to be disallowed or paid.

(6) The Court may direct that notice shall be given to the legal representative's client, in such manner as the Court may direct, of –

(a) any proceedings under this rule; or

(b) any wasted costs order made under it against his legal representative.

28. Security for costs in arbitration claims

(1) A defendant to any arbitration claim may apply for security for his costs of the proceedings.

(2) An application for security for costs shall be supported by written evidence either by way of affidavit or in the form of one or more witness statements accompanied by any supporting documents.

(3) Where the Court decides to make an order for security for costs, it shall –

(a) determine the amount of security;

(b) direct the manner in which and the time within which the security shall be given; and

(c) make an order specifying the consequences of a breach of the order for security for costs.

29. Conditions to be satisfied for order for security for costs

(1) The Court may make an order for security for costs under rule 28 if –

(a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and

(b) one or more of the conditions in paragraph (2) applies.

(2) The conditions are that –

(a) the claimant is resident out of the jurisdiction;

(b) the claimant is a company or other body, whether incorporated inside or outside Mauritius, and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;

(c) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;

(d) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;

(e) the claimant is acting as a nominal claimant and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;

(f) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

30. Security for costs of an appeal

The Court may order security for costs of an appeal against –

(a) an appellant;

(b) a respondent who also appeals,

on the same grounds as it may order security for costs against a claimant under rule 28.

31. Commencement

These rules shall come into operation on the 1st June 2013.

Made by the Chief Justice, after consultation with the Rules Committee and the Judges on 29 May 2013.

SCHEDULE
[Rules 5 and 12(3)]

FEES

		(Rs)
1.	Fee payable on starting an arbitration claim	10,000
2.	Fee per page for drawing up, or a certified copy or transcript or extract, of judgment, order or other document	100