



## รายการอ้างอิง

### ภาษาไทย

พิชัยศักดิ์ หรยางกูร. การตีราคาทรัพย์สินเป็นปัญหาที่ใช้กระบวนการอนุญาโตตุลาการได้หรือไม่.

Thai Commerce 1,1 (มกราคม-มีนาคม 2549): 57-58.

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สัมมนา ข้อเสนอแนะและคำถามของผู้เข้าร่วมสัมมนา และคำตอบของวิทยากรผู้นำการ

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ภาคผนวก



## ภาคผนวก ก

### Precedents for an Accountancy Expert

- I Expert Clause
- II Appointment Letter
- III Terms of Reference
- IV Procedural Directions
- V Decision

#### -Important Note

These precedents are by way of example and will need careful adaptation for particular applications. They can also be used, suitably adapted, for references to experts other than accountants. See Bernstein and Reynolds for rent review precedents.

#### I Expert Clause

1 If the Vendors and the Purchasers are unable to agree on [the sales figure] by [date] the matter in dispute shall be referred, at the request of either the Vendors or the Purchasers, for decision to an independent Chartered by agreement between the Vendors and the Purchasers, or, if they have not agreed within 14 days of the [first date above] [date of request to refer by one of the parties], by the President for the time being of the Institute of Chartered Accountants in England and Wales ["the President"] on the application of either party. If an Independent Accountant has been appointed but is unable to complete the reference another Independent Accountant shall be appointed by the parties, or if they have not agreed on the appointment within 14 days of the request to do so by one of the parties, by the President.

[2 Optional provision for disclosing confidential documents or authorising disclosure from those in hands of third party.]

3 The Independent Accountant shall act as an expert and not as an arbitrator. The parties shall each have the right to make representations to the Independent

Accountant. The decision of the Independent Accountant shall, in the absence of manifest error, be final and binding on the parties. All costs incurred by the Independent Accountant shall be borne by the Vendors and the Purchasers in equal shares unless the Independent Accountant determines otherwise. The amount (if any) which becomes payable by the Purchasers to the Vendors, or, as the case may be, repayable by the Vendors to the Purchasers, as a result of the Independent Accountant's decision shall become due and payable within seven days of publication of the decision. The Independent Accountant shall have the power to direct that interest on that amount, at the rate equal to [1 per cent - a compensatory rate] above the base rate of [clearing] bank, shall be paid by the Purchasers to the Vendors or repaid by the Vendors to the Purchasers as compensation for delay in receipt in respect of the period following the date on which the matter was referred to the Independent Accountant.

4 If the amount payable as a result of the Independent Accountant's decision is not paid by either the Vendors or the Purchasers within the period of seven days after publication of the Independent Accountant's decision, interest will accrue on that amount at the rate of [4 per cent - a penal rate] above the base rate of [clearing] bank.

## II Appointment Letter

This form can be used where parties agree on the appointment of an expert without needing to apply to an appointing authority: in the other precedents it is assumed that the appointment is made by the President of the Institute of Chartered Accountants. Some appointing authorities have their own standard forms for application and appointment, and a fee is payable.

1 We refer to Clause [number] of the agreement between the Vendors and the Purchasers dated [date] by which the Purchasers acquired the whole of the issued share capital of XYZ plc from the Vendors ("the Agreement"): a copy of the agreement is enclosed.

2 Clause [number] of the Agreement provided that if the parties could not agree on [the sales figure], they should appoint an independent accountant to determine the figure. They have not been able to agree.

3 Accordingly the parties jointly request you [Mr ABC] to determine [the sales figure].

4 Draft terms of reference are enclosed, which the parties have agreed: if you are prepared to accept the appointment, please indicate whether you also approve these draft terms.

### III Terms of Reference

1 We refer to the agreement [date] ("the Agreement") between [parties] by which the Vendors sold to the Purchasers the whole of the issued share capital of XYZ plc; the Purchasers' liability to make additional payments to the Vendors or, as the case may be, the Vendors' liability to make repayment to the Purchasers depends on whether, and, if so, by how much, XYZ plc's sales exceeded or fell short of the sum of ?2 million in the year ended 31 December 1991.

2 Clause [number of expert clause] of the Agreement provided that if the parties had not agreed on [the sales figure] in clause [number] by [date] the matter was to be referred to an Independent Accountant acting as an expert and not as an arbitrator whose decision was to be final and binding and whose fees would be shared equally between the parties unless the Independent Accountant determined otherwise.

3 The parties disagree about the [sales figure]. As the parties were also unable to agree on who the Independent Accountant should be, they applied to the President of the Institute of Chartered Accountants requesting that he appoint an Independent Accountant.

4 The President of the Institute of Chartered Accountants appointed Mr ABC to be the Independent Accountant, by a letter [date].

5 The issue referred to Mr ABC is whether the [sales figure should include the sales of widgets by a subsidiary which are unconnected with the main business of XYZ plc].

6 The parties agree to pay Mr ABC's fees in equal shares and that his fees shall be charged at the rate of ?xxx per hour plus reasonable expenses [or to pay Mr ABC's fees and expenses as Mr ABC directs].



[7 Mr ABC shall decide whether either the Vendors or the Purchasers are to pay or contribute to the costs incurred by the other party.]

[8 Provision to replace Mr ABC if he becomes incapacitated during the reference, if this is not contained in the expert clause.]

[9 Provision for the decision to include interest if not in the expert clause.]

[10 Optional provision for confidential and third party documents - if not in the expert clause.]

Signed by the expert and the parties.

#### IV Procedural Directions

1 Mr ABC will receive from the Vendors acting as agents for both the Vendors and the Purchasers [here list the basic documents - the contract and other specified documents].

2 The Vendors will send Mr ABC a letter setting out their case by [date - say 28 days from date of directions]. All documents relied on and/or referred to by the Vendors must be attached to that letter, unless they have already been supplied to Mr ABC under direction 1 above. The Vendors will send the Purchasers a copy of their letter and attachments at the same time as they are sent to Mr ABC.

3 The Purchasers will send Mr ABC a letter setting out their case by [date - say 28 days from date of Vendors' letter]. All documents relied on and/or referred to by the Purchasers must be attached to the letter, unless they have already been supplied to Mr ABC under direction 1 or 2 above. The Purchasers will send the Vendors a copy of their letter and attachments at the same time as they are sent to Mr ABC.

[4 Optional provision for further submissions.]

5 Neither party has the right to call for a hearing at which witnesses would be examined. However, Mr ABC may meet the parties' accountants [and the parties themselves] either separately or together at his discretion.

6 Mr ABC may request either party or both parties to make further submissions, to be provided to Mr ABC and copied to the other party within [21] days of the request.

7 If Mr ABC decides he needs to take legal advice on the issue he is to determine, he shall instruct the [DEF] law firm after notifying the parties and obtaining their agreement to pay [DEF]'s fees.

[8 Arrangements to inspect a site or object - not usually necessary for accountancy experts.]

9 Either party has the right to apply to Mr ABC on two working days' notice given to Mr ABC and the other party.

10 Mr ABC shall issue a [non-] speaking decision within [10] weeks of the date of the latest submission.

11 All communications are to be sent to [list addresses for communications, with telephone and fax numbers]. All communications are to be sent by fax with a confirming copy sent by post.

Signed by the expert and the parties

Dated

## V Decision

1 I [ABC] was appointed to decide [define the issue: eg, whether the sales figure included the sales of widgets by the subsidiary etc] between the Vendors and the Purchasers under an agreement between the parties [dates].

2 [Here all the points in the terms of reference may be either recited, or the terms of reference themselves may be referred to by the following: The circumstances of the reference, the issue to be decided, my appointment and my fees were all provided for in Terms of Reference between the parties and myself [dated].]

3 Procedural directions for the reference were agreed on [date], and the parties made their submissions to me in accordance with those directions.

4 My decision in that the [sales of widgets by the subsidiary should be included in the sales figure]. [It will depend on the working of the Agreement whether Mr ABC needs to go further and say what the sales figure it as a consequence, and how much interest the Purchasers should pay the Vendors following the lapse of time since the issue arose.]

[5 Reasons for the decision.]

[6 The Purchasers shall pay the Vendors' costs assessed at ?xxx.]

7 My fees are ?xxx and my expenses are ?xx, payable [in equal shares by the Vendors and the Purchasers] or [payable by the Purchasers].

Signed           [ABC].

Dated.....



Centre for Effective Dispute Resolution

Model Expert Determination Agreement

Date

Parties

\_\_\_\_\_ ("Party A")

\_\_\_\_\_ ("Party B")

\_\_\_\_\_ ("Party C") etc.

(jointly "the Parties")

*Add full names and addresses*

\_\_\_\_\_ ("the Expert")

\_\_\_\_\_ ("the Assistant")

Centre for Effective Dispute Resolution Limited ("CEDR Solve") of 70 Fleet Street, London EC4Y 1EU

Dispute

("the Dispute")

*Here set out details of the contract(s) or other legal relationship(s) and brief details of the dispute(s) to be resolved by expert determination*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**Appointment of Expert**

- 1 CEDR Solve has appointed the Expert to resolve the Dispute. The Parties agree that the Expert will resolve the Dispute by Expert Determination. The Expert will act as an expert and not as an arbitrator.

**Purpose of Expert Determination**

- 2 Unless the Parties subsequently agree otherwise, this Expert Determination leads to a decision ("the Decision") being issued by the Expert. The Decision will be final and binding on the Parties.

**Confidentiality**

- 3 The Expert Determination process is private and confidential. The Parties, the Expert and CEDR Solve will keep it confidential except to the extent that it is necessary in order to implement the Decision or is required by law.

**Independence**

- 4 The Expert and CEDR Solve are independent of the Parties, neutral and impartial, and do not act as advisers to the Parties.

**Conduct of Expert Determination**

- 5 The Expert will conduct the Expert Determination in accordance with procedural directions which the Expert will seek to agree with the Parties. If they cannot be agreed, the Expert's directions will prevail.

**Challenge to the procedure**

- 6 The Parties agree that they [are/are not] permitted to challenge the Expert's rulings on issues arising during the procedure including those on the Expert's own jurisdiction.

**Mediation option**

- 7 At any time before the issue of the Expert's decision the Parties may agree to refer the Dispute to mediation, in accordance with CEDR's Model Mediation Procedure. In that case each of the Parties notifies the Expert and CEDR Solve, and the Expert Determination is suspended. If the dispute is settled by mediation, the Expert Determination comes to an end and the Parties settle the fees and expenses of the Expert and of CEDR Solve. If the dispute is not settled by mediation, the Expert

Determination resumes, and if they have been acting as mediators the Expert and the Assistant may take up their previous roles.

#### **Reasons in the Decision**

8 The Decision of the Expert [shall/shall not] include reasons.

#### **Interest**

9 The Expert is empowered to award interest as part of the Decision.

#### **Fees and expenses**

10 Unless the Parties agree otherwise, the fees and expenses of the Expert Determination will be borne by the Parties in equal shares. The fees and expenses will be estimated by CEDR Solve and paid to CEDR Solve as a condition precedent for the Expert Determination to start. The Expert will be paid fees and expenses. Interim bills may be raised by CEDR Solve to cover the Expert's fees at the Expert's option. A final account of the fees and expenses will be sent to the Parties by CEDR Solve when the Decision is ready for issue to the Parties and the Decision will be released on payment by the Parties of any further amounts due. CEDR Solve will reimburse the Expert. If the Parties agree not to proceed with Expert Determination, CEDR Solve will refund a proportionate amount of the fees and expenses advanced, depending on the amount of work done by the Expert and CEDR Solve.

#### **Implementation of the Decision**

11 The Parties agree to implement the Decision within [e.g. - seven] days of its being published to them.

#### **Challenge to the Decision**

12 The Parties agree they [are/are not] permitted to challenge the Decision in any legal proceedings or otherwise.

#### **No liability**

13 The Parties expressly acknowledge that neither the Expert nor CEDR Solve shall be liable to the Parties for any act or omission whatsoever in connection with this Expert Determination.

**Role of CEDR Solve**

14 CEDR Solve appoints the Expert. The Expert is responsible for the procedure from then on. CEDR Solve may be consulted by any of the Parties to this Agreement in case of difficulty. Should the Expert be unable to complete the task, CEDR Solve will appoint a substitute Expert within a reasonable time.

**After the Decision**

15 None of the Parties will call the Expert or CEDR Solve (or any employee, consultant, officer or representative of CEDR Solve) as a witness, consultant, arbitrator or expert in any litigation or arbitration in relation to the Dispute and the Expert and CEDR Solve will not act voluntarily in any such capacity without the written agreement of all the Parties.

**Law and jurisdiction**

16 This Agreement shall be governed by English law and under the jurisdiction of the English courts. All the Parties to this Agreement agree to refer any dispute arising in connection with it to mediation first.

**Signed**

On behalf of Party A \_\_\_\_\_

On behalf of Party B \_\_\_\_\_

[Signed on behalf of Party C \_\_\_\_\_ ]

Signed by the Expert \_\_\_\_\_

Signed on behalf of CEDR Solve \_\_\_\_\_

**ภาคผนวก ค****Rules for Expertise**

*in force as from 1 January 2003*

**SUGGESTED ICC EXPERTISE CLAUSES****OPTIONAL ICC EXPERTISE**

'The parties may at any time, without prejudice to any other proceedings, agree to submit any dispute arising out of or in connection with clause [X] of the present contract to administered expertise proceedings in accordance with the Rules for Expertise of the International Chamber of Commerce.'

**OBLIGATION TO SUBMIT DISPUTE TO ICC EXPERTISE**

'In the event of any dispute arising out of or in connection with clause [X] of the present contract, the parties agree to submit the matter to administered expertise proceedings in accordance with the Rules for Expertise of the International Chamber of Commerce. [The findings of the expert shall be binding upon the parties.]'

**OBLIGATION TO SUBMIT DISPUTE TO ICC****EXPERTISE, FOLLOWED BY ICC ARBITRATION AS REQUIRED**

'In the event of any dispute arising out of or in connection with clause [X] of the present contract, the parties agree to submit the matter, in the first instance, to administered expertise proceedings in accordance with the Rules for Expertise of the International Chamber of Commerce. If the dispute has not been resolved through such administered expertise proceedings it shall, after the Centre's notification of the termination of the expertise proceedings, be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration.'



**ICC ACTING AS APPOINTING AUTHORITY IN  
PARTY-ADMINISTERED EXPERTISE**

'In the event of any dispute arising out of or in connection with clause [X] of the present contract, the parties agree to submit the matter to an expertise as defined in clause [Y] of the present contract. The expert shall be appointed by the International Centre for Expertise in accordance with the provisions for the appointment of experts under the Rules for Expertise of the International Chamber of Commerce.'

**RULES FOR EXPERTISE OF THE INTERNATIONAL CHAMBER OF COMMERCE**

**SECTION I GENERAL PROVISIONS**

**Article 1      The International Centre for Expertise**

1      The International Centre for Expertise (the 'Centre') is a service centre of the International Chamber of Commerce (ICC). The Centre can perform one or more of the following functions in connection with domestic or international business matters:

A) Proposal of experts

Upon the request of any physical or legal person(s) or any court or tribunal (a 'Person'), the Centre can provide the name of one or more experts in a particular field of activity, pursuant to Section II of these Rules. The Centre's role is limited to proposing the name of one or more experts. The Person requesting a proposal may then contact directly the proposed expert(s), and, as the case may be, agree with such expert(s) on the scope of the appropriate mission and fees. There is no obligation to make use of the services of an expert proposed by the Centre. The proposal of an expert may be useful in many different contexts. A person may require an expert in connection with its ongoing business activities or in connection with contractual relations. A party to an arbitration may wish to obtain the name of a potential expert witness. A court or arbitral tribunal which has decided to appoint an expert may seek a proposal from the Centre.

**B) Appointment of experts**

The Centre will appoint an expert, pursuant to Section III of these Rules, in situations where the parties have agreed to the appointment of an expert and have agreed to use the Centre as the appointing authority or where the Centre is otherwise satisfied that there is a sufficient basis for appointing an expert. In such cases the appointment by the Centre shall be binding on the parties. The Centre's role is limited to appointing the expert in question.

**C) Administration of expertise proceedings**

When the parties have agreed upon the administration of expertise proceedings by the Centre or when the Centre is otherwise satisfied that there is a sufficient basis for administering expertise proceedings, the Centre will administer the proceedings pursuant to Section IV of these Rules.

2 The Centre consists of a Standing Committee and a Secretariat which is provided by ICC. The statutes of the Standing Committee are set forth in Appendix I.

## SECTION II PROPOSAL OF EXPERTS

**Article 2 Recourse to the Centre**

1 Any Person may ask the Centre to propose one or more experts by submitting a request for proposal of experts (the 'Request for Proposal') to the Centre at the ICC International Secretariat in Paris.

2 The Request for Proposal shall include:

- a) the name, address, telephone and facsimile numbers and e-mail address of each Person filing the Request for Proposal;
- b) a statement that the requesting Person is seeking the proposal of an expert by the Centre;
- c) a description of the field of activity of the expert to be proposed along with any desired qualifications of the expert, including but not limited to education, language skills and professional experience, and any undesired attributes of the expert;
- d) a description of any matters which would disqualify a potential expert; and

e) a description of the work to be carried out by the expert and the desired time frame for completing such work.

3 Unless requested to do so by the person seeking the proposal of an expert, the Centre will not notify any other person of the filing of a Request for Proposal.

### **Article 3 The Expert**

1 Any proposal of an expert by the Centre shall be made by the Centre either through an ICC national committee or otherwise. The Centre's role normally ends on notification of the proposal unless the Centre is asked to appoint the proposed expert and/or administer the procedure pursuant to Sections III and IV.

2 Prior to the proposal of an expert, the Centre shall consider in particular the prospective expert's qualifications relevant to the circumstances of the case, and the expert's availability, place of residence, and language skills.

3 Before a proposal, a prospective expert shall sign a statement of independence and disclose in writing to the Centre any facts or circumstances which might be of such a nature as to call into question the expert's independence in the eyes of the Person filing the Request for Proposal. The Centre shall provide such information in writing to such Person and shall fix a time limit for any comments from such Person.

### **Article 4 Costs for the Proposal of an Expert**

1 Each Request for Proposal must be accompanied by the non-refundable amount specified in Article 1 of Appendix II. This amount represents the total cost for the proposal of one expert by the Centre. No Request for Proposal shall be processed unless accompanied by the requisite payment.

2 When the Centre is requested to propose more than one expert, the non-refundable amount accompanying the Request for Proposal and to be paid by the requesting Person is the amount specified in the preceding paragraph multiplied by the number of experts requested.

## SECTION III APPOINTMENT OF EXPERTS

## Article 5 Recourse to the Centre

1 Any request for the appointment of an expert (the 'Request for Appointment') shall be submitted to the Centre at the ICC International Secretariat in Paris. Any such request shall be processed by the Centre only when it is based upon an agreement between the parties for the appointment of an expert by the Centre or when the Centre is otherwise satisfied that there is a sufficient basis for appointing an expert.

2 The date on which the Request for Appointment is received by the Centre shall, for all purposes, be deemed to be the date of the commencement of the agreed or required expertise.

3 The Request for Appointment shall include:

- a) the name, address, telephone and facsimile numbers and e-mail address of each Person filing the Request for Appointment and of any other persons involved in the expertise;
- b) a statement that the requesting Person is seeking the appointment of an expert by the Centre;
- c) a description of the field of activity of the expert to be appointed along with any desired qualifications of the expert, including but not limited to education, language skills and professional experience, and any undesired attributes of the expert;
- d) a description of any matters which would disqualify a potential expert;
- e) a description of the work to be carried out by the expert and the desired time frame for completing such work; and
- f) a copy of any agreement for the appointment of an expert by the Centre and/or of any other elements which form the basis for the Request for Appointment.

4 The Centre shall promptly inform the other party or parties in writing of the Request for Appointment once the Centre has sufficient copies of the Request for Appointment and has received the non-refundable amount required under Article 8.

5 When the Request for Appointment is not made jointly by all of the parties, and/or when the parties do not agree on the qualifications of the expert, and/or when the parties do not



agree on the expert's work, the Centre shall send a copy of the Request for Appointment to the other party or parties who may make observations within a time limit fixed by the Centre. Observations received shall be communicated by the Centre to the other party or parties for comments within a time limit fixed by the Centre.

6 The Centre shall proceed with the Request for Appointment as it sees fit and will inform the parties of how it will proceed.

#### **Article 6 Written Notifications or Communications**

1 All written communications submitted to the Centre by any party to the expertise, as well as all documents annexed thereto, shall be supplied in a number of copies sufficient to provide one copy for the Centre, one copy for each party and one copy for each expert.

2 All notifications or communications from the Centre shall be made to the last address of the party or its representative for whom the same are intended, as notified by the party in question or by the other party. Such notification may be made by delivery against receipt, registered post, courier, facsimile transmission, telex, telegram or any other means of telecommunication that provides a record of the sending thereof.

3 A notification or communication shall be deemed to have been made on the day it was received by the party itself or by its representative, or would have been received if made in accordance with the preceding paragraph.

#### **Article 7 The Expert**

1 Any appointment of an expert by the Centre shall be made by the Centre either through an ICC national committee or otherwise.

2 Prior to the appointment of an expert, the Centre shall consider in particular the prospective expert's qualifications relevant to the circumstances of the case, the expert's availability, place of residence and relevant language skills, and any observations, comments or requests made by the parties. In appointing the expert the Centre shall apply any agreement of the parties related to the appointment.

3 Every expert must be independent of the parties involved in the expertise proceedings, unless otherwise agreed in writing by such parties.

4 Before an appointment, a prospective expert shall sign a statement of independence and disclose in writing to the Centre any facts or circumstances which might be of such a nature as to call into question the expert's independence in the eyes of the parties. The Centre shall provide such information to the parties in writing and fix a time limit for any comments from them.

#### **Article 8 Costs for the Appointment of an Expert**

1 Each Request for Appointment must be accompanied by the non-refundable amount specified in Article 2 of Appendix II. This amount represents the total cost for the appointment of one expert by the Centre. No Request for Appointment shall be processed unless accompanied by the requisite payment.

2 When the Centre is requested to appoint more than one expert, the non-refundable amount accompanying the Request for Appointment and to be paid by the requesting Person is the amount specified in the preceding paragraph multiplied by the number of experts requested.

3 When the Centre is requested to appoint an expert who has already been proposed by the Centre in connection with the same matter, the Centre shall charge half of the non-refundable amount specified in Article 2 of Appendix II in addition to the already paid amount specified in Article 1 of Appendix II.

### **SECTION IV ADMINISTRATION OF EXPERTISE PROCEEDINGS**

#### **Article 9 Recourse to the Centre**

1 Any request for the administration of expertise proceedings (the 'Request for Administration') shall be submitted to the Centre at the ICC International Secretariat in Paris. Any such request shall be processed by the Centre only when it is based upon an agreement for the administration of expertise proceedings by the Centre or when

the Centre is otherwise satisfied that there is a sufficient basis for administering expertise proceedings.

2 The date on which the Request for Administration is received by the Centre shall, for all purposes, be deemed to be the date of the commencement of the expertise proceedings.

3 The Request for Administration shall include:

- a) the name, address, telephone and facsimile numbers and e-mail address of each Person filing the Request for Administration and of any other persons involved in the expertise proceedings;
- b) a statement that the requesting Person is seeking the administration of expertise proceedings by the Centre;
- c) a description of the field of activity of the expert along with any desired qualifications of the expert, including but not limited to education, language skills and professional experience, and any undesired attributes of the expert;
- d) a description of any matters which would disqualify a potential expert;
- e) a description of the work to be carried out by the expert and the desired time frame for completing such work; and
- f) a copy of any agreement for the administration of expertise proceedings by the Centre and/or of any other elements which form the basis for the Request for Administration.

4 The Centre shall promptly inform the other party or parties in writing of the Request for Administration once the Centre has sufficient copies of the Request for Administration and has received the non-refundable amount required under Article 14.

5 The administration of the expertise proceedings by the Centre shall consist *inter alia* of:

- a) coordination between the parties and the expert;
- b) initiating the appropriate steps to encourage the expeditious completion of the expertise proceedings;
- c) supervising the financial aspects of the proceedings; d) appointment of an expert using the procedure referred to in Section III or confirmation of an expert agreed to by all of the parties;

- e) review of the form of the expert's report;
- f) notification of the expert's final report to the parties; and
- g) notification of the termination of the expertise proceedings.

#### **Article 10      Written Notifications or Communications**

1        All written communications submitted to the Centre by any party to the expertise proceedings, as well as all documents annexed thereto, shall be supplied in a number of copies sufficient to provide one copy for the Centre, one copy for each party and one copy for each expert.

2        All notifications or communications from the Centre and the expert shall be made to the last address of the party or its representative for whom the same are intended, as notified either by the party in question or by the other party. Such notification may be made by delivery against receipt, registered post, courier, facsimile transmission, telex, telegram or any other means of telecommunication that provides a record of the sending thereof.

3        A notification or communication shall be deemed to have been made on the day it was received by the party itself or by its representative, or would have been received if made in accordance with the preceding paragraph.

#### **Article 11      Independence of the Expert – Replacement of the Expert**

1        Every expert must remain independent of the parties involved in the expertise proceedings, unless otherwise agreed in writing by such parties.

2        An expert appointed by the Centre, who has died or resigned or is unable to carry out the expert's functions, shall be replaced.

3        An expert appointed by the Centre shall be replaced upon the written request of all of the parties.

4        If any party objects that the expert does not have the necessary qualifications or is not fulfilling the expert's functions in accordance with these Rules or in a timely fashion, the Centre may replace the expert after having considered the observations of the expert and the other party or parties.

5 When an expert is to be replaced, the Centre has discretion to decide whether or not to follow the original appointing process.

## **Article 12 The Expert's Mission**

1 The expert, after having consulted the parties, shall set out the expert's mission in a written document. That document shall not be inconsistent with anything in these Rules and shall be communicated to the parties and to the Centre. Such document shall include:

- a) the names, addresses, telephone and facsimile numbers and e-mail addresses of the parties;
- b) a list of issues to be treated in the expert's report;
- c) the name(s), address(es), telephone and facsimile numbers and e-mail address(es) of the expert or experts;
- d) the procedure to be followed by the expert and the place where the expertise should be conducted; and
- e) a statement indicating the language in which the proceedings will be conducted.

Modifications to the expert's mission may be made by the expert, in writing, only after full consultation with the parties. Any such written modifications shall be communicated to the parties and to the Centre.

2 Upon preparing the document setting out the expert's mission, or as soon as possible thereafter, the expert, after having consulted the parties, shall prepare a provisional timetable for the conduct of the expertise proceedings. The timetable shall be communicated to the parties and to the Centre. Any subsequent modifications of the provisional timetable shall be promptly communicated to the parties and to the Centre.

3 The expert's main task is to make findings in a written expert's report within the limits set by the expert's mission after giving the parties the opportunity to be heard and/ or to make written submissions. Unless otherwise agreed by all of the parties, the findings of the expert shall not be binding upon the parties.



- 4 Unless otherwise agreed by the parties, the expert's report shall be admissible in any judicial or arbitral proceeding in which all of the parties thereto were parties to the expertise proceedings in which such report was prepared.
- 5 Any information given to the expert by the Centre or any party during the course of the expertise shall be used by the expert only for the purposes of the expertise and shall be treated by the expert as confidential.
- 6 The expert's report shall be submitted in draft form to the Centre before it is signed. The Centre may lay down modifications only as to the form of the report. No report shall be communicated to the parties by the expert. No report shall be signed by the expert prior to the Centre's approval of such report.
- 7 The Centre may waive the requirements laid down in Article 12(6) if expressly requested to do so in writing by all the parties and if the Centre considers that such a waiver is appropriate under the circumstances of the case.
- 8 The expert's report, after it is signed by the expert, shall be sent to the Centre in as many copies as there are parties plus one for the Centre. Thereafter, the Centre shall notify the expert's report to the party or parties and declare in writing that the expertise proceedings have been terminated.

### **Article 13 Duties and Responsibilities of the Parties**

- 1 The non-participation of a party in the expertise proceedings does not deprive the expert of the power to make findings and render the expert's report, provided that such party has been given the opportunity to participate.
- 2 In agreeing to the application of these Rules the parties undertake to provide the expert with all facilities in order to implement the expert's mission and, in particular, to make available all documents the expert may consider necessary and also to grant the expert free access to any place where the expert may be required to go for the proper completion of the expert's mission.

**Article 14      Costs for the Administration of Expertise Proceedings**

1        Each Request for Administration must be accompanied by the non-refundable amount specified in Article 3 of Appendix II. This amount will be credited to the requesting party's or parties' portion of the deposit pursuant to Article 14(3).

2        When the Centre is requested to administer expertise proceedings where the expert has already been proposed or appointed by the Centre in connection with the same matter, the non-refundable amount specified in Article 3 of Appendix II shall not be paid in addition to the non-refundable amounts paid for the proposal or the appointment of an expert and specified in Articles 1 and 2 of Appendix II.

3        Following the receipt of a Request for Administration, the Centre shall request the parties to pay a deposit in an amount likely to cover the administrative costs of the Centre and the fees and expenses of the expert for the expertise proceedings, as set out in Article 3, paragraphs (2) and (3), of Appendix II. The expertise proceedings shall not go forward until payment of such deposit has been received by the Centre.

4        In any case where the Centre considers that the deposit is not likely to cover the total costs of the expertise proceedings, the amount of such deposit may be subject to readjustment. When the request for the corresponding payments has not been complied with, the Centre may suspend the expertise proceedings and set a time limit, on the expiry of which the expertise proceedings may be considered withdrawn.

5        Upon termination of administered expertise proceedings, the Centre shall settle the total costs of the proceedings and shall, as the case may be, reimburse the party or parties for any excess payment or bill the party or parties for any balance required pursuant to these Rules. The balance, if any, shall be payable before the notification of the final expert's report to the party or parties.

6        All above deposits and costs shall be borne in equal shares by the parties, unless they agree otherwise in writing. However, any party shall be free to pay the unpaid balance of such deposits and costs should the other party or parties fail to pay its or their share.

**SECTION V MISCELLANEOUS****Article 15 Waiver**

A party which proceeds with the expertise proceedings without raising an objection to a failure to comply with any provision of these Rules, any direction given by the Centre or by the expert, or any requirement of the expert's mission, or any requirement relating to the appointment of an expert or to the conduct of the expertise proceedings, shall be deemed to have waived its right to object.

**Article 16 Exclusion of Liability**

Neither the experts, nor the Centre, nor ICC and its employees, nor the ICC national committees shall be liable to any person for any act or omission in connection with the expertise procedure.

**Article 17 General Rule**

In all matters not expressly provided for in these Rules, the Centre and the experts shall act in the spirit of these Rules.

**APPENDIX I****STATUTES OF THE STANDING COMMITTEE OF THE ICC INTERNATIONAL  
CENTRE FOR EXPERTISE****Article 1 Composition of the Standing Committee**

The Standing Committee is composed of a maximum of eleven members (a chairman, two vice-chairmen and up to eight members) appointed by ICC for a three-year renewable term.

## Article 2 Meetings

A meeting of the Standing Committee shall be convened by its chairman whenever necessary.

## Article 3 Function and Duties of the Standing Committee

1 The function of the Standing Committee is to assist the Secretariat in reviewing the qualifications of the experts to be proposed and/or appointed by the ICC International Centre for Expertise. The Standing Committee shall advise the Secretariat concerning all aspects of expertise to help to assure the quality of the Centre.

2 In the absence of the chairman, or otherwise at the chairman's request, one of the two vice-chairmen shall be appointed by the chairman or by the Secretariat in the absence of an appointment by the chairman to fulfil the tasks of the chairman, including taking decisions pursuant to these statutes.

3 The Secretariat shall inform the members of the Standing Committee about all Requests for Proposal and Requests for Appointment and ask the members for their advice. The chairman of the Standing Committee shall make the final decision on the proposal or appointment of the expert.

4 In the case of a Request for Administration pursuant to Section IV:

- A) the Standing Committee shall be informed of the death or resignation of an expert as well as of any objection by the party or parties or the Centre concerning an expert, or of any other matter requiring the replacement of the expert. It shall advise the Secretariat whether the objection of the party or parties pursuant to Article 11(3) or of the Centre pursuant to Article 11(4) of the Rules for Expertise is justified and make recommendations to the chairman. The chairman shall decide on the justification of any objection and/or on the manner in which the replacement will be made;
- B) the chairman shall fix the expert's or experts' fees and expenses in accordance with Article 3(3) of Appendix II to the Rules for Expertise; and
- C) upon the premature termination of the expertise, the chairman shall fix the costs of the expertise pursuant to Article 3(4) of Appendix II to the Rules for Expertise.

**Article 4      Confidentiality**

The work of the Standing Committee and the Secretariat is of a confidential nature which must be respected by everyone who participates in that work in whatever capacity.

**APPENDIX II****SCHEDULE OF EXPERTISE COSTS****Article 1      Costs for Proposal**

The non-refundable amount for the proposal of an expert pursuant to the Rules for Expertise is US\$ 2,500, provided, however, that the proposal of an expert made at the request of an arbitral tribunal acting pursuant to the ICC Rules of Arbitration shall be free of charge. The non-refundable amount is payable by the requesting Person(s). No request shall be processed unless accompanied by the requisite payment.

**Article 2      Costs for Appointment**

The non-refundable amount for the appointment of an expert pursuant to the Rules for Expertise is US\$ 2,500. This amount is payable by the requesting Person(s). No request shall be processed unless accompanied by the requisite payment.

**Article 3      Costs for Administration**

1      The non-refundable amount for sole administration of the expertise proceedings pursuant to the Rules for Expertise is US\$ 2,500. This amount is payable by the requesting Person(s). No request shall be processed unless accompanied by the requisite payment.

2      The administrative expenses of the Centre for the expertise proceedings shall be fixed at the Centre's discretion depending on the tasks carried out by the Centre. They shall not exceed 15% of the total expert's fees and not be less than US\$ 2,500.



3 The fees of the expert shall be calculated on the basis of the time reasonably spent by the expert in the expertise proceedings, at a daily rate fixed for such proceedings by the Centre in consultation with the expert and the party or parties. Such daily rate shall be reasonable in amount and shall be determined in light of the complexity of the dispute and any other relevant circumstances. The amount of reasonable expenses of the expert shall be fixed by the Centre.

4 If an expertise terminates before the notification of the final report, the Centre shall fix the costs of the expertise at its discretion, taking into account the stage attained by the expertise proceedings and any other relevant circumstances.

5 Amounts paid to the expert do not include any possible value added taxes (VAT) or other taxes or charges and imposts applicable to the expert's fees. Parties have a duty to pay any such taxes or charges; however, the recovery of any such charges or taxes is a matter solely between the expert and the party or parties.

## ประวัติผู้เขียนวิทยานิพนธ์

นายวินัย จีรวงศ์สุนทร เกิดเมื่อวันที่ 22 กรกฎาคม พ.ศ. 2521 ที่กรุงเทพมหานคร สำเร็จการศึกษาหลักสูตรปริญญานิติศาสตรบัณฑิตจากคณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ ปีการศึกษา 2542 และได้เข้าทำงานเป็นนายความประจำสำนักงาน ณ สำนักงานนายความ ชัยวัธ-บัณฑุรย์ ตั้งแต่ปี พ.ศ. 2543 จนถึงปัจจุบัน

