

Signed at Tokyo December 18, 1965
Entered into force December 18, 1965

Agreement relating to the Arbitration Rule on the Loan Agreement between the Republic of Korea and the Overseas Economic Cooperation Fund, Japan

Dated December 18, 1965

With regard to Article XIV of the Loan Agreement, dated June 22, 1965, entered into between the Government of the Republic of Korea and the Overseas Economic Cooperation Fund, the parties to the said Loan Agreement hereby agree on the following rule governing the procedure for the settlement of disputes arising from the said Loan Agreement, Project Agreements and all other agreements incidental thereto.

IN WITNESS WHEREOF, the parties hereto have duly signed this eighteenth day of December, 1965.

For For
THE GOVERNMENT OF THE OVERSEAS ECONOMIC
THE REPUBLIC OF KOREA COOPERATION FUND, JAPAN

(Assistant Minister for Planning, (President)
Economic Planning Board)

THE ARBITRATION RULE

Article I. Preliminary

Section 1. 1 (The Purpose of This Rule) The purpose of this Rule is to lay down the procedure at the various stages of arbitration, the constitution of the Tribunal, the validity of the award, etc. in order to bring about an early and definite settlement of the dispute as far as possible.

Section 1. 2 (Definitions) In this Rule, unless the context otherwise requires,

- (a) "the Loan Agreement means the Loan Agreement concluded on June 22, 1965, Project Agreements to be concluded and all agreements incidental thereto between the Government of the Republic of Korea and the Overseas Economic Cooperation Fund.
- (b) "the Borrower" means the Government of the Republic of Korea.
- (c) "the Fund" means the Overseas Economic Cooperation Fund.
- (d) "a dispute" or "disputes" mean (i) controversies between both parties, claims of one party against the other party, or differences of opinion arising from

the Loan Agreement, and (ii) cases where the obligated party does not carry out the directions of the committee set forth in the relevant clause of the Loan Agreement.

- (e) “the Tribunal” means the Arbitral Tribunal to be constituted pursuant to this Rule, including the sole arbitrator referred to in Section 2. 2 (2).
- (f) “the award” means an arbitration award made by the Tribunal.

Section 1. 3 (Application of This Rule) As the Loan Agreement contains a clause to the effect that both parties shall abide by this Rule, this Rule shall duly apply to the Loan Agreement.

Article II. Parties and the Tribunal

Section 2. 1 (Parties to the Arbitration) The parties to the arbitration shall be the Borrower on the one side and the Fund on the other side.

Section 2. 2 (Constitution of the Tribunal)

- (1) The Tribunal shall consist of three arbitrators appointed as follows:
 - (a) one arbitrator shall be appointed by the Borrower;
 - (b) the second arbitrator shall be appointed by the Fund;
 - (c) the third arbitrator shall be appointed pursuant to the provisions of Section 2. 4 (3).
- (2) In the case where, there exist reasons for the commencement of arbitration proceedings referred to in Section 4. 1 (2), and one party has given the notice provided for in Section 2. 4(1), but has not received the notice provided for in Section 2. 4 (2) from the other party within fifty days, the arbitrator appointed by the first party shall become the sole arbitrator.
- (3) In case any arbitrator, who has been appointed shall die, become incapacitated, resign or become unable to act for any other reasons, a successor arbitrator shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator.

Section 2. 3 (Qualification of Arbitrators)

- (1) No person who has a financial or personal interest in the matters submitted to arbitration shall be appointed an arbitrator.
- (2) The third arbitrator appointed pursuant to paragraph (3) of section 2. 4 shall not be a person of the same nationality as any of the parties to the arbitration.

Section 2. 4 (Request for Arbitration Proceedings and Procedure for the Appointment of Arbitrators)

- (1) Arbitration proceedings shall be instituted upon written notice by one party to the other demanding arbitration. Such notice shall set forth the following:
 - (a) Nature of the dispute.
 - (b) Nature of the relief sought.
 - (c) Full name, occupation, address, career and nationality of the arbitrator appointed by such party.
- (2) The party who has received the notice referred to in the preceding paragraph shall dispatch to the other party a written notice giving the full name, occupation, address, career and nationality of the arbitrator appointed

by him within fifty days after receipt of the notice from the party demanding arbitration. In case it is deemed necessary to make answers and counter-claims to the other party, such written notice shall give the answers and counter-claims to the matters provided for in (a) and (b) of the preceding paragraph.

- (3) The two arbitrators appointed in accordance with the preceding two paragraphs shall, within thirty days of the appointment of the last arbitrator, appoint a third arbitrator. Failing the appointment of a third arbitrator within thirty days after the appointment of the last arbitrator, one or both parties may ask a person, specifically agreed upon between them, to appoint such arbitrator.

Section 2. 5 (Binding by This Rule) Any and all arbitrators appointed in accordance with the provisions hereof shall be bound by this Rule and shall arbitrate in accordance therewith.

Section 2. 6 (Place and Time of Meeting of the Tribunal)

- (1) The place of meeting of the Tribunal shall be the place of signing the Loan Agreement, dated June 22. 1965.
- (2) Within thirty days after the appointment of the third arbitrator or after the appointment of the sole arbitrator provided for in Section 2. 2 (2), the third arbitrator or the sole arbitrator shall give both parties and both arbitrators (excluding the case of the sole arbitrator) a notice of appointment of the time of the first sitting of the Tribunal. The time of the second and subsequent sittings of the Tribunal shall be determined by the Tribunal.

Section 2. 7 (Remuneration of the Arbitrators and Other Persons and Costs of Arbitration)

- (1) The amount of remuneration of the arbitrators and such other persons as shall be required for the conduct of arbitration proceedings shall be fixed by consultation between the parties, and if the parties shall not agree on the amount before the Tribunal shall convene, the tribunal shall fix such amount as shall be reasonable under the circumstances.
- (2) Each party shall defray his own expenses in the arbitration proceedings. The costs of Tribunal, including the remuneration of the arbitrators and other person as above prescribed, shall be paid by one or both parties who shall be liable therefor, as determined in the award of the Tribunal.
- (3) The Tribunal may provisionally collect from both parties beforehand as its costs such amount as shall be reasonable under the circumstances.

Section 2. 8 (Language) The arbitration proceedings shall be conducted in the English language.

Article III. Decisions of the Tribunal

Section 3. 1 (Principle of Majority Decision) The award and all other matters requiring the decisions of the Tribunal shall be decided by majority vote of the arbitrators.

Article IV. Commencement of Arbitration Proceedings and Examination by the Tribunal

Section 4. 1 (Commencement)

- (1) The Tribunal shall be deemed as having been constituted at the time when a notice of the first sitting of the Tribunal prescribed in Section 2. 6 (2) shall have been served:
- (2) At the commencement of arbitration proceedings, the Tribunal shall confirm that the following requirements have all been fulfilled:
 - (a) That, despite the consultation by the committee prescribed in the relevant clause of the Loan Agreement which precedes the arbitration, no agreement has been reached within ninety days from the date of the first meeting or, despite the request of either party under the Loan Agreement for the commencement of the above consultation, such consultation has not been actually commenced within sixty days after such request, or the decision reached at the committee has not been carried out within sixty days.
 - (b) That, at the commencement of arbitration proceedings, there still exists a dispute necessitating arbitration.

Section 4. 2 (Submission of Statement, etc. by the Parties)

- (1) The party who has requested the arbitration proceedings shall, on the day of the first sitting of the Tribunal, submit to the Tribunal a statement concerning the dispute referred thereto. Such statement shall give the following matters and shall be accompanied by a copy of the notice demanding arbitration provided for in Section 2. 4 (1).
 - (a) Nature of the dispute.
 - (b) Nature of the relief sought.
- (2) The other party shall submit a copy of the notice provided for in Section 2. 4 (2) and may further, if considered necessary, submit a statement giving his answers and counter-claims.

Section 4. 3 (Hearing of the Parties) The Tribunal shall afford to both parties a fair hearing. If, however, any party who has received notice of a meeting of the arbitrators shall fail to be present at the Tribunal without cause satisfactory to the Tribunal, the Tribunal may proceed with the arbitration proceedings on its own judgement.

Section 4. 4 (Evidence) The Tribunal may examine witnesses, documents, etc. considered necessary by the parties for establishing their contentions.

Section 4. 5 (Other Proceedings) Besides the above-mentioned proceedings, the proceedings necessary for arbitration and the interpretation of this Rule shall be determined by the Tribunal.

Section 4. 6 (Standards for Judgement relating to the Rights and Obligations of the Parties) The Tribunal shall judge the rights and obligations of the two parties in accordance with the laws and regulations provided for in Article XVIII of the Loan Agreement, dated June 22, 1965.

Article V. Arbitration Award

Section 5. 1 (The Award)

- (1) The Tribunal shall make an award within four months from the date of the first sitting of the Tribunal, provided, however, that the Tribunal may extend the time for a period which the Tribunal may deem necessary.
- (2) The award mentioned in the preceding paragraph shall be in writing, and the award signed by a majority of the arbitrators shall be the award of the Tribunal.
- (3) The Tribunal shall serve a duly authenticated copy of the award to each party in accordance with the provisions of Section 7. 1

Section 5. 2 (Compromise in the Course of Arbitration) The parties may make a compromise during a sitting of the Tribunal with respect to the matters pending in the Tribunal at any time prior to the award and a Protocol prepared in accordance therewith and signed by the arbitrators shall have the same validity as the award of the Tribunal provided for in the following Section.

Section 5. 3 (Validity) The award shall be final and binding upon the parties, and each party shall abide by and comply with the award.

Article VI. Entry in a Competent Court

Section 6. 1 The original of the award may be filed with a court of competent jurisdiction in the Republic of Korea and/or Japan.

Section 6. 2 If, within thirty days after duly authenticated copies of the award shall be delivered to the parties, the award shall not be complied with, any party may enter judgement in terms of the award in any court of competent jurisdiction against any other party.

Article VII. Service of Notice or Process

Section 7. 1 Notice or processes under this Rule shall be deemed to have been duly given or served when they shall be delivered by hand or by registered mail to the following:

the Borrower—Minister of Economic Planning Board◆ar Republic of Korea Seoul, Korea.
the Fund—President
The Overseas Economic Cooperation Fund
Iino Building, No. 22, 2-chome,
Uchisaiwaicho, Chiyoda-Ku,
Tokyo, Japan.