

## **The SAAVA Short Form Arbitration Rules 2013**

The SAAVA Short Form Arbitration Rules 2013 are drafted on the basis that the parties wish the decision of an arbitrator on the facts and the law to be final and binding upon the parties, thus excluding recourse to the Courts except in the limited circumstances covered by the mandatory rules in Schedule 1 of the Arbitration (Scotland) Act 2010 which by law cannot be disapplied or modified by the parties.

### **The Rules**

#### **Article 1**

- 1.1 These arbitration rules shall be known as “The SAAVA Short Form Arbitration Rules 2013” and are referred to as “these Rules”.
- 1.2 These Rules shall become effective on 1<sup>st</sup> June 2013
- 1.3 These Rules shall apply where parties have agreed or agree that any rent review or other dispute between them should be referred to arbitration under these Rules.
- 1.4 All arbitrations conducted under these Rules shall be governed by the Arbitration (Scotland) Act 2010 (the “2010 Act”).
- 1.5 The Act includes “mandatory rules” which apply to all arbitrations which have their seat in Scotland.
- 1.6 The Act also includes “default rules” which can be modified or disapplied by agreement of the parties.  
By the adoption of these Rules, default rules 1, 2, 5, 6, 22, 40, 41, 53 and 69 shall not apply to any arbitration conducted under these Rules.
- 1.7 All arbitrations under these Rules shall be conducted under Scots Law.
- 1.8 These Rules apply only to any arbitration where any question in issue is between Landlord and Tenant of an Agricultural Holding or any matter relating to an Agricultural Holding is the subject of a dispute between Landlord and Tenant.
- 1.9 In these Rules
  - (i) Any words denoting one gender shall denote the other;
  - (ii) Any reference to “day” or “days” shall mean calendar days;
  - (iii) Any word denoting the singular shall include the plural where the context requires.

## **Commencement of Arbitration**

### **Article 2**

- 2.1 An arbitration under these Rules commences when one party to a dispute agrees with the other party to a dispute to submit the dispute to arbitration under these Rules.
- 2.2 For the purpose of these Rules "writing" shall include e-mail, fax, electronic or other means provided that it is legible and capable of being reproduced for subsequent reference.

## **Appointment of Arbitrator**

### **Article 3**

- 3.1 Arbitrations under these Rules shall be conducted by a sole arbitrator who shall be an individual.
- 3.2 Within seven (7) days of receipt of his appointment, the arbitrator shall write to both parties setting out his proposed terms of business including fee rates ("the proposal"). If practicable, the arbitrator shall offer a fixed fee alternative. Such rates and/or fixed fee shall take into account any relevant factor including the amount of the sum(s) in dispute, and the complexity of the dispute.
- 3.3 The arbitrator shall have the power to request the parties to pay a reasonable deposit against his fees.
- Any such deposit shall be held by, or on behalf of, the arbitrator in a designated bank account separate from his personal and business accounts. Such deposit, including any accrued interest thereon, remains the property of the parties until, and to the extent that, the arbitrator has earned his fees.
- 3.4 The parties shall use all reasonable endeavours to agree terms of business with the arbitrator within seven (7) days of receipt of the proposal.
- 3.5 If the arbitrator and the parties are unable to agree terms of business, these shall be referred by either party to the President of SAAVA, failing whom the Vice President, failing whom the Immediate Past President, for determination which he shall do within seven (7) days of such referral and the parties and the arbitrator agree to be bound by such determination.
- 3.6 In reaching such a determination, the President or any alternate as provided for in article 3.5 shall give full and careful consideration to each and all of:
- (i) the proposal and any comments thereon made by the parties or the arbitrator;
  - (ii) the nature and size of the dispute;
  - (iii) the market rate for arbitrators in and near the relevant location;
  - (iv) the market rate for professionals of the type chosen as arbitrator; and
  - (v) any other relevant factor (including any which the parties draw to his attention).
- 3.7 The arbitrator shall at all times act in an impartial manner and shall, irrespective of the means of his appointment, be independent of the parties.

## **Conduct of Proceedings**

### **Article 4**

- 4.1 The arbitrator and the parties shall conduct the arbitration without unnecessary delay and without incurring unnecessary expense.
- 4.2 Within fourteen (14) days of receipt of his appointment, the arbitrator shall issue directions concerning the conduct of the arbitration. Such directions can be varied by the arbitrator at his own instance or pursuant to an application by either party or by both.
- 4.3 Such directions shall, subject to such variation as is appropriate to fulfill the mandatory rules in each case, include provisions as follows:
- (i) each party shall issue a "Statement of Claim" in writing to the arbitrator, copied to the other party at the same time and in the same manner as it is sent to the arbitrator, within fourteen (14) days of the directions being issued (a) stating in all necessary detail what it is the party is claiming and the legal and factual basis for the claim and (b) attaching all evidence including witness statements, documents, photographs or other information relied upon by the party;
  - (ii) each party shall reply in a "Statement of Counterclaim" in writing to the arbitrator, copied to the other party at the same time and in the same manner as it is sent to the arbitrator within fourteen (14) days of receipt of the statement of claim (a) replying in all necessary detail to what is being claimed and (b) attaching all evidence including witness statements, documents, photographs or other information relied upon by the party
  - (iii) any further responses in writing by either party to the other shall be at the discretion of the Arbitrator;
  - (iv) either party can request the arbitrator to order that the other produce additional documents.
- 4.4 The arbitration shall be conducted on a "documents-only" basis where the arbitrator and the parties so decide. Notwithstanding the foregoing, the arbitrator may order a hearing of any kind at his discretion if he considers it is necessary for the purpose of reaching a decision.
- 4.5 The arbitrator shall have the power to inspect any premises which are the subject or concerned with the dispute, or visit the place where rent is charged and due to be paid, or visit or inspect any other place so as to inform himself properly about the subject matter of the dispute, provided always that he shall inform the parties of the details of all such visits prior to issuing his Award;

Such inspections or visits will be unaccompanied, unless agreed otherwise.

Should the inspections or visits be made accompanied then they will only be made in the company of both parties and/or a representative of each. Such inspections or visits shall be limited to fact-finding inquiries, and may include the arbitrator questioning the parties or their representatives.

- 4.6 With reference to article 6 below (“arbitration expenses”), if either party proposes to claim as arbitration expenses, the cost of professional advice or other assistance, it shall register its intention do so in its statement of claim or statement of counterclaim (as appropriate) by identifying (a) the adviser (b) what types(s) of advice the adviser will give and (c) an indication of the likely costs which he expects to incur.

## **The Award**

### **Article 5**

- 5.1 The arbitrator shall publish his award within fourteen (14) days, of the latest of:
- (i) the date upon which he received the last documents or submissions or;
  - (ii) the close of any hearing; or
  - (iii) the last of any site visit or inspection.
- 5.2 The time period stipulated in article 5.1 shall, subject to intimation by the arbitrator to the parties prior to its expiry, be capable of being extended by the arbitrator by seven (7) days, but thereafter only by the consent of parties for such period as the parties may agree.
- 5.3 An arbitration award shall include the arbitrator’s succinct reasons for his award.
- 5.4 Where the parties have agreed that expenses can be claimed, and are claimed in the statement of claim or in the statement of counterclaim, the arbitrator may award any or all of payment, damages, interest or arbitration expenses.
- 5.5 When deciding which party is liable to the other for such expenses or other payment, and by how much, the arbitrator shall ignore any settlement offer(s) that may have been made by either party, but it shall be open to the arbitrator to consider any such settlement offer(s) when awarding expenses.

## **Arbitration Expenses**

### **Article 6**

- 6.1 The term “arbitration expenses” includes:
- (i) the arbitrator’s fees and expenses incurred in conducting the arbitration;
  - (ii) the parties’ legal and other expenses in the arbitration; and
  - (iii) the fees and expenses charged by SAAVA in respect of its acting under article 3.5 above.
- 6.2 The arbitrator shall normally decide who is responsible for paying the arbitration expenses on the basis that the unsuccessful party in the arbitration will pay all of them but, at his reasonable discretion and upon giving reason(s), he may allocate them between the parties on some other basis.

**6.3** No party may make any claim for expenses under article 6.1(ii) unless it is agreed between the parties that expenses can be claimed, and has complied with article 4.6.

## **Interest**

### **Article 7**

**7.1** Where it is agreed between the parties, and is claimed in the statement of claim or in any statement of counterclaim the arbitrator may award interest in accordance with mandatory rule 50.