

# **THE AIRROC DISPUTE RESOLUTION PROCEDURE**

**September 2014 Edition**



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The AIRROC Dispute Resolution Procedure (the “Procedure”) was developed in 2008 and 2009 by a subcommittee of AIRROC’s Legislative and Amicus Committee. The Procedure is intended especially for less-complicated disputes, or those that would be cost-prohibitive to submit to plenary industry arbitration practices. It is expected that the Procedure will be of interest and serve as a valuable tool to parties able to agree on a more expedited method of resolution. The parties must agree on what specific disputes will be submitted for resolution under these rules.

Below is the September 2014 Edition of the Procedure, which will be amended from time to time.

## **I. Arbitrator List**

- A. AIRROC shall maintain and periodically update a list of arbitrators (the “List”), which together with arbitrator resumes will be available on its website. To be considered for inclusion, an applicant must complete an *Arbitrator Application* (Form 1) and submit it to AIRROC’s Executive Director, along with a current resume. The required qualifications are: (1) certification in good standing by ARIAS\*U.S. to serve as an arbitrator; or (2) at least ten years’ employment by one or more insurance or reinsurance companies or other entities in an insurance group, including companies in run-off or receivership and risk-bearing syndicates. ARIAS-certified arbitrators will be designated with an asterisk on the List.
- B. AIRROC reserves the right at any time to: (1) approve or disapprove a candidate’s application for inclusion on the List; (2) remove an arbitrator’s name from the List; or (3) amend the criteria for inclusion (including retroactive application to persons who qualified under previous criteria).
- C. Notwithstanding the above, AIRROC relies on the information provided by applicants and makes no representations whatsoever regarding the accuracy or completeness thereof.
- D. Commencing January 1, 2015, AIRROC will periodically contact all of its approved arbitrators to certify/update contact information. As part of that process, arbitrators will be asked to state how many times in the last calendar year he/she was appointed as an arbitrator pursuant to the Procedures.

## **II. Initiation of Proceedings**

- A. To initiate use of the Procedure, the parties must jointly complete an *Initiation of Proceedings Form* (“IOPF”) (Form 2). The IOPF requires the parties, among other things, to identify the contract or contracts at issue in the arbitration; to stipulate to the claim(s) and any counterclaim(s) to be arbitrated; and to state the principal amount sought in respect of each claim and any counterclaim to the extent possible. The IOPF will thus define the

parameters of the dispute, the subject matter of the arbitration, and the scope of the arbitrator's authority. In agreeing to be bound by the Procedure, the parties stipulate that the arbitration will be strictly limited to the subject matter identified in the IOPF, absent their written agreement to an extension or change.

- B. The parties are encouraged to discuss at the outset their respective views and expectations on significant issues, including: (1) the substantive issues in dispute; (2) the contemplated need for documents or other discovery (especially important given the consensual nature of discovery under these rules); (3) whether any party expects to submit its case via in-house or outside counsel; and (4) the need, length, and form of any evidence to be presented at a hearing. It is recommended that the parties shall have discussed each of these points *before* agreeing to use the Procedure.
- C. To initiate the arbitrator selection process administered by AIRROC and described in Section III of the Procedure, the parties must jointly submit to AIRROC's Executive Director: (1) the completed IOPF; and (2) an **Arbitrator Referral & Disclosure Form** (Form 3A) with Part I completed. (Part II of the latter form is for prospective arbitrators to complete and shall be left blank by the parties.) Arbitrator selection will then proceed in accordance with Section III.
- D. The parties are encouraged to reach agreement on the arbitrator *without* AIRROC's involvement. Where the parties can agree on the arbitrator at the outset of the proceeding, they should proceed with arbitration under these rules without informing AIRROC or submitting the documents described in Paragraph C, above. An alternative **Arbitrator Referral & Disclosure Form** designed to assist the parties in selecting an arbitrator by consent is attached as Form 3B. No party shall have *ex parte* communications with any prospective arbitrator.
- E. The parties shall send the completed IOPF to the arbitrator no later than the time of his or her selection.

### III. Arbitrator Selection Administered by AIRROC

- A. AIRROC is available to assist in arbitrator selection when requested by the parties. The parties must indicate on the IOPF whether they prefer AIRROC to select prospective arbitrators from the entire List or, alternatively, only from the ARIAS-certified arbitrators designated on the List. After receiving the IOPF and applicable Arbitrator Referral & Disclosure Form submitted by the parties (*see* Section II.C.), AIRROC will select 15 names at random and inform the persons selected, by email, that they are in contention to serve as arbitrator of the parties' dispute. AIRROC will attach the Arbitrator Referral & Disclosure Form to its email and request each prospective arbitrator to complete and return Part II (Availability & Disclosure Statement) by email within one week. (AIRROC shall have no responsibility to verify the accuracy or completeness of the disclosures received.) After identifying the timely submitted responses of prospective arbitrators indicating an availability to serve, AIRROC will notify the parties simultaneously of the candidates

remaining in contention and provide copies of such candidates' completed statements and resumes.

- B. Next, not later than one week after the above notification from AIRROC, the parties will simultaneously exchange their respective choices of just over half of the remaining names as acceptable arbitrator candidates. For example, if 11 of the original 15 candidates remain in contention, each party will select six names. This process will result in at least one match among the parties' selections. If there is just one match, then that person shall be the arbitrator. If there is more than one match, then the parties will notify AIRROC's Executive Director, and AIRROC will have the arbitrator chosen by lot from the parties' matched selections.
- C. Notwithstanding the commencement of the arbitrator selection process described in this section, the parties are free to reach agreement on the arbitrator at any time before its completion. (Where AIRROC is continuing to play a role in administration, the parties should inform AIRROC of any such agreement as soon as possible.) The parties should then proceed with arbitration as provided below.
- D. No party shall have *ex parte* communications with any prospective arbitrator during the selection process described herein.

#### IV. Procedural Rules

- A. **Organizational Meeting:** Not later than 21 days after the arbitrator is notified of his or her selection, the parties and the arbitrator will conduct an organizational conference by telephone, unless the parties agree to an adjournment or a meeting in person. At the conference, the arbitrator will make further disclosures to the parties as appropriate. Unless there is a clear, fundamental conflict precluding the arbitrator's engagement, the parties will indicate their acceptance of the arbitrator. The parties will further describe the issues in dispute to the arbitrator, and a schedule for all activities in the proceeding will be established. The schedule will be enforced absent the parties' agreement to change it or the occurrence of exigent and unanticipated circumstances to be determined at the discretion of the arbitrator.
- B. **Discovery:** There shall be no discovery or any motions or applications for discovery, unless the parties agree otherwise. However, nothing shall preclude the arbitrator, *sua sponte*, from requiring the production of specified documents that the arbitrator considers necessary for the proper resolution of the dispute.
- C. **Preliminary Relief:** There shall be no motions or applications for preliminary relief, unless the parties agree otherwise.
- D. **Hearing:** The dispute shall be submitted to the arbitrator on briefs and documentary evidence only (*i.e.*, no live witness testimony), unless the parties agree otherwise. Oral argument or presentations on the briefs and documents submitted may be directed by the arbitrator in his or her discretion, or when requested jointly by the parties. The duration of

any argument or presentations, together with any live witness testimony agreed to by the parties (all of which shall be referred to collectively as the “Hearing”), shall not exceed one day, unless the parties agree otherwise, or the arbitrator considers additional oral presentations or additional live witness testimony necessary for the proper resolution of the dispute.

- E. **Affidavits:** The arbitrator will have authority to determine whether affidavits will be permitted and, if so, what rules will be followed as to such affidavits regarding their subject matter, scope, timing, rebuttal, and the like.
- F. **Award:** The arbitrator shall render a written award not later than 30 days after the submission of briefs or the conclusion of the Hearing, if any. Such award will set forth the disposition of the claims(s) and any counterclaim(s) asserted and the relief granted, if any. However, the arbitrator will not issue a “reasoned” award, unless the parties agree otherwise.
- G. **Communications:** No party shall at any time from the commencement of the arbitrator selection process have *ex parte* communications with the arbitrator concerning any aspect of the proceeding.

## V. Fees

- A. **Arbitrator Fees:** The arbitrator shall charge an hourly rate of \$150, which will be apportioned equally among the parties. In addition, each party shall bear an equal share of the arbitrator’s reasonable expenses. Upon the arbitrator’s initial selection, each party shall pay a \$2,000 retainer to the arbitrator. Half of the retainer (\$1,000 per party) will be non-refundable to the parties and kept by the arbitrator as minimum compensation regardless of the length of the proceeding. The retainer will be applied to the arbitrator’s final statement for services rendered at the conclusion of the proceeding, with any balance returned at that time, subject to the above minimum. All fees of the arbitrator will be paid directly to the arbitrator.
- B. **AIRROC Service Fee:** Regardless of whether AIRROC administers arbitrator selection, AIRROC will not charge any service fee to member companies for use of the Procedure. If a member company has a dispute with a non-member company(ies) and the parties agree to use AIRROC to administer arbitrator selection, AIRROC will charge the nonmember company(ies) a total service fee of \$1,000. If none of the companies in a dispute is a member of AIRROC but the non-members agree to use AIRROC to administer arbitrator selection, AIRROC will charge the non-members a total service fee of \$2,000. Any fee due shall be paid in full to AIRROC simultaneously with the submission of documents described in Section II.C. AIRROC shall have no obligation to refund payment under any circumstances (*e.g.*, even if settlement occurs or the parties agree on the arbitrator without AIRROC having rendered service).

## **VI. Confidentiality**

- A. Unless the parties agree otherwise in writing, the parties and arbitrator (including all prospective arbitrators) agree to maintain the confidentiality of all papers, communications, statements, submissions, materials, processes, orders, and awards (“Information”) in connection with the arbitration. Confidentiality of the Information will remain in effect after conclusion of the arbitration. Disclosure of any Information may be made only to the extent necessary:
- (i) to enforce, confirm, vacate, or modify an order or award of the arbitrator;
  - (ii) in communications with auditors retained by a party or with regulatory authorities or their agents;
  - (iii) to seek recovery from retrocessionaires regarding the subject matter of the arbitration;  
or
  - (iv) to comply with lawful subpoenas or orders of any court or other arbitration panel.
- B. The parties will make good faith efforts to limit the extent of any disclosure of the Information and will cooperate with each other in resisting or limiting disclosure to the extent reasonable and appropriate.

## **VII. Hold Harmless and Indemnification**

- A. The parties agree that they shall not assert any claim, file any suit, or initiate any action of any kind against the arbitrator or AIRROC concerning any matter arising from an arbitration conducted under the Procedure. Each party further agrees jointly and severally to release, protect, defend, indemnify, and hold harmless the arbitrator, AIRROC, and its officers, principals, directors, employees, agents, representatives, and affiliates from and against any and all claims, liabilities, judgments, losses, damages, demands, causes of action, attorney’s fees, expert fees, expenses, and the like, in law or in equity, directly or indirectly arising from an arbitration conducted under the Procedure, including for any alleged non-performance of services. Each party further agrees jointly and severally to reimburse the arbitrator and AIRROC for all reasonable expenses (including attorney’s fees) as they are incurred in connection with the investigation of, preparation for, or defense against any pending or threatened claim arising from an arbitration conducted under the Procedure.
- B. The arbitrator agrees not to assert any claim, file any suit, or initiate any action of any kind against AIRROC or its officers, principals, directors, employees, agents, representatives, and affiliates concerning any matter arising from the Procedure or an arbitration thereunder, including any derivative claim for a suit or action brought against the arbitrator or any claim by the arbitrator to collect unpaid fees.
- C. Paragraphs A and B are non-cancelable and of unlimited duration.

- D. Nothing in this section shall abridge any right that a party may have with respect to another party to seek to enforce, confirm, vacate, or modify any order or award that the arbitrator may render, or any right of the arbitrator to collect fees due from a party.

## **VIII. Absence of Precedential or Preclusive Effect**

Unless the parties agree otherwise in writing, it is stipulated by the parties that any arbitration conducted under the Procedure is solely for the purpose of resolving the specific dispute or disputes that the parties have designated as constituting the subject matter of the arbitration; and, to the fullest extent permitted by law, it is further stipulated that any award or ruling will not be subject to collateral estoppel or *res judicata* or have any other precedential or preclusive effect beyond the strict confines of the subject matter.

## **IX. Confirmation and Enforcement**

The parties agree that the award of the arbitrator will be fully binding concerning any matter submitted for arbitration and that the award can be confirmed by any court of competent jurisdiction. Any petition to confirm or vacate the award will be filed under seal to the extent permitted by the court. Notwithstanding the above, no party shall seek to confirm a monetary award that has been paid in full.