

COMMERCIAL ARBITRATION CENTRE PORTUGUESE CHAMBER OF COMMERCE AND INDUSTRY

DISPUTE BOARDS REGULATION (Dispute Resolution Committees)

(1st April 2021)

Introduction

This Regulation establishes the rules governing the establishment, organisation and powers of Dispute Resolution Committees.

Usually referred to in international trade as "Dispute Boards", this type of Committees may be a relevant means of facilitating good contractual performance and preventing potential disagreements or disputes from escalating into litigation or arbitration.

Dispute Resolution Committees are permanent bodies, without the nature of arbitral tribunals, typically with an odd number of members, to which the parties assign powers of recommendation and/or decision when entering into a contract, or later, with the aim of anticipating, avoiding or resolving any disputes that may arise during the performance of the contract.

By means of a clause or an agreement, the parties entrust the Committee with defining the appropriate means for the resolution of the Dispute, acknowledging and assuming the obligations which may be established by that third party (Committee).

Dispute Resolution Committees are particularly useful in medium. or long.term continuous performance contracts. Although they deserve special consideration in construction and concession contracts, they may also be useful in medium. or long.term agreements of a different nature (e.g. in the corporate context).

The Dispute Resolution Committees set up under this Regulation shall, in particular, comply with the principle of the independence and impartiality of their members, the principle of confidentiality, the principle of decision according to the law applicable to the Contract, unless otherwise expressly agreed, the principle of due process and the principle of free procedural management by the Committee.

These rules allow the parties to assign the Committees recommendation or decision powers. In the latter case, the parties may also agree that the decision cannot be challenged, in which case it will have the status of an agreement between the parties.



The resolutions of the Dispute Resolution Committee are binding on the parties (decisions) or become so if not contested (recommendations), although attention must be drawn to the possibility of applicable limitations resulting from public procurement rules limiting their options as to the powers to be conferred on the Committee. The Commercial Arbitration Centre provides support to the parties for the establishment and monitoring of the Dispute Resolution Committee, and the parties may, by mutual agreement, grant the Commercial Arbitration Centre the power to appoint the members and to decide on proceedings of refusal of a member.

Finally, a different name was chosen from that which is usually used as a Portuguese translation of Dispute Board ("Conselho de Litígios"). The term "Comissão" (Committee) seemed preferable to "Conselho" (Board), because this term is used by commercial legislation to name company bodies, and considering that the Committee's mission is, precisely, to monitor potential disputes. The name adopted and the title thus reflect appropriately the essence of the Committee's mission and the main interest it assumes for the parties.

Article 1

Definitions

"Agreement to Submit to the Regulation" means the agreement referred to in Article 4(1).

"Centre" means the Commercial Arbitration Centre of the Portuguese Chamber of Commerce and Industry.

"Dispute Resolution Committee" ("Committee") means the Committee established by the Parties to which, in the framework of or in connection with a Contract and with the aim of anticipating, avoiding or resolving disputes that may occur during the performance of said Contract, the Parties assign powers to define the appropriate means to resolve a dispute.

"Contract" means the agreement of the Parties under which the dispute arises. The agreement granting powers to the Committee may be part of this Contract or be entered into later.

"Dispute" means any disagreement or dispute arising out of the Contract which is submitted to the Committee for its consideration.

"Decision" means the binding resolution issued by the Dispute Resolution Committee, which shall be immediately complied with by the Parties.

"Party" means the Party or Parties to the Contract which have agreed to turn to the Dispute Resolution Committee and have accepted the establishment of the Committee for the resolution of Disputes relating to the Contract.

"Centre President" means the Chair of the Board of the Commercial Arbitration Centre of the Portuguese Chamber of Commerce and Industry.



"Recommendation" means the determination of the Committee, not immediately binding on the Parties, which will become binding and final if the Parties do not express their disagreement within a given time period.

"Regulation" means the Dispute Boards Regulation (Dispute Resolution Committee) of the Centre.

Article 2

Scope of application

Dispute Resolution Committees, or Dispute Boards, are established under the terms of this Regulation with the aim of anticipating, avoiding or resolving Disputes between the Parties arising under the Contract. Committees may issue Recommendations or Decisions. The Committees do not have the nature of a court, and the Decisions they issue are not judgments. The Centre shall provide administrative services to the Parties and may, in particular, appoint the members of the Committee and decide on requests for the refusal of members of the Committee.

Article 3

Principles

The Committee shall be governed by the following principles:

- a) The principle of independence and impartiality of its members;
- b) The principle of confidentiality of the work of the Committee;
- c) The principle of decision under the law applicable to the Contract, unless the Parties expressly agree otherwise;
- d) The principle of respect for due process, giving the Parties reasonable and equal opportunity to submit their case;
- e) The principle of free procedural management by the Committee, while respecting due process.

Article 4

Agreement to submit to the Regulation

1. The Parties may agree to establish a Committee for the monitoring of disputes submitted to this Regulation, in the Contract or later, and such provision shall always be in written.

2. The Parties shall define the powers of the Committee, and acknowledge that if they are silent, the Committee has the powers to issue Recommendations and Decisions.

3. The deadlines for a Recommendation or Decision to become final shall be those laid down in this Regulation.

4. If the Parties are silent, the rules laid down in this Regulation shall apply.



Recommendations

1. Recommendations issued by the Committee shall comply with the law applicable to the Contract, unless the Parties expressly agree otherwise.

2. Upon receipt of a Recommendation, the Parties may comply with it voluntarily, but are not required to do so.

3. A Party which disagrees with the Recommendation shall, within 30 days of its notification, send a communication to the other Party and to the Committee expressing such position and summarising the reasons for their disagreement.

4. If none of the Parties expresses their disagreement under the terms of the preceding paragraph, the Recommendation shall become binding and final for the Parties, which are obliged to immediately comply with the Recommendation and which may not challenge its validity.

5. In the event of breach of a Recommendation that has become binding and final, by any of the Parties, the other Party may request arbitration or initiate judicial proceedings against the Party in breach of the Recommendation.

Article 6

Decisions

1. Decisions issued by the Committee shall comply with the law applicable to the Contract, unless the parties expressly agree otherwise.

2. Decisions issued are binding in nature and must be complied with immediately or within the deadline stipulated by the Committee, regardless of the Decision being challenged in accordance with the following paragraph.

3. The challenge referred to in the preceding paragraph shall be submitted within 30 days of the notification of the Decision, before a judicial court or by application for the establishment of an arbitral tribunal.

4. The Parties must comply with the Decision until the Dispute is finally settled by a judicial court or arbitral tribunal.

5. If the Decision is not challenged it will become final.

6. The Parties may, expressly and in writing, confer on the Committee powers to issue Decisions which cannot be challenged, which shall have the status of an agreement entered into between the Parties.



Management powers of The Committee

Unless otherwise agreed by the Parties, the Committee shall, inter alia, have powers to:

- a) request that the Parties send documents that are considered necessary;
- b) ensure the use of the language stipulated by the Parties;
- c) convene meetings, visits and hearings;
- d) request the hiring of technical experts at the expense of the Parties, for advice;
- e) request clarification from the Parties and their respective representatives;
- f) adopt all necessary measures for the smooth running of works and for the accomplishment of the Committee's mission.

Article 8

Duties of the Committee

The Committee has, inter alia, the following duties:

- a) act in an impartial and independent manner, ensuring, in any event, a fair procedure and equality between the Parties;
- b) if consulted by the Parties, advise them, always jointly and informally, acting in a preventive manner;
- c) encourage amicable settlement between the Parties;
- d) know the matters on which it is called upon to decide;
- e) keep up.to.date on the main facts related to the scope of its functions, in particular those related to the progress of the works or the performance of the Contract, starting from, among others, the analysis of the documents sent by the Parties;
- f) attend meetings, visits and hearings;
- g) be available, within seven days of the request of the Parties, or by one of them, for visits not provided for in the respective timetable;
- h) issue a Recommendation or Decision within the defined deadline;
- i) clearly state, succinctly, the Recommendations and Decisions issued.

Article 9

Duties of the Parties

1. The Parties shall have the duty to keep the Committee informed of the performance of the Contract, in particular, where applicable, on the progress of the works, as well as on the occurrence of potential Disputes.

2. The Parties must, when requested by the Committee, send the Committee relevant documentation for the performance of its functions, such as contractual documents, periodic progress reports, minutes of meetings, timetable control report and relevant correspondence exchanged between the Parties.



3. The Parties shall attend hearings, meetings and, where applicable, visits to the works or other places the Committee intends to visit.

4. The Parties must cooperate with the Committee, and promptly pay fees due to their members.

Article 10

Establishment of the Committee

1. The Committee shall be established by the Parties by means of a written document.

2. The Agreement to Submit to the Regulation shall contain, in particular, the following elements:

- a) identification of the Contract and a provision on the application of the Regulation;
- b) the number of members of the Committee, assuming, if the Parties are silent, that it will be three;
- c) powers of the Committee, assuming, if the Parties are silent, that powers are granted to issue Recommendations and Decisions;
- d) any other matters which the Parties wish to foresee, and their agreement on the application of the rules of the Regulation shall be presumed if the Parties are silent.

3. When the Parties opt for a single member, the latter shall be appointed by consensus within thirty days of the signing of the Agreement to Submit to the Regulation. If the Parties do not reach a consensus within that time limit, the Centre President shall have the powers to make such appointment, after hearing the Vice.Chairs.

4. If the Parties choose to establish a three.member Committee, each of them shall appoint a member within ten days simultaneously of the date of signature of the Agreement to Submit to the Regulation.

5. If any Party fails to indicate one of the members within the referred time limit, the Centre President shall have the powers to indicate the respective member, after hearing the Vice.Chairs.

6. Once ensured, pursuant to the following Article, the independence and impartiality of the members appointed by each of the Parties, these shall, within ten days from the communication by both Parties, appoint a third member, who shall be the chair of the Committee.

7. If the two appointed members do not reach an agreement on the third member of the Committee within ten days, the Centre President shall have powers for said appointment, after hearing the Vice.Chairs.

8. When there are multiple Parties to the Contract, the Parties shall seek consensus for the joint appointment of all members of the Committee. If, within thirty days after entering into the Contract or the agreement establishing the Committee, if this is entered into later,



the Parties have not reached a consensus, the Centre President, after hearing the Vice.Chairs, shall have the power to appoint all the members of the Committee, indicating the chair from among them.

9. If any member dies, resigns, is declared impeded or becomes unable to perform its functions, a substitute shall be appointed under the terms and deadlines applicable to the appointment of the replaced member, being the procedural deadlines laid down in this Regulation automatically stayed until such replacement takes place.

Article 11

Declaration of independence, impartiality, availability and competence

1. Within seven days of their appointment, the person(s) appointed to act as a member of the Committee shall sign a declaration of acceptance, under which they shall ensure their independence and impartiality, and also their availability and technical knowledge for the function, delivering to the Parties their Curriculum Vitae.

2. Appointed persons shall disclose any circumstance that may, in the eyes of a third party, create reasonable doubt about their independence or impartiality, namely due to a professional relationship or link to one of the Parties, or to persons or entities directly related to them, such as members of the company bodies or lawyers, or due to any relevant link to the Contract.

3. The duty of disclosure to the Parties, mentioned in the preceding paragraphs, shall remain in force throughout the entire period of the exercise of the function by the member of the Committee.

4. The member of the Committee, even if appointed by consensus of the Parties, may freely resign to their function if they understand, at their discretion, that they no longer meet the requirements of independence, impartiality, availability or competence.

5. On receipt of the acceptance declaration by the nominated member, issued pursuant to paragraph 1 of this Article, the Parties shall have a period of seven days to reasonably refuse the indicated member.

6. In the event of a refusal, the establishment of the Committee shall be suspended and the refused member shall be notified to answer within five days, and upon receipt of the refused member's answer, the Parties shall have five days to reply.

7. The Centre President has the powers to, after hearing the Vice.Chairs, definitively decide on the refusal of the member of the Committee.

8. The appointed members shall, diligently and promptly, provide the Parties with the information they reasonably believe to be necessary for their judgment on the independence, impartiality, availability and competence for the role of member of the Committee.



Agreement between the Parties and the members of the Committee

1. The agreement between the Parties and the members of the Committee, to be entered into separately or jointly, shall be in writing.

2. In particular, the written agreement must contain:

- a) the full identity and the registered office and domicile of the Parties and of the member(s) of the Committee, including as an attachment the Curriculum Vitae of the member(s) of the Committee;
- b) identification of the Contract that the Committee will monitor, setting out its scope;
- c) the scope of the services to be provided by the member(s) of the Committee and the powers assigned to it;
- d) remuneration of the members of the Committee, which shall include regular fees, for monitoring the performance of the Contract and, in addition, ad hoc fees, for each meeting or visit and, as well as for each informal assistance procedure and for each procedure for issuing a Recommendation or a Decision, including, *inter alia*, the study of the Dispute, analysis of the documentation, internal meetings of the Committee, hearings and preparation and drafting of the resolution;
- e) terms and conditions for the payment of fees and expenses;
- f) the term of validity of the agreement, in particular, clarifying whether the Committee should complete its work by the time of the termination of the agreement or whether its powers remain to hear any dispute that may exist at that time;
- g) the language(s) in which the Committee's procedures will be conducted;
- h) exclusion of responsibility of the members of the Committee for actions or omissions in the performance of their functions, except in cases of manifest bad faith.

Article 13

Taxes

1. Except for Value Added Tax (VAT) where applicable, the Parties shall not bear any taxes due by members of the Committee as a result of the performance of their functions in the country of residence of the member of the Committee.

2. All taxes, including Value Added Tax (VAT), and charges due by the members of the Committee as a result of the performance of their functions, which are required by countries other than the country of residence of the member of the Committee, shall be borne by the Parties.



Commencement and end of the Committee

1. The Committee shall be deemed to be established on the date set out in the Committee's establishment agreement, if all the members of the Committee participate in it, or on the date which the Parties determine and communicate to all the members of the Committee, if the Parties enter into individual agreements with each member of the Committee.

2. The Committee's establishment agreement may be terminated at any time, by agreement between the Parties, by written communication to the members of the Committee, and the Committee shall cease its activity as soon as all its members receive such communication.

3. In the situation provided for in the preceding paragraph, the fees which the members of the Committee would receive within three (3) months after the date of the termination shall be due to the members of the Committee.

4. Without prejudice to Article 11(4), a member of the Committee may resign to their participation in the Committee, provided that their resignation is communicated in writing and three months in advance.

5. The Parties may, by agreement, terminate the agreement of one or more of the members of the Committee and the member(s) involved in said termination shall cease their activity under the terms contained in the respective notice.

Article 15

Meetings and visits

1. Immediately after its establishment, the Committee shall determine, together with the Parties, a timetable of meetings to monitor developments in the performance of the Contract and, if applicable, a timetable of visits to the works or other places that the Committee finds appropriate to visit, as well as the procedure to be adopted.

2. Either Party may request a meeting or a visit outside the dates envisaged, which, without prejudice to the availability obligation of the members of the Committee, foreseen in in Article 8 g), shall take place within a maximum of fifteen days.

3. Meetings may be held in a different place from the works or place of the visits, if there is consensus between the Parties and the Committee, or if the Committee so determines.

4. If one of the Parties does not attend a meeting or a visit, the Committee shall continue with the meeting or the visit.

5. If one of the members of the Committee does not attend, the Committee may continue with the meeting or the visit, unless any of the Parties opposes.

6. The Committee shall record minutes including the main points discussed and verified at each meeting or visit.



Informal Assistance from the Committee

1. The Parties may jointly request the informal assistance of the Committee for Dispute resolution which has not yet been subject to the procedure referred to in the following paragraph.

2. Informal assistance may be provided orally, always in the presence of the involved Parties, or in writing, in which case the advice shall be communicated to the Parties simultaneously.

3. The informal assistance provided by the Committee and any advice resulting therefrom shall not bind the Committee if it is asked to issue a Recommendation or a Decision on the matter.

Article 17

Procedure in the event of a dispute

1. The Parties may submit to the Committee any Dispute relating to the Contract, by written application, called a dispute resolution application, which shall include:

- a) identification of the Party(ies);
- b) a clear and succinct description of the facts which gave rise to the Dispute and the position of the Party on the issues for which a resolution is requested;
- c) appropriate means of evidence to prove the alleged facts;
- d) the requests.

2. The applicant Party shall send the application, simultaneously, to each member of the Committee and to the other Party or Parties concerned, being considered that the procedure commenced on the date of receipt of such a request by the Committee chair.

3. The respondent Party may submit their response within thirty (30) days of receipt of the request for the resolution of the dispute, as referred to in paragraph 1 of this Article.

4. The Committee shall, after consulting the Parties, define the applicable procedural rules and timetable to be followed, deciding on the need for a hearing and the subject matter.

5. In defining the procedural rules, the Committee shall take into account, in particular, the following factors:

- a) nature and complexity of the Dispute;
- b) the volume and complexity of the means of evidence submitted or requested;
- c) further evidentiary inquiries which the Committee itself intends to make or request;
- d) the need to adopt rules that best ensure the speed, efficiency and lower cost of the procedure.



6. With due regard for the principle of fair procedure, the Committee has extensive powers of procedural management and investigation, and, in particular, it may:

- a) inquire the Parties or any participant in the procedure about any matters which it wishes;
- b) require the submission of additional evidence;
- c) order further evidentiary inquiries to be taken, in particular expert evidence or, where appropriate, inspections.

Article 18

Hearing

1. If there is a hearing, it shall be scheduled for a date not later than thirty days from the date of receipt of the response from the respondent Party, to be agreed between the Parties and the Committee or, in the absence of an agreement, determined by the Committee.

2. If one of the members of the Committee is absent, the hearing shall take place or continue, provided that any of the Parties opposes.

3. Failure to appear or refusal by any of the Parties to participate in a hearing or any other previously.scheduled inquiry shall not prevent the continuation of the hearing or inquiry by the Committee.

4. The hearing will be conducted in an informal manner, complying with the following guidelines:

- a) the Committee shall consult the Parties on the possibility of a settlement;
- b) the Committee shall detail the procedure to be followed at the hearing;
- c) each Party may make a statement on the matter, within the maximum timeframe fixed by the Committee, starting with the applicant;
- d) the witnesses of the applicant Party shall be questioned first, followed by the questioning of the respondent Party's witnesses;
- e) the Committee shall have full powers to inquire the Parties and the witnesses of facts or the expert witnesses, and to require that the Parties submit additional documents and clarification on the matters discussed;
- f) minutes of the hearing shall be drawn up;
- g) the Committee may request that the Parties provide, in printed or digital form, at its criteria, the information or statement provided by the Parties.

5. The Committee may issue a Recommendation or Decision at the end of the hearing or at a later date within the regulation deadline.



Decision or recommendation requirements

1. The Decision or Recommendation shall be issued within a maximum of thirty (30) days of the end of the investigation phase, which may be extended by the Committee for a further 15 days.

2. The Decision or Recommendation shall be set out in writing, including:

- a) the date and place at which it was given;
- b) description of the Dispute and chronology of the facts which are relevant for the Recommendation or Decision;
- c) summary of its grounds;
- d) conclusion, according to which the Committee will resolve the Dispute, which must always specify whether it is a Recommendation or a Decision;
- e) any dissenting vote of a member or members of the Committee, issued separately.

3. Any Decision or Recommendation which does not concern the Dispute submitted to the Committee shall be null and void and shall not, in that part, have any effect.

4. The Committee shall deliberate in closed session and by a majority, one vote being held by each member. If there is no majority, the Committee chair shall have a casting vote, for all purposes.

5. On the grounds of material error, omission, obscurity or contradiction of the Decision or Recommendation, the Parties may, within 10 (ten) days from the date of receipt of the Decision or Recommendation, make a request for clarification.

6. The Committee notifies the other Party to provide its opinion, if it so wishes, on the request for clarification submitted within 10 (ten) days, and shall issue a decision on the request for clarification within 20 (days).

7. Where applicable, the time limit for challenging the Decision or Recommendation shall only begin from the date on which the Parties have received the Committee's decision on the request(s) for clarification referred to in the preceding paragraphs.

8. Without prejudice to its own effects, a Decision or Recommendation may be used as evidence in any court or arbitration proceedings in which the parties to said proceedings have participated as Parties to the procedure before the Committee.

Article 20

Deadline for the Committee to deliberate

1. The Committee shall issue the Recommendation or Decision as soon as possible.

2. Without prejudice to what the Parties may agree, in general or on a case.by.case basis, the maximum time limit for the Committee to deliberate on disputes that are submitted to



it shall be 90 (ninety) days from the date of receipt by the Committee of the request initiating the procedure.

3. The Parties, in consultation with the Committee, may extend the time limit provided for in the preceding paragraph, taking into account, in particular, the nature and complexity of the Dispute.

4. Failure to comply with the deadline set out in paragraphs 2 and 3 of this clause shall result in the immediate termination of the procedure, and the Dispute may then be settled by court or arbitration proceedings, as the case may be.

Article 21

Confidentiality

1. The Committee's procedures are confidential, and the Centre, the members of the Committee and the Parties themselves are prohibited from disclosing any information or documents to which they have access as a result of the performance of their functions or their participation in the procedure.

2. The duty of confidentiality may be waived by agreement of the Parties, or it may not be applicable in cases where there is a legal obligation to publicise, or in court or arbitration proceedings in which the parties are the Parties that participated in the procedure before the Committee.

3. The members of the Committee may not participate in court, arbitration or similar proceedings concerning the Dispute, in particular as judges, arbitrators, experts, witnesses, lawyers or consultants of the Parties.

Article 22

Interpretation of the Regulation

1. Before the Committee is established, the Centre President shall be responsible for the interpretation and application of the Regulation.

2. Once the Committee has been established, it shall be the responsible for the interpretation and application of the Regulation, except as to matters which, under the Regulation, are within the powers of the Centre President.

3. In the event of a lack of unanimity regarding the interpretation or application of the Regulation among the members of the Committee, the majority shall prevail. In the absence of a majority, the President of the Committee shall decide, having a casting vote.



Fees and expenses of the members of the Committee

1. All expenses of the Committee and fees of the members of the Committee shall be borne equally between the Parties.

2. The fees of the members of the Committee shall be determined by common agreement with the Parties in the Committee's establishment agreement.

3. The fees of the members of the Committee shall be equal.

4. The expenses of the members of the Committee, in particular for travel and accommodation, as well as the expenses of experts which the Committee considers essential to appoint, and the rental of hearing rooms and necessary equipment, shall be borne equally between the Parties, and payment shall be made in advance, where justified.

5. In the event that any Party fails to pay the Centre's charges, or the expenses or fees of the members of the Committee, within the foreseen time limit and amounts set out, namely, in the Committee's establishment agreement, the other Party may pay the respective amount in advance, in order to enable the Committee to continue, and the accounts must be settled as soon as possible or at the end of the then.current procedure.

6. The Party who makes the aforementioned payment, without this implying a novation or waiver of their rights, shall be reimbursed by the Party in default for all the amounts paid, plus interest on arrears of 1% (one percent) per month until full payment has been made, and a fine of 10% (ten percent), in both cases calculated on the amount paid.

7. Where the fees and/or expenses of the members of the Committee have not been paid for more than 60 (sixty) days, the Committee, or any of its members, may suspend its services.

8. The suspension for non.payment may not exceed 90 (ninety) days, at the end of which the Committee establishment agreement shall be deemed to be terminated for all legal purposes and the Committee shall be automatically dissolved.

9. The case referred to in the preceding paragraph shall exclude credit of the members of the Committee, which are due at the time of dissolution of the Committee, and the rules intended to be applicable after the expiry of the Committee establishment agreement.

Article 24

Limitation of liability

The members of the Committee, any person appointed by the Committee or in the course of its work, the Chair and the members of the Centre's Arbitration Board, and its officials and staff shall not be liable for any acts or omissions relating to a Committee, except to the extent that such limitation of liability is prohibited by applicable law.



Centre chargers

1. The charges of the Centre shall include those relating to each appointment of a member of the Committee, to each decision on a request for refusal of a member of the Committee, and to other requests that the Parties make to the Centre.

2. The amount of the charges is shown in the attached table, which may be reviewed by the Centre.

3. The payment of charges by the Parties to the Centre shall always be prior to the act to be carried out by the Centre, and the Centre may not continue the procedure for appointing a member of the Committee or the incident of refusal of a member of the Committee without the costs being fully paid.

4. The amount paid by the Parties shall constitute all charges to be borne for the appointment of a member of the Committee or for the incident of refusal of a member of the Committee.

5. Charges shall be borne by the Parties in equal parts and the amount paid by the Parties to the Centre as charges shall not be refundable.

Table	
Administrative Charges	
Appointment of a member of the Committee	€ 2,500.00
Challenge of a Member of the Committee	€ 7,500.00
Other decisions or actions	Up to € 2,500.00 (depending on the degree of complexity, the respective value being established by decision of the Centre President)

VAT is added at the statutory rate, when due