



*India's Apex Arbitral Institution*

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RULES OF DOMESTIC  
COMMERCIAL ARBITRATION  
AND  
CONCILIATION

*(As amended on and with effect from 1<sup>st</sup> April, 2016)*

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**INDIAN COUNCIL OF ARBITRATION**

**Federation House | Tansen Marg | New Delhi**

**Web: [www.icaindia.co.in](http://www.icaindia.co.in)**



# International Mutual Co-operation Agreements between ICA and Foreign Arbitral Institutions

## International Partners

1. The Board of Trade of Thailand
2. The Korean Commercial Arbitration Association
3. The Yugoslav Chamber of Economy, Belgrade
4. The Bulgarian Chamber of Commerce & Industry, Sofia
5. The Chambers of Commerce and Industry of the socialist Republic of Romania
6. The International Chamber of Commerce, The Court of Arbitration of the International Chamber of Commerce, The Indian National Committee of the International Chamber of Commerce
7. The Asian-African Legal Consultative Committee, The Regional Centre for Arbitration at Kuala Lumpur
8. The Scottish Council for Arbitration
9. The Australian Centre for International Commercial Arbitration
10. The Nederlands Arbitrage Instituut, Rotterdam
11. The Arbitration Institute of the Stockholm chamber of Commerce, Stockholm
12. The American Arbitration Association
13. The Danish Committee of International Arbitrators
14. The Permanent Arbitration Court of the Mauritius Chamber of commerce and Industry
15. The Chamber of Commerce and Industry of the Russian Federation
16. The German Institution of Arbitration
17. The Cairo Regional centre for International Commercial Arbitration
18. The Arbitration Court Attached to the Economic chamber of the Czech Republic
19. The Swiss Arbitration Association
20. The Cameroon committee of Arbitration, Douala
21. Ghana Arbitration Centre
22. Greek Arbitration association, Athens, Greece
23. The Tokyo Maritime Arbitration Commission of the Japan Shipping Exchange, Inc.
24. The Philippine Dispute Resolution Center, Inc.
25. The Arbitration Centre of the Institute for the Development of Commercial Law & Practice Srilanka
26. The Association of Arbitrators, South Africa
27. The Chartered Institute of Arbitrators, London
28. The London Court of International Arbitration
29. The Chamber of National and International Arbitration of Milan
30. The Greek Arbitration Association, Athens, Greece
31. Mediterranean Arbitration Council Legal Seat, Milan, Italy
32. The Association of arbitrators of Nigeria, Lagos, Nigeria
33. The WIPO Arbitration and Mediation Center World Intellectual Property Organization, Geneva Switzerland
34. The China International Economic and Trade Arbitration Commission
35. The Chartered Institute of Arbitrators, Kenya Branch
36. The Polish Arbitration Association, Poland
37. The G.C.C. Commercial Arbitration Centre, Bahrain
38. The Bahrain centre for International Commercial Arbitration (BACICA), Bahrain
39. The Federation of Bangladesh Chambers of Commerce & Industry, Dhaka
40. The Arbitration Association of the Republic of China
41. Hong Kong International Arbitration Centre, Hong Kong
42. Venice Chamber of National & International Arbitration, Venice (Italy)
43. Central Chamber of Commerce of Finland
44. Arbitration Centre of the Caracas Chamber of Commerce & Industry, Venezuela
45. International Arbitral Centre of the Austrian Federal Economic Chamber, Vienna, Austria.
46. Association of Arbitration Courts of Uzbekistan

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# MODEL CLAUSES FOR DOMESTIC COMMERCIAL ARBITRATION AND CONCILIATION

## ICA DOMESTIC COMERCIAL ARBITRATION CLAUSE

The Indian Council of Arbitration recommends to all parties, desirous of making reference to arbitration by the Indian Council of Arbitration, the use of the following arbitration clause in writing in their contracts:

**"Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties."**

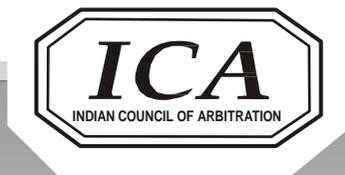
## ICA CONCILIATION CLAUSE

Parties to a contract, who agree to resolve their contractual disputes in accordance with the ICA Rules of Conciliation and to have the ICA act as appointing authority and/or to provide administrative services, may use the following clause:

**"If a dispute arises out of or in connection with this contract, or in respect of any defined legal relationship associated therewith or derived therefrom, the parties agree to seek an amicable settlement of that dispute by conciliation under the ICA Rules of Conciliation. The authority to appoint the conciliator/conciliators shall be the Indian Council of Arbitration. The Indian Council of Arbitration will provide administrative service in accordance with the ICA Rules of Conciliation"**.

*Note:* Parties may have to consider adding the following:

- (a) The number of conciliator(s) shall be .....
- (b) The language of the conciliation proceedings will be .....
- (c) Specific qualifications of the conciliator(s) including, but not limited to, language, nationality, technical qualifications and experience.



RULES OF  
DOMESTIC  
COMMERCIAL  
ARBITRATION

*(As Amended on and With Effect from April 1, 2016)*



# ICA RULES OF DOMESTIC COMMERCIAL ARBITRATION

(As amended on and with effect from 1<sup>st</sup> April, 2016)

## ICA DOMESTIC COMMERCIAL ARBITRATION CLAUSE

The Indian Council of Arbitration recommends to all parties desirous of making reference to arbitration by the Indian Council of Arbitration, the use of the following arbitration clause in writing in their contracts:

*"Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties."*

## Definitions

### Rule 1

(i) These rules may be called the "Rules of Domestic Commercial Arbitration of the Indian Council of Arbitration."

(ii) These rules shall apply where parties have agreed in writing that (a) a dispute has arisen or (b) a dispute which may arise between them in respect of defined legal relationship whether contractual or not, shall be settled under the Rules of Arbitration.

### Rule 2

In these rules, the following words have the following meanings:

- (i) "Arbitral Tribunal" means an arbitrator or arbitrators appointed for determining a particular dispute or difference.
- (ii) "Arbitral Award" includes an interim award.
- (iii) "Act" means the Arbitration and Conciliation Act, 1996 and any amendment thereof.
- (iv) "Committee" means the Arbitration Committee of the Council as provided for hereinafter.
- (v) "Council" means the Indian Council of Arbitration.
- (vi) "Governing Body" means the Governing Body of the Council.
- (vii) "Guidelines" means the guidelines for arbitrators and the parties to arbitration for expeditious conduct of the arbitration proceedings, given in the Annexure to these Rules.

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- (viii) "Domestic Commercial Arbitration" means an arbitration relating to disputes arising out of legal relationships whether contractual or not considered as commercial under the law in force in India and where parties are (a) individuals who are nationals of India; or (b) a body corporate which is incorporated in India; or (c) any body or department of the Government of India and/or State Government and/or the local bodies including local authorities, State Government and Union Territories; or (d) an association or body of individuals and/or a partnership firm having its place of business in India.
  - (ix) "Party" means a party to an arbitration agreement. It shall include any individual, firm, company, Government, Government organisation or Government Undertaking.
  - (x) "Panel" means the Panel of Arbitrators maintained by the Council.
  - (xi) "Registrar" means the Registrar for the time being appointed by the Committee and includes such other persons as the Committee may nominate for carrying out the duties of the Registrar under these rules.
  - (xii) "Rules" means the Rules of Arbitration of the Council.
  - (xiii) "Rules of Conciliation" means the Rules of Conciliation of the Council.
  - (xiv) "Fast Track Arbitration" means arbitration in accordance with Rule 44.
  - (xv) Words importing the singular number include, where the context admits or requires, the plural number and vice versa.

## Arbitration Committee

### Rule 3

- (a) The Governing Body of the Council shall constitute an Arbitration Committee for performing the functions prescribed under these Rules. The Committee shall consist of the President of the Council, who shall be the ex officio Chairman of the Committee and three members of the Governing Body of the Council elected by the Governing Body from amongst themselves. The Committee shall hold office for a year.
- (b) The Committee may co-opt not more than two persons to be additional members of the Committee during its terms of office. Persons who are not members of the Governing Body may also be co-opted to be members of the Committee.

- (c) The Committee or the Chairman of the Committee may delegate to the Registrar the power to take certain decisions, provided that any such decision shall be reported to the Chairman or the Committee as the case may be.

## Rules Applicable

### Rule 4

- (a) Any dispute relating to any commercial matter including shipping, sale, purchase, banking, insurance, building construction, engineering, technical assistance, know-how, patents, trademarks, management consultancy, commercial agency, or labour, arising between two or more parties in India who agree or have agreed for arbitration by the Council, or under the Rules of Arbitration of the Council, shall be determined and settled in accordance with these Rules.
- (b) The Council shall also be competent to administer the conduct of arbitration in any dispute or difference relating to a commercial transaction between parties as mentioned in sub-clause (a) where they have agreed to have their dispute arbitrated under any other Rules of Arbitration and have agreed to have such arbitration administered by the Council, wholly or in respect of some matters arising out of such arbitration.
- (c) In case the parties have provided different procedure for appointment of arbitrator or schedule of cost including the arbitrator's fee, the Council shall not be bound to process the case unless both the parties agree to follow the entire procedure of arbitration under Rules of Arbitration of the Council.
- (d) The Council shall be competent to function as Appointing Authority as contemplated under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

### Rule 5

Wherever the Parties have provided or agreed for arbitration by the Indian Council of Arbitration or for arbitration under the Rules of Arbitration of the Council, these rules or any amendment thereof, in the form obtaining at the time the dispute is referred to arbitration of the Council, shall apply.

### Rule 6

The proceeding before the Arbitral Tribunal shall be governed by applicable laws in India.

## **Rule 7**

Any chamber of commerce, trade association or any arbitral or other organisation may adopt these Rules by making them generally available to its members or by applying them to any dispute in which any of its members may be parties or by normally conducting its arbitration under these Rules.

## **Interpretation of the Rules**

### **Rule 8**

The decision of the Committee on any question relating to interpretation of these rules or any procedural matter there under shall be final and binding on the parties.

## **Panel of Arbitrators**

### **Rule 9**

A Panel of Arbitrators shall be appointed by the Committee from amongst persons who are qualified and possesses knowledge and experience in their respective field of profession and arbitration law & procedure and are willing to serve as arbitrators generally or in specific fields and who are from time to time recommended by the members of the Council or any other person or organisation.

All the members of the Panel will carry equal status and parties will not have any right to challenge the appointment of the arbitrator on the ground that its nominee arbitrator has higher status than the Presiding Arbitrator.

### **Rule 10**

The Registrar shall prepare and maintain an up-to-date Panel of Arbitrators together with adequate information as to their qualifications and experience. Separate lists may be kept and maintained of arbitrators included in the Panel for disputes in general and for each of the fields of international trade and/or business transactions in which the Governing Body decides that the Council will offer arbitration facilities under the Rules.

The parties to a dispute or the Registrar where he appoints the arbitrator may choose any person from the panel with reference to any dispute. If any party appoints a foreigner/person residing abroad, as arbitrator from the panel, that party will have to meet the travel & stay expenses of the person appointed as arbitrator at the venue of arbitration. The arbitral tribunal may, however, make any order in regard thereto in the award. The panel of Arbitrators shall be open to inspection by all persons with the permission of the Registrar.

### **Rule 11**

The Committee may at any time add the name of any person to the list of arbitrators included in the Panel or delete the name of any person from the panel.

### **Rule 12**

The Chairman of the Committee may include the name of any person in the panel, in case it is required in any particular case. His continuance in the Panel will be decided by the Committee.

### **Rule 13**

The persons who have attained the age of more than 80 years will automatically cease to be member of the Panel of Arbitrators. In the case of a person, who has been appointed as Arbitrator before attainment of the age of 80 years, his panel membership will continue till the pronouncement of the Award in pending arbitration matters referred to him.

## **Duties of the Registrar**

### **Rule 14**

- (a) The Registrar shall receive applications for arbitration by the Council, receive payment of fees and deposits, appoint, in consultation with the Chairman of the Committee, and in his absence in consultation with the member of the Governing Body designated by him, an arbitrator or arbitrators as hereinafter provided. The Registrar shall also receive all communications made to the arbitral tribunal by the parties and communicate to them the orders and directions of the arbitral tribunal, keep a register of applications to the Council and of awards made by the arbitral tribunal, keep such other books or memoranda and make such other records or returns as the Committee shall from time to time require and generally carry out the directions of an arbitral tribunal so constituted under these rules and take such other steps as may be necessary to assist such arbitral tribunal in the carrying out of its functions.
- (b) The Registrar may delegate to any officer of the Council, Chambers of Commerce or Trade Association at the premises of which the arbitration proceedings are taking place, to discharge such of the functions and administrative duties of the Registrar as are deemed proper and necessary from time to time, with reference to a particular case or cases.

## Initiation of Arbitration

### Rule 15

- (i) Any Party wishing to commence arbitration proceedings under these rules (Claimant) shall give a notice of request for arbitration to the Registrar of ICA and to the Respondent.
- (ii) The notice of request (application) for arbitration to the Registrar shall be accompanied by:-
  - (a) the names and full addresses of the parties to the dispute including emails, phone numbers, hand/mobile phone numbers, fax nos. of the parties to the dispute and their legal representative, if any.
  - (b) statement of the claim and facts supporting the claim, points at issue and relief or remedies sought with other details of the claimant's case.
  - (c) original or duly certified copies of the arbitration agreement, any contract or agreement out of or in connection with which the dispute has arisen and such other documents and information relevant or relied upon.
  - (d) Non-Refundable Registration Fee of Rs.15,000/- plus any applicable tax for claims up to Rs. One Crore and Rs.30,000/- plus any applicable tax for claims more than Rs.One Crore.
  - (e) The Arbitral proceedings in respect of dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the Respondent.
  - (f) In the event that the Claimant fails to comply with any of the requirements referred to hereinabove, the Registrar may fix a time limit not exceeding 15 days within which the Claimant must comply, failing which the file shall be closed without prejudice to the Claimant's right to resubmit the same claims at a later date in another notice of request for arbitration.

### Rule 16

If any Court makes an order directing that an arbitration be held under these Rules, in addition to the documents listed in Rules 15, the order of that Court or a copy thereof shall accompany the application for arbitration.

## **Rule 17**

- (a) On receipt of an application for arbitration, the Registrar shall have absolute discretion to accept or reject the said application. The Registrar is not bound to give reasons for the exercise of his discretion.

Before deciding on the acceptability of an application for arbitration, the Registrar may ask the parties for further information and particulars of their claims.

- (b) Similarly, if any information or particulars regarding the arbitration agreement furnished by Claimant with the application for arbitration are found to be incorrect or false, at any time subsequently, the Registrar shall have the power to reject the application for arbitration.
- (c) Any Party aggrieved by the decision of the Registrar, in accepting or rejecting an application for arbitration as above, may apply to the Court for suitable directions.

## **Defence Statements**

### **Rule 18**

- (a) On receipt of the application together with the claim statement, the Registrar shall send to the other Party (Respondent) a copy of the claim statement and attached documents and ask such other party to furnish within thirty days or within any extended date not exceeding thirty days, a defense statement setting out his case accompanied by all documents and information in support of or bearing on the matter.
- (b) Any communication sent by the Registrar under Registered Post to the Respondent on the address appearing in the Arbitration Agreement/the contract between the parties, as per the information supplied to the Council, will be deemed to be duly served on the Respondent, if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address last known, even if the Respondent refuses to accept the said communication or if it is returned to the Council by the postal authorities as unclaimed by the said party. The Registrar may proceed further with the arbitration proceedings as per the rules as if such communication had been duly served on the concerned party. The Registrar may in such cases make an additional communication to the Parties by Registered Letter or by other means which may provide a record of attempts to deliver it.
- (c) A copy of the defence statement and all appended documents, if any, shall be sent to the Claimant for information.
- (d) The communication is deemed to have been received on the day it is so delivered.

## Counter-Claim and Reply to Counter-Claim

### Rule 19

- (a) The Respondent may make a counter-claim against the Claimant provided the counter-claim arises under the same transaction as the original claim. He must submit the counter claim with full details supported by all documents and information as in the case of the claim under Rule 15 within the period laid down

for the defence statement to the claim and the Claimant may within twenty one days of the notification of the counter claim or within such extended time not exceeding thirty days submit a statement in reply to the counter claim. The arbitral tribunal appointed to adjudicate upon the original claim shall also adjudicate upon the counter-claim and there will be no change in the number of members of arbitral tribunal already constituted on the basis of original claim.

- (b) Copy of the reply of the Claimant to the counter-claim and all appended documents, if any, shall be sent to the Respondent for information.

## Copies of Statements, Documents and Replies

### Rule 20

All statements, claim, counter-claim, affidavit, replies and other documents and papers submitted by the parties and all appended documents must be supplied in triplicate. Where there is more than one arbitrator or more than one opposing party, the parties shall within the time specified furnish to the Registrar such number of further copies as may be required by the Registrar.

## Constitution of the Arbitral Tribunal

### Rule 21

On receipt of the application for arbitration, the Registrar shall take necessary steps to have the arbitral tribunal constituted for the adjudication of the dispute or difference as provided hereunder.

### Rule 22

The number of arbitrators to hear a dispute shall be determined as under:

- (a) Where the claim including determination of interest, if any, being claimed upto the date of commencement of arbitration in terms of Rule 15, does not exceed Rs. One crore and where the arbitration agreement does not specify three arbitrators, the reference shall be deemed to be to a sole arbitrator.

- (b) Where the claim including determination of interest, if any, being claimed upto the date of commencement of arbitration in terms of Rule 15 exceeds Rs. One crore the dispute will be heard and determined by three arbitrators, unless the agreement provides otherwise or the parties to the dispute agree to refer the dispute to a sole arbitrator within thirty days from the date of notification of the request for arbitration.

### **Rule 23**

The appointment of sole arbitrator or three arbitrators shall be made in the following manner:

- (a) In case a Sole Arbitrator has to be appointed, the Registrar shall, by a notice in writing, call upon the parties to the dispute to forward the name of an agreed arbitrator from among the Panel of Arbitrators. The said notice shall specify the period within which the nomination shall be made which shall not be more than thirty days from the date of the said notice to the respective parties. If the parties fail to agree on the person to be appointed as sole arbitrator within the time granted by the Registrar, the Registrar in consultation with the Chairman of the Committee and in his absence in consultation with the member of the Governing Body designated by the Chairman, shall appoint the sole arbitrator from among the Panel of Arbitrators. The sole arbitrator so nominated shall constitute the arbitral tribunal to hear the dispute and shall be appointed as such in writing by the Registrar. The Registrar shall give notice to the Parties of the constitution of the arbitral tribunal.
- (b) Where the reference is to three arbitrators, the Registrar shall in the first instance call upon the parties to nominate one arbitrator each from among the Panel of Arbitrators by a notice in writing, sent to them. The said notice shall specify the period within which the nomination shall be made which shall not be more than thirty days from the date of the said notice to the respective Parties. If a Party to the dispute refuses or neglects to appoint an arbitrator on his behalf within the period specified or if he requests the Registrar to nominate an arbitrator on behalf of that party, the Registrar in consultation with the Chairman of the Arbitration Committee and in his absence in consultation with the members of the Governing Body designated by the Chairman shall appoint the arbitrator from the Panel of arbitrators on behalf of that party. On receipt of the nominations from the respective parties or on the appointment as aforesaid by the Registrar, the Registrar shall appoint another person as the Presiding Arbitrator of the arbitral tribunal in consultation with Chairman of the Committee and in his absence in consultation with members of the Governing Body designated by the Chairman, from among the panel of arbitrators to be additional arbitrator to act as Presiding Arbitrator of the arbitral tribunal.

### **Rule 24**

The parties will obtain the consent from the persons nominated by them as arbitrator and intimate the Council accordingly. The Registrar will obtain the consent from person(s) nominated by him. After a person gives his consent for appointment as arbitrator, he will be duly intimated about his appointment to decide the dispute, by a Memo in writing under the hand of the Registrar about the constitution of the arbitral tribunal. The appointment of the arbitrator will take effect from the date of such intimation about the constitution of

the arbitral tribunal.

## **Rule 25**

- (i) Before accepting his nomination the prospective arbitrator shall disclose any circumstances such as financial, business, professional or other kind in the outcome of the award, likely to disqualify him as an impartial arbitrator. Upon receipt of such information, the Registrar shall disclose it to the parties, who if willing to proceed under the circumstances disclosed, shall advise the Registrar accordingly. If either party declines to waive the presumptive disqualification, the prospective arbitrator shall be disqualified from acting as arbitrator and the vacancy so created shall be filled, in accordance with the applicable provision of these Rules.
- (ii) The arbitrator while making the aforesaid disclosure should take notice of the grounds enumerated in the Fifth Schedule of the Act or such other schedule or amendment as may be made from time to time in respect thereof.
- (iii) Any person, whose relationship with the parties or counsel or the subject matter of the dispute falls under any of the categories specified in the Seventh Schedule of the Act, shall be ineligible to be appointed as an arbitrator provided that the parties may waive the applicability of the categories provided in the Seventh Schedule or such other schedule or amendment as may be made from time to time by an express agreement in relation to the appointment of arbitrators.

## **Rule 26**

Any Party shall have the right to challenge the appointment of an arbitrator on receipt of the notice of his appointment for reasons which disqualify the arbitrator. The Challenge of an arbitrator shall be made within 15 days after his appointment has been communicated to the challenging party or within 15 days of his becoming aware of the reasons for which the challenge is made. Copies of the communication of challenge shall be sent to the other Parties and the arbitrators. The Committee shall be the sole judge of the grounds of challenge and its decision shall be final and binding on the Parties as well as the arbitrator.

## **Rule 27**

- (a) If any appointed arbitrator resigns or dies or becomes incapable of acting or neglects or fails to act expeditiously, prior to or during the arbitration hearings, or if he fails to make the award within the time and/ or extended time prescribed under Rule 63, the Registrar in consultation with the Chairman of the Arbitration Committee may terminate the authority of such an appointed arbitrator and inform him accordingly. In the event of such termination, the arbitrator or arbitrators as the case may be, and whose authority has been terminated, shall not be entitled to any fee.

- (b) In case of the resignation or death or termination of authority of an appointed arbitrator under Sub-Rule above, a new arbitrator will be appointed in his place by the Registrar in consultation with the Chairman of the Arbitration Committee in case they had appointed the original arbitrator. Where the appointment was made by the parties, the Registrar shall call upon the party who had appointed the arbitrator to nominate another arbitrator in his place. If any Party refuses or neglects to nominate an arbitrator within 15 days of the date of notice requiring him to nominate the arbitrator or within such extended time not exceeding thirty days, the Registrar in consultation with the Chairman of the Arbitration Committee shall nominate the arbitrator on behalf of that Party from among the Panel of Arbitrators.
- (c) The arbitrator(s) appointed as above will be informed about the reconstitution of the arbitral tribunal and the reconstituted arbitral tribunal shall make the award expeditiously within the time prescribed under Rule 63 from the date when the reconstituted arbitral tribunal enters on the reference. The reconstituted arbitral tribunal shall proceed with the arbitration with the liberty to act on the record of evidence and proceedings as then existing or to commence the proceedings de novo.

## Deposits

### Rule 28

The Registrar may require the Parties before passing the case on to the arbitrators under Rule 38, to deposit in advance such sums of money as he deems necessary to defray expenses of the arbitration including the administrative charges, arbitrator's fee and stamp duties. As a general rule, the deposits shall be called for in equal shares from the Claimant(s) and the Respondent(s). The arbitral tribunal may, during the course of the arbitration proceedings or in the arbitration award, require further sums to be deposited by the Parties or any one of them to meet the expenses of the arbitration. When one of the Parties neglects or refuses to make the deposit, the Registrar or the arbitral tribunal, as the case may be, may require such deposit whether in relation to a claim or a counter-claim, to be made by the other Party to the dispute (Claimant or Respondent as the case may be). Should the whole or part of the deposit be not made by the Parties or any one of them, the Registrar shall inform the Parties or the Party concerned that the claim or counterclaim, as the case may be, will not be the subject matter of the reference. The arbitral tribunal shall proceed only in respect of those claims or counter-claims for which the deposits has been duly paid to the Council and otherwise may order the suspension or termination of the arbitral proceedings.

All deposits towards costs and expenses shall be made with the Council and no payment shall be released to the arbitrators directly by the parties. The deposit made shall be taken into account by the arbitral tribunal in apportioning the cost while making the award. Any deposit made in excess shall be refunded to such of parties as the arbitral tribunal may direct. The Council shall have a lien for the arbitral award on any unpaid cost of the arbitration.

## Fees and Expenses

### Rule 29

The arbitral tribunal shall be entitled to allow fees and expenses of witnesses, expenses connected with the selection and carriage of sample and examination of goods, Licensed Measure's Department charges, conveyance, hire, cost of legal or technical advice or proceedings in respect of any matter arising out of the arbitration incurred by the arbitral tribunal, and any other incidental expenses and charges in connection with or arising out of the reference or award as the arbitral tribunal shall, in its absolute discretion, think fit.

### Rule 30

The costs of the reference and the award including charges, fees and other expenses shall be in the discretion of the arbitral tribunal, which may direct to and by whom, and in what proportion, such charges, fees and other expenses and any part thereof shall be borne and paid, and may tax and settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between solicitor and client. In the event, any administrative fees and expenses are due to the Council, the arbitral tribunal may award them in favour of the Council.

### Rule 31

The fees, costs and expenses incidental to the reference and the award shall include the following :

#### (1) Registration Fee

The Registration fee shall be payable with regard to the amount in dispute in each case as hereunder. The registration fee shall not be refunded and becomes the property of the Council.

- (a) Rs. 15,000/- plus applicable taxes for claims upto Rs. one crore
- (b) Rs.30,000/- plus applicable taxes for claims more than Rs. one crore

#### (2) Arbitrator's Fee and Administrative Charges

The Administrative fee (of ICA) and Arbitrator's fee (for each arbitrator) may be taken as a composite amount, although fixed separately with regard to the amount in dispute in each case, as under:

Amount of Claim & Counter Claim	Arbitrator's fee for each Arbitrator	Administrative Charges
Upto Rs. 5 lac (Rs.5,00,000/-)	Rs.60,000/-	Rs.45,000/-
From Rs.5 lac one to Rs.25 lac (Rs.5,00,001 to 2,500,000)	Rs.60,000/- plus Rs.3,000/- per lac or part thereof subject to a ceiling of Rs.1,20,000/-	Rs.45,000/- plus Rs.2,250/- per lac or part thereof subject to a ceiling of Rs.90,000/-
From Rs.25 lac one to Rs.1 crore (Rs.2,500,001 to 10,000,000)	Rs.1,20,000/- plus Rs.2,400/- per lac or part thereof subject to a ceiling of Rs.3,00,000/-	Rs.90,000/- plus Rs.1,800/- per lac or part thereof subject to a ceiling of Rs.2,25,000/-
From Rs.1 crore one to Rs.5 crore (Rs.10,000,001 to 50,000,000)	Rs.3,00,000/- plus Rs.45,000/- per crore or part thereof subject to a ceiling of Rs.4,80,000/-	Rs.2,25,000/- plus Rs.33,750/- per crore or part thereof subject to a ceiling of Rs.3,60,000/-
From Rs.5 crore one to Rs.10 crore (Rs.50,000,001 to 100,000,000)	Rs.4,80,000/- plus Rs.30,000/- per crore or part thereof subject to a ceiling of Rs.6,30,000/-	Rs.3,60,000/- plus Rs.22,500/- per crore or part thereof subject to a ceiling of Rs.4,72,500/-
Over Rs.10 crores	Rs.6,30,000/- plus Rs.24,000/- per crore or part thereof, subject to a ceiling of Rs. 30 lac	Rs.4,72,500/- plus Rs.18,000/- per crore or part thereof, subject to a ceiling of Rs.25 lac

**Note:** In addition to the Arbitrator's Fee and the Administrative Charges referred to hereinabove, the parties shall also deposit in advance any applicable taxes thereon including requisite stamp duties.

### **(3) In addition to the above**

- (a) The ICA will be entitled to receive a Special Fee of Rs.7,500/- plus applicable taxes per hearing for providing facilities of hearing rooms, secretarial assistance etc. in advance initially for ten sittings. Such expenses shall be deposited by the parties in advance as demanded by the Registrar from time to time.
- (b) Notwithstanding the provisions in Sub-Rule (2) of this Rule, the Committee/Chairman of the Committee may prescribe the Arbitrator's fee, expenses and the Administrative fee of the Council at a figure higher than those prescribed in the said Sub-Rules, if in the exceptional circumstances of the case this appears to be necessary.
- (c) In the event any foreign national is appointed as an arbitrator, in that event, the Registrar in consultation with the Arbitration Committee, shall be entitled to fix additional fee and travelling & out of pocket expenses over and above what has been prescribed under Rule 31(2), 32 and 33 for such arbitrator.

### **Rule 32**

**Other expenses :** The arbitrator may be paid an amount of Rs. 2,500/- towards local conveyance for attending each arbitration hearing in the city of his residence. In respect of joint trial, the hearing will be treated as one irrespective of the number of cases. Any traveling and other expenses incurred by the arbitrator or the Registrar for attending the arbitration hearings in a city other than the place of residence shall also be reimbursed to him as provided hereinafter. All the above expenses shall form part of the arbitration costs.

### **Rule 33**

- (1) An arbitrator who has to travel shall be paid traveling expenses by air or rail (air conditioned wherever available) or car (when neither air nor rail transport is available) at actuals. In addition, he may be paid out-of-pocket expenses at actuals for boarding, lodging and local transport subject to maximum of Rs. 20,000/- per day in metropolitan cities and Rs. 12,000/- in all other cities. An arbitrator who makes his own arrangements for boarding, lodging, local transport etc. may be paid out of pocket expenses at the rate of Rs. 10,000/- per day, without production of vouchers. The limits for stay of the Registry officials will be of those applicable to arbitrators.
- (2) The cost to be incurred on payment of expenses referred to in Sub-Rule (1) to an arbitrator nominated by a party will be borne and paid by the party nominating the arbitrator. However, if an appointed arbitrator changes his residence after his nomination by a party, he will not be entitled to reimbursement of any enhanced expenses for attending the arbitration hearing, unless the party nominating him agrees to reimburse the same to him. The expenses payable to the third arbitrator or sole

arbitrator appointed by the Council under Rule 23(a) & (b) will be borne and paid by both the parties in equal proportion or in such other manner as may be determined by the Arbitral Tribunal.

#### **Rule 34**

Where the arbitration proceedings under an adhoc arbitration or under the rules of arbitration of any other arbitral organisation or otherwise are administered by the Council wholly or in respect of some matters arising out of such arbitration, the Council may charge an appropriate fee for such administration and other services.

#### **Rule 35**

In respect of the arbitration proceedings referred to in Rule 34 hereinabove, the Council shall be entitled to charge a fee as provided in Rule 31 (1).

#### **Rule 36**

Where the sum under dispute is not stated or in arbitration proceedings where the relief claimed is other than a money claim, viz., a declaratory claim, the Registrar and the Arbitral Tribunal under Rule 28, may require such deposits as may be deemed necessary to be paid by such of the parties as may be required subject to later adjustment.

#### **Rule 37**

The amount of interest, whenever specified, will be included in the claim amount for the purpose of calculation of arbitrator's & administrative fee. Further, claims and counter-claims referred for arbitration shall be taken into consideration separately for the purpose of calculation of arbitrators as well as administrative fee under Sub-Rule 31 (2).

## **Submission of the Case to the Arbitral Tribunal**

#### **Rule 38**

- (i) The Arbitral Tribunal shall be deemed to have entered on the reference on the day on which the arbitrator or all the arbitrators, as the case may be, have received notice in writing of their appointment by the Registrar after disposal of the challenge to their appointment, if any, made.
- (ii) The Registrar shall send copies of all papers relating to arbitration such as claim statement, defence statement, counter claims, reply, statements, or other documents received from the parties to the dispute to the Arbitrator/Arbitrators constituting the Arbitral Tribunal with a request to proceed with the arbitration.

- (iii) If the Claimant does not file all the requisite documents, papers, etc. or does not deposit the appropriate fees as per the Rules after having been given due opportunity for the purpose by the Registrar or the arbitral tribunal, the Registrar or the arbitral tribunal may dismiss/close the case on file for lack of pursual by the Claimant. Similarly, if the Respondent fails to produce any requisite documents, papers including the statement of defence or information or fails to deposit administrative fees, or arbitrators fees etc. after having been given due opportunity for the purpose by the Registrar or the arbitral tribunal, the Registrar or the arbitral tribunal may proceed further with the arbitration proceedings as per the Rules, notwithstanding such failure or refusal by the Respondent.

### **Rule 39**

Where there are two or more applications for arbitration by the Council and the issue involved in the dispute arises out of same transactions, the Registrar may, if he thinks proper to do so and with the consent of the Parties, fix the hearings of the disputes to be heard jointly or refer the applications to the same Tribunal. The awards, however, shall be given separately in each case.

## **Notifications and/or Communications from the Registrar**

### **Rule 40**

All applications which the parties desire to make to the arbitral tribunal and all notices to be given to the Parties before or during the course of arbitration or otherwise in relation thereto shall be made through and sent by the Registrar who shall communicate the orders and directions of the Arbitral Tribunal thereon to the Parties.

## **Amendment of Claims, Etc.**

### **Rule 41**

Amendments of the claim, defence statement, counter-claim or reply submitted to the Arbitral Tribunal must be formulated in writing by the Party so desiring. The Arbitral Tribunal will decide whether such amendments should be allowed or not. The Administrative fee and Arbitrator's fee (for each Arbitrator) shall get revised to the extent of increase for such additional claims/counter-claims. The party making such additional claim/counter-claim shall deposit the entire fees payable in respect of such increase of additional claim as set out in the schedule of fees in Rule 31(2).

## Place of Arbitration

### Rule 42

The place or venue of arbitration shall be India. The Arbitration proceedings shall be held at such place or places in India as the Arbitral Tribunal may determine having regard to the convenience of the Arbitrators and the Parties.

## Proceedings Before the Arbitral Tribunal Conciliation

### Rule 43

**Optional Conciliation:** The parties may opt for conciliation and request the arbitral tribunal before the commencement of the arbitration proceedings unless they have already agreed otherwise, to settle their dispute through conciliation as per Rules of Conciliation of the Council.

## Fast Track Arbitration

### Rule 44

**Fast Track Arbitration :** The Parties may opt for Fast Track Arbitration and request the arbitral tribunal, before the commencement of the arbitration proceedings, to decide the reference in a fixed time frame of 3 to 6 months or any other time agreed between the Parties, according to the Fast Track Arbitration procedure, as under:

- (1) The arbitral tribunal will be authorized to decide the dispute on the written pleadings, documents and written submissions filed by the Parties without any oral hearings.
- (2) The arbitral tribunal shall have power to call for any further information/clarification from the parties in addition to the pleading and documents filed by them.
- (3) An oral hearing may be held if both the parties make a joint request or if the Arbitration tribunal considers an oral hearing necessary in any particular case.
- (4) If an oral hearing is held, the arbitral tribunal may dispense with any technical formalities and adopt such procedure as it deems appropriate and necessary for economic and expeditious disposal of the case.

### Rule 45

At a hearing, a party shall be entitled to appear by counsel, attorney, advocate or a duly authorised adviser or representative or personally. However, where the dispute is purely of a commercial nature, the parties shall have no right to be represented by lawyers except where, having regard to the nature or complexity of the dispute, the arbitral tribunal considers it necessary in the interest of justice that the parties should be allowed to be represented by counsel, attorney or advocate.

## **Rule 46**

The arbitral tribunal may proceed with the reference notwithstanding any failure by a party to comply with any of the directions of the arbitral tribunal and may also proceed with the arbitral proceedings in the absence of any or both the Parties who fail or neglect to attend at the time and place appointed by the arbitral tribunal, in spite of due notice. Rule 47

The parties shall do all acts necessary to enable the arbitral tribunal to make an award expeditiously and shall not do or cause or allow to be done, any act which will delay the proceedings or prevent arbitral tribunal from making an award expeditiously, and if any party does cause or allow to be done any such act, that party shall pay such costs as the arbitral tribunal deems reasonable.

## **Rule 48**

The arbitration session will go on as far as possible on a day-to-day basis from 10.30 a.m. to 4.30 p.m. once the hearing begins after completion of all the formalities. The arbitral tribunal shall not ordinarily adjourn a hearing at the request of any party, except where the circumstances are beyond the control of the party provided the party seeking adjournment files a written request in advance and the arbitral tribunal is satisfied that reasons and circumstances for the adjournment are justified. While granting an adjournment, the arbitral tribunal may make such orders regarding payment of costs by one or both of the parties, including exemplary costs on the party seeking adjournment without any sufficient cause, as it deems fit and reasonable.

## **Rule 49**

If the parties have agreed to submit their case to arbitration under these Rules and any party refuses or fails to take part in the arbitration proceedings, the arbitral tribunal may proceed with the arbitration notwithstanding such refusal or absence.

## **Rule 50**

The arbitral tribunal may at its discretion at any time or times before making the final award and at the expense of the parties concerned, consult any person having special knowledge relating to the particular industry, commodity, produce or branch of trade concerned in the reference or any expert or qualified accountant and may also at the like expenses of the Parties, consult solicitors, counsel or advocates upon any technical question of law, evidence, practice or procedure arising in the course of the reference. If the parties agree, the arbitral tribunal may, at the expense of the Parties, appoint any expert, accountant, or lawyers to sit with as an assessor and take into account the advice of such assessor.

## **Rule 51**

The Parties to the reference and any witness on their behalf shall, subject to the provisions

of any law for the time being in force :

- (a) submit to be examined by the arbitral tribunal on oath or affirmation in relation to the matters in dispute.
- (b) produce before the arbitral tribunal all books, deeds, papers, accounts, writings and documents in their possession or power respectively which may be required or called for by the arbitral tribunal.
- (c) Comply with the requirements of the arbitral tribunal as to the production or selection of samples, and
- (d) generally do all other things which, during the pendency of the reference, the arbitral tribunal may require.

## **Rule 52**

The arbitral tribunal will consider, as far as possible, to receive the evidence of witnesses by affidavit. Provided that the witness whose affidavit is admitted in evidence is made available for cross-examination at the request of the opposite Party, the Arbitral Tribunal may:

- (a) administer oath or affirmation to the Parties or witnesses appearing and giving evidence;
- (b) make any award conditional or in the alternative;
- (c) correct in any award any clerical mistake or error arising from or incidental to any slip or omission;
- (d) administer to the Parties to the arbitration such interrogatories as it may consider necessary;
- (e) decide all objections to its jurisdiction including any objection regarding the existence or validity of the arbitration clause or the arbitration agreement, without prejudice to the right of the parties to have the matter decided by the Court of law;
- (f) decide the law governing :
  - (i) the contract or the matter in dispute,
  - (ii) the arbitration agreement, and
  - (iii) the arbitration procedure
- (g) award interest including pendente lite interest.

## **Rule 53**

When substantially the same dispute or questions of law and facts are likely to arise in more than one contract or agreement (Chain Contracts), the arbitral tribunal may invite all parties involved to agree to submit to an award in one arbitration between such two or more of the parties as are named for the purpose.

## **Rule 54**

- (i) The arbitral tribunal may by the award dismiss the application or claim:
  - (a) if the Claimant does not prosecute the arbitration proceedings or file the papers within the time granted; or
  - (b) neglects or refuses to pay the dues or deposits ordered to be paid by the arbitral tribunal or the Registrar.
- (ii) The arbitral tribunal may make an ex parte award :
  - (a) if the Respondent neglects or refuses to appear or make his defence or fails to file the papers within the time granted; or
  - (b) neglects or refuses to pay the dues or deposits ordered to be paid by the arbitral tribunal or the Registrar.

## **Rule 55**

The Registrar shall make necessary arrangements for a stenographic record of evidence whenever such record is required by a Party. The cost of the stenographic record and all transcripts thereof, if any, shall form part of the costs of the reference.

## **Rule 56**

The language of the arbitration proceedings shall be English unless otherwise agreed by the parties. If any documents filed by a Party are in a language other than English, the Party filing such documents shall simultaneously furnish an English translation of the documents. The Registrar may make arrangements for the service of an interpreter at the request of one or more of the parties and costs thereof shall form part of the costs of the reference.

## **Rule 57**

- (a) (1) Any party may, during the arbitral proceedings or at any time after the making of the arbitral award but before its enforcement, apply to the arbitral tribunal -
  - (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
  - (ii) for an interim measure of protection in respect of any of the following matters, namely-
    - (a) the preservation, interim custody or sale of any goods which are the subject matter of the arbitration agreement;
    - (b) securing the amount in dispute in the arbitration;
    - (c) the detention, preservation or inspection of any property or thing which is the subject matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or

authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient.

(2) Any order issued by the arbitral tribunal shall deem to be an order of the Court for all the purposes and shall be enforceable under the Code of Civil Procedure or any other law for the time being in force, in the same manner as if it were an order of the Court.

(b) Appointment of Emergency Arbitrator:

(a) If a party is in requirement of urgent interim or conservatory measures, that cannot await formation of the Tribunal, it may make an application for emergency interim relief. The party shall notify the Registrar with a simultaneous copy thereof to the other parties to the arbitration agreement for such measures.

(b) The party making such an application shall:

i) describe the circumstances and the nature of the urgency and the measures sought

ii) file proof of service of such application upon the opposite parties.

(c) The party invoking the provision of Emergency Arbitrator shall deposit the necessary fees, administrative charges and expenses decided by the Registrar in consultation with the Chairman of the Arbitration Committee within 7 days from the date of demand made by the Registrar.

(d) The Registrar, in consultation with the Chairman and in his absence in consultation with the member of the Committee designated by the Chairman, shall appoint the Emergency Arbitrator as soon as possible but not later than seven days from the date of receipt of the fee as above.

(e) The Emergency Arbitrator so appointed shall schedule a hearing including filing of pleadings as soon as possible but not later than seven days of his appointment. The Emergency Arbitrator shall provide reasonable opportunity of being heard to all the parties and upon being satisfied shall have the power to pass an interim order.

(f) The Registrar shall ensure that the entire process from the appointment of the Emergency Arbitrator to making the Order shall be completed within thirty days (excluding non-business days).

(g) The Emergency Arbitrator shall become *functus officio* after the Order is made.

(h) The order for urgent interim or conservatory measures passed by the Emergency Arbitrator shall not bind the Tribunal on the merits of any issue or dispute that the said Tribunal may be required to determine.

- (i) An order pursuant to the appointment of Emergency Arbitrator shall be binding on the parties when rendered. By agreeing to arbitration under these Rules, the parties undertake to comply with such an order or award without delay.
- (j) The order passed by the Emergency Arbitrator shall remain operative unless modified, substituted or vacated by the Tribunal.
- (k) Emergency arbitrator for all purposes shall be treated as ad hoc Arbitral Tribunal and shall have all the powers vested in the Arbitral Tribunal referred to in Rule 57.

## Waiver of Rules

### **Rule 58**

Any party who proceeds with the arbitration with the knowledge that any provision or requirement of these rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object.

## Return of Documents

### **Rule 59**

Unless required to be filed in a Court of law, the arbitral tribunal shall have full discretion to retain/to return all books, documents or papers produced before it and may direct at any time that the books, documents or papers produced before it or any of them may be returned to the parties producing them on such terms and conditions as the arbitral tribunal may impose.

## Award

### **Rule 60**

No award shall be made by the arbitral tribunal unless the case of the party applying for arbitration has been brought to the notice of the other party and until after the lapse of such specified time within which he has been asked to submit his defence statement under Rule 18.

### **Rule 61**

Whenever there is more than one arbitrator, the award of the majority shall prevail and be taken as the decision of arbitral tribunal. Failing a majority, the Presiding Arbitrator of the arbitral tribunal alone shall make the award.

### **Rule 62**

Should the Parties arrive at a settlement of the dispute by common agreement before the Arbitral Tribunal and the Arbitral Tribunal is satisfied that such agreement is genuine and not

to defeat the purpose of any law, the arbitral tribunal shall render an award as per agreement of the Parties. Otherwise, the arbitral tribunal shall make the award on the basis of the documents, evidence, etc. filed before it by the Parties.

### **Rule 63**

(i) The Arbitral Tribunal shall make the award as expeditiously as possible, preferably within six months, from the date of the reference subject to a maximum limit of twelve months from the date on which arbitral tribunal entered into reference in terms of Rule 38.

(ii) The parties mutually agree to waive their right of consent and confer upon the Registrar the right to extend the time for making of an award for a further period of six months, if applied for, by any of the parties, provided such request is found to be reasonable and necessary.

(iii) If the award is not made within the aforesaid period of 12 months or 18 months, as the case may be, the mandate of the arbitrator shall terminate unless the Court has either prior to or after the expiry of the period further extended the period for passing of award.

(iv) In the event, the arbitrators are substituted by the Court under the Act, the arbitration proceedings may continue from the stage it has reached and on the basis of the evidence and material already on record and the arbitrator(s), so appointed, shall be deemed to have received the said evidence and material. The Arbitral Tribunal, so reconstituted, shall be deemed to be in continuation of the previously appointed Arbitral Tribunal.

(v) The arbitrators shall not be entitled to any fees in the event of cancellation of their mandate for not making of the award within the time specified.

(vi) After the constitution of the arbitral tribunal and during the arbitral proceedings if any party makes a challenge as to the independence and impartiality of the arbitrator, the arbitral proceedings shall remain suspended during the period such challenge is decided.

(vii) If such challenge is rejected, the arbitral tribunal shall be at liberty to impose such exemplary cost on the party making challenge as it may be decided by the arbitral tribunal.

(viii) In the event such challenge is upheld, the arbitrators so challenged shall stand discharged and shall not be entitled to any fees.

(ix) The period during which the arbitral proceedings remain suspended shall be excluded from the period within which the award is to be made in terms of rule 63(1).

### **Rule 64**

The arbitral award shall state the reasons upon which it is based, unless :

(i) the parties have agreed that no reasons are to be given, or

(ii) the award is an arbitral award on agreed terms.

### **Rule 65**

The arbitral award shall state its date and the place of arbitration and the award shall be deemed to have been made at that place.

### **Rule 66**

The arbitral tribunal may make an interim award, and may, by an award, determine and order what shall be done by either or any of the Parties, respecting the matters referred.

### **Rule 67**

The arbitrators constituting the arbitral tribunal or the Presiding Arbitrator where Rule 61 is applicable, shall sign the award and the Registrar shall give notice in writing to the Parties of the making and signing thereof and of the amount of fees & charges payable in respect of the arbitration and the award. The arbitrators fee shall be payable by the Council on receipt of the award and requisite deposit made by the parties.

### **Rule 68**

- (a) When an award has been made, the Registrar shall furnish a true copy of the award to the parties by registered post provided the arbitration costs have been fully paid to the Council by the parties or by one of them.
- (b) The Registrar may require either Party to notify him of the compliance with the award.
- (c) The arbitral tribunal and the Registrar of the Council shall assist the parties in complying with any formalities that may be necessary for the enforcement of the award or for other purposes.
- (d) The Council may print, publish or otherwise circulate any award made under its rules or under its auspices, in any arbitration journal, magazine, report, etc. for the purpose of creating arbitration jurisprudence or precedents for the benefit and guidance of future arbitrations. No party to the arbitration shall have any objection to the publication of awards as above provided that the names and addresses of any Party to the dispute will be omitted from such publication and its identity duly concerned if so desired by such party.

### **Rule 69**

Additional copies of the award certified true by the Registrar shall be made available to the parties but to no one else, at all times at request and on payment as fixed by the Registrar.

## **Rule 70**

A party shall in all things abide by and obey the award which shall be binding on the Parties and their respective representatives, notwithstanding the death of any party before or after the making of the award and such death shall not operate as revocation of the submission or reference. To avoid delays and further litigation, the arbitrators/Registrar shall ask the Parties to agree that the award made by the arbitrators/s shall be final and binding on the Parties and neither Party shall be entitled to challenge it in the Court of law.

## **Filing of Award**

### **Rule 71**

The arbitral tribunal shall at the request of any of the Parties to the proceedings or of any person claiming under a Party or if so directed by the Court and upon payment of fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy thereof together with the deposition or documents which may have been taken and proved before it to be filed before the Court.

### **Rule 71-A**

## **Correction, Interpretation and Remission of Awards**

(a) Within thirty days from the receipt of arbitral award, a party, through the Registrar, may request the Arbitral Tribunal to correct any computation errors, any clerical or typographical errors or any other errors of similar nature occurring in the Award.

(b) The Registrar shall thereafter forward the request to the Tribunal with a copy to the other party.

(c) A party, through the Registrar, may request the Tribunal to give an interpretation of a specific point or part of the award.

(d) If Tribunal considers the request made under sub-section (c) to be justified, it shall make the corrections or give the interpretation within thirty days from the receipt of such request and interpretation shall form part of the arbitral award.

(e) The Tribunal may also correct any error of the type referred to under sub-section (a), on its own initiative, within thirty days from the date of the arbitral award.

(f) A party, through the Registrar may request, within thirty days from the receipt of the arbitral award, the Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award. The Registrar shall forward the request to the Tribunal with the copy to the parties.

(g) If the Tribunal considers the request made under sub-section (f) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(h) The Tribunal may extend, if necessary, the period of time within which it shall make a

correction, give an interpretation or make an additional arbitral award under sub-sections (a), (c) and (f).

#### **Rule 72**

A fee of Rs. 5,000/- plus incidental expenses at actuals in addition to the court fees, on the scale for the time being in force is payable by the party requiring the award to be filed.

## **Stamp Duties**

#### **Rule 73**

- (a) Deficient stamp duties, if any, are to be paid by the parties in equal share in all cases in accordance with the scale of stamp duties for the time being imposed by law.
- (b) In case of an ex-parte Award, the entire stamp duty shall be paid by the Claimant in accordance with the scale of stamp duties for the time being imposed by law.

## **Copies of Proceedings**

#### **Rule 74**

No party is entitled as of right to copies of proceedings before the arbitral tribunal. In case the Registrar is required to furnish copies of depositions and/or documents which have been taken or proved before the arbitrator, a charge as demanded by the Registrar shall be paid by the party requiring such copies.

#### **Rule 75**

The Registrar shall, upon the written request of a party, furnish to such party at his expense certified facsimile of any documents filed in the arbitration proceedings.

## **Cases Withdrawn**

#### **Rule 76**

When the party instituting a case desires to withdraw it before an arbitral tribunal has been constituted, the Registrar shall return to him any deposits made by him, under Rule 28, after deducting such charges as he might have incurred in connection with the cases. The registration fee, however, shall not be refundable.

#### **Rule 77**

If the arbitration is terminated by the act or default of any parties after constitution of the arbitral tribunal and before the award is made, any fee, charges, deposited by the Parties shall not be refunded.

## Indemnity of Secretariat and Arbitrators

### Rule 78

The Council, the Arbitration Committee and officers of the Council shall not be liable for any act or omission in whatever capacity they may have acted in connection with or in relation to an arbitration under these Rules. Parties are themselves required to contest the proceedings regarding the validity of the arbitration agreement before the court.

### Rule 79

No party shall bring or prosecute any suit or proceedings whatsoever against the Council, arbitral tribunal, or any member thereof, for or in respect of any matter or thing purporting to be done under these Rules nor any suit or proceedings in respect thereof (save for enforcement of the award) against the other party.

## Costs

### Rule 80

- (a) If the arbitral tribunal decides to make an order as to the payment of costs with interest on costs – the general rule is that the unsuccessful party shall be ordered to pay such costs with interest as may be determined by the arbitral tribunal to the successful party or the arbitral tribunal may make different orders for reasons to be recorded in writing.
- (b) In determining the costs, the arbitral tribunal shall refer to all the circumstances including:–
  - (i) the conduct of all the parties;
  - (ii) whether a party has succeeded partly in the case;
  - (iii) whether the party had made a frivolous counter claim leading to delay in disposal of arbitral proceedings;
  - (iv) whether any reasonable offer to settle the dispute is made by a party and refused by the other party.

## Amendment of Rules

### Rule 81

The Governing Body may revise, amend or alter these rules or the schedule of fees and other monies to be charged and paid as and when expedient and necessary.



# GUIDELINES FOR ARBITRATORS AND PARTIES

## Annexure – I

### **GUIDELINES FOR ARBITRATORS AND THE PARTIES FOR EXPEDITIOUS CONDUCT OF ARBITRATION PROCEEDINGS**

1. The arbitrators and the parties to arbitration are expected to follow these guidelines to ensure economic and expeditious disposal of arbitration cases.

#### **For Arbitrators**

2. The arbitrators must take up the arbitration expeditiously on receipt of the request from the Council and should also complete the same with reasonable despatch. Serious efforts should be made to settle arbitration cases expeditiously within a period of 6 months where the amount of claim exceeds 1 crore and within a period of 4 months where the amount of claim is less than Rs.1 crore.
3. When accepting his mandate, the arbitrator shall be able to perform his task with the necessary competence according to his professional qualifications.
4. When giving notice of his acceptance, the arbitrator shall disclose in writing in the printed format as under:
  - any relationship with the parties or their counsel which may affect his independence and impartiality;
  - any personal or economic interest, either direct or indirect, in the subject matter of the dispute;
  - any prejudice or reservation as to the subject matter of the dispute which may affect his impartiality.
  - Where necessary due to supervening facts, this Statement shall be repeated in the course of the entire arbitral proceedings until the award is filed.
5. Where facts that should have been disclosed are subsequently discovered, the arbitrator may either withdraw or be challenged or the Indian Council of Arbitration may refuse to appoint him in other arbitral proceedings on this ground.
6. The arbitrator may at all stages suggest the possibility of a settlement to the parties but may not influence their decision by indicating that he has already reached a decision on the dispute.



# GUIDELINES FOR ARBITRATORS AND PARTIES

7. In the course of the arbitral proceedings, the arbitrator shall refrain from all unilateral contact with the parties or their counsel which is not notified to the Indian Council of Arbitration so that the ICA can inform the other parties and arbitrators.
  8. The arbitrator shall refrain from giving the parties, either directly or through their counsel, notice of decisions in the evidence taking place or on the merits; notice of these decisions may be given exclusively by the ICA.
  9. The arbitrator shall neither request nor accept any direct arrangement on costs or fees with the party which has designated him. The arbitrator is entitled to reimbursement of expenses and a fee as exclusively determined by the ICA according to its Schedule of Fees, which is deemed to be approved by the arbitrator when accepting his mandate.
  10. The arbitrator shall encourage a serene and positive development of the arbitral proceedings. In particular, he shall decide on the date and manner of the hearings in such a way as to allow both parties to fully participate therein, in compliance with the principle of equal treatment and adversarial proceedings.
  11. The first hearing of the arbitral tribunal should be convened within 15 days of the receipt of the complete reply of the respondent when the arbitral tribunal may issue necessary directions. Admission and denial of the documents may be got done by the Registrar. Issues if any to be framed, may be done at the same or at the next hearing. The arbitrators should hold arbitration hearings continuously on day- to-day basis during office hours.
  12. The parties should be asked to furnish a list of their witness, if any, in advance and they should be asked to file affidavits of witness on the date fixed for evidence preferably within a weeks of the settlement of issues, Cross examination of such of the deponent's witnesses whose presence is demanded by the opposite party should be completed at a hearing to be fixed within 15 days.
  13. Arguments preferably should be heard within 15 days of the completion of evidence, to be followed by submission of written arguments, if any.
  14. Adjournments of duly fixed hearing should not be granted except for unavoidable reasons which should be spelt out in the adjournment order.
  15. The Arbitrator should make the award expeditiously after the close of the hearings, preferably within 15 days.
-



# GUIDELINES FOR ARBITRATORS AND PARTIES

16. The arbitrator who does not comply with the provisions of these guidelines may be replaced by the Committee. Where it is not appropriate to replace the arbitrator in order not to cause delay in the arbitral proceedings, the ICA may also take such action after the conclusion of the arbitral proceedings, by refusing to confirm him in subsequent arbitral proceedings.

## **For Parties**

17. The claimant should file the applications or demand for arbitration to the Registrar of the Council with all the information and papers as per Rules, full statement of claim and copies of documents relied upon, in 3 sets in case of a Sole Arbitrator and in 5 sets in case of three arbitrators.
18. The respondent should file his reply to the claim with complete information and documents relied upon, in 3 or 5 sets as above as early as possible within the prescribed time. Fresh documentation/claims should not be entertained at a later stage of the proceedings unless the arbitral tribunal is satisfied about the reasons for granting such permission.
19. If any party to arbitration, particularly in cases where any arbitrator, advocate or any of the parties has to come from out station to participate in arbitration proceedings, desires to seek adjournment on any valid ground, it must submit a written request to the Registrar at least before 5 working days stating the grounds which compel it to request for postponement of the hearing so that the Council is in a position to take necessary steps to inform the Parties, Arbitrators and Advocates regarding postponement of the hearing. Parties seeking adjournment will have to pay cost as may be determined by the arbitral tribunal.
20. Parties should deposit arbitration and administrative fees with the Council (ICA) within the stipulated time, as per the Rules and no extension should be sought in this behalf except for compelling reasons.
21. To avoid excessive costs in arbitration proceedings, the parties are advised to choose their arbitrators from the Panel, as far as possible from the place where the arbitration hearings have to be held. In case, a party still chooses an arbitrator from a place other than the place of hearing, the concerned party will bear the entire extra cost to be incurred on stay TA/DA etc. of the arbitrator nominated by it.

## **For Arbitration Committee**

22. The Arbitration Committee of the Council may examine the arbitration case file, from time to time to evaluate the progress of the proceedings and to ascertain whether the arbitrators have granted adjournments only on reasonable grounds.
  23. The Arbitration Committee shall be sole judge of the grounds of violation of the guidelines and its decision shall be final and binding on the arbitral tribunal as well as the parties.
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## Preamble/Purpose

### Objective of the Code:

With a view to make arbitration Efficient, Simple, Just, User Friendly, Speedy, Trust worthy, Equitable, Serviceable and at relatively Low Cost this Code aims to establish a set of standards for Arbitration Committee, Arbitrators, Parties and Counsel and they are expected to confirm to such standards while discharging their respective duties under the auspices of the Indian Council of Arbitration.

This code has been formulated in the wake of a fundamental principle that only an arbitration institution can guarantee the enforcement of such ethical norms, which is required at various stages of arbitration right from the appointment of an arbitrator till the rendering of an arbitration award. However, at hoc arbitration can, as a self regulatory measure, adopt this code of conduct to generate confidence in the institution of arbitration in general. As this code evolves over the years, it would be a continuing objective to revise and update it from time to time to keep pace with International Standards.

The Code is set out in four parts:

**Part I** Code of Conduct for the Arbitration Committee.

**Part II** Code of Conduct for the Arbitrator.

**Part III** Code of Conduct for the parties.

**Part IV** Code Conduct for the Counsel.

### **Part I- Code of Conduct for the Arbitration Committee:**

- 1.1) The members of the Arbitration Committee may be appointed as Arbitrator during their term of office.
- 1.2) The Arbitration Committee, while appointing arbitrator/s in a case shall have regard to the following criteria:
  - a) Nature of the dispute
  - b) Availability of the Arbitrators
  - c) Identity of the parties



- d) Independence and impartiality of the arbitrator
  - e) Any stipulation made in the Arbitration Agreement of the parties
  - f) Past record of the Arbitrator
- 1.3) The Arbitration Committee may, in case of non-availability of an arbitrator of required skills and experience, consider a non-panelist for appointment. The above stated criteria shall apply in such case as well.

## **Part II- Code of Conduct for the Arbitrators:**

- 2.1.1) This Code of Conduct shall apply to all Arbitrators on the Panel.
- 2.1.2) Every person nominated as an arbitrator in a case shall make disclosures as specified in the Arbitrators' Declaration of Acceptance of Responsibility and State of Independence.
- 2.1.3) The Arbitrators are expected to conduct themselves in a manner consistent with the rules and the policies of the ICA.
- 2.1.4) The Arbitrator/s shall follow the Guidelines for expeditious conduct of Arbitration proceedings, Annexed to the ICA Rules of Arbitration.

## **2.2) Duties of Arbitrators (general):**

- 2.2.1) To act with honesty, integrity, diligence and dignity to which the profession of dispute resolution is associated: the arbitrator shall-
- Recognize a responsibility to the public, parties and to all other participants in the proceedings;
  - Not solicit appointment only if he believes that he is adequately competent and qualified and can conduct the proceedings promptly;
  - Refrain himself from entering into any kind of relationship with the parties or the counsel, while serving as an arbitrator, that is likely to affect his impartiality;
  - Not accept any gift or substantial hospitality, directly or indirectly from any party to the arbitration.



- 2.2.2) To disclose any interest or relationship with the parties: the Arbitrator shall have a continuing duty-
- Disclose any direct or indirect financial or personal interest in the outcome of the arbitration;
  - Disclose any existing or past relationship or interest that might affect this impartiality or might create a reasonable apprehension of bias.
- 2.2.3) To be faithful to the relationship of trust and confidentiality inherent in his office: the Arbitrator shall-
- Not, at any time, use confidential information acquired during the Arbitration Proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another;
  - Keep all the information relating to the proceedings confidential unless the parties otherwise agree or any law requires him to disclose;
  - Not disclose the decision in advance of the time given to the parties.

### **2.3) Conduct of Proceedings:**

- 2.3.1) To conduct the proceedings fairly and diligently: the arbitrator shall-
- Adhere to the concepts of fairness, patience, courteousness, and equality;
  - Ascertain from the parties about the method of record of proceedings;
  - Afford full opportunity to other arbitrators, if any, in the case to participate in all aspects of the proceedings;
  - Act within the scope of authority set out in the arbitration agreement;
  - Follow the procedure, if any, set out in the agreement;
  - Not discuss the case with any party in the absence of the other party unless otherwise provided for in the agreement or if the circumstances require him to do so.
  - Provided that due notice is served and the substance of such meeting is promptly conveyed to the other party.



2.3.2) To conduct the proceedings as expeditiously as possible: the Arbitrator shall-

- Prepare a time table consistent with the Rules of ICA, at the first meeting along with the parties fixing the periods of submission of statements, evidence, hearing, award etc;
- Strictly adhere to such time table and no latitude or indulgence on such requirement should be entertained except for bona fide reasons to be recorded.
- Submit a performance statement reflecting the extent of conformity to the time table, after the completion of every stage of proceedings.
- Not to allow any lapse of time in between the steps to be taken inter se as also between conclusion of such steps and the commencement of hearing, and to have as far as possible continuous hearing from day to day from Monday to Friday wherever required.

## 2.4) Others

2.4.1) Regarding the fee: the Arbitrator shall be governed by the pre-arranged fee structure of ICA, and shall not enter into any direct arrangement with the parties.

2.4.2) Decision-Making: the Arbitrator shall decide all matters justly, exercising independent judgment and should not permit outside pressure to effect the decisions. He shall also construct the award in a logical order, centered around the following principal elements:

- Brief summary of facts
- Disputes/issues referred to arbitration
- Averment of the parties on each of the issues
- Evidence led, if any
- Statement, in respect of each point, of the applicable Rules of Law and application of said rule to the issue being examined.
- Reasons for the award.

## Part III- Code of Conduct for the parties:

3.1) The parties shall maintain the dignity of Proceedings and shall act with honesty and diligence.



- 3.2) The parties shall follow the Guidelines for Expeditious Conduct of Arbitration Proceedings annexed to the ICA Rules of Arbitration.
- 3.3) The parties shall deposit the sum required by the Registrar within the stipulated time period.
- 3.4) The parties shall respond in a timely manner to reasonable requests for information from the arbitrator or other party/ies.
- 3.5) The parties shall strictly conform to the timetable (set out by the arbitrator in the first meeting) and submit all relevant documents and statements within the time period set out in the timetable.
- 3.6) The parties shall not extend any hospitality, directly or indirectly to the Arbitrator/s.
- 3.7) The parties shall pay the fees as agreed and their share of costs as specified in the Award.
- 3.8) The parties shall follow all orders/directions/rulings given by the arbitrators/s during the Proceedings.
- 3.9) The Parties shall avoid any kind of dilatory tactics and shall make maximum/best/ all possible efforts for an expeditious resolution of the dispute.

#### **Part IV Code of Conduct for the Counsel:**

- 4.1) The Counsel shall fully co-operate with the parties and the Arbitrator/s during the Arbitration Proceedings.
- 4.2) The Counsel shall be bound by the code of conduct prescribed by the Bar Council of India.



## ICA CONCILIATION CLAUSE

Parties to a contract who agree to resolve their contractual disputes in accordance with the ICA Rules of Conciliation and to have the ICA act as appointing authority and/or to provide administrative services, may use the following clause:

*“If a dispute arises out of or in connection with this contract, or in respect of any defined legal relationship associated therewith or derived therefrom, the parties agree to seek an amicable settlement of that dispute by conciliation under the ICA Rules of Conciliation. The authority to appoint the conciliator/conciliators shall be the Indian Council of Arbitration. The Indian Council of Arbitration will provide administrative service in accordance with the ICA Rules of Conciliation”.*

**Note:** Parties may wish to consider adding the following:

- (a) The number of conciliator(s) shall be.....
- (b) The language of the conciliation proceedings will be .....
- (c) Specific qualifications of the conciliator(s) including, but not limited to, language, nationality, technical qualifications and experience.

### 1. Preliminary

#### Short title and scope

1. (1) These rules may be called the ICA Rules of Conciliation.
- (2) These rules shall apply where the parties have agreed in writing, that-
  - (a) A dispute which has arisen, or
  - (b) A dispute which may arise, between them in respect of a defined legal relationship, whether contractual or not, should be resolved by amicable settlement under the ICA Rules of Conciliation.
- (3) These rules shall not apply to disputes which by virtue of any law, for the time being in force, may not be submitted to conciliation.



## 2. Definitions

2. In these unless rules, the context otherwise requires-
- a) “Arbitration Committee” means the Arbitration Committee of ICA;
  - b) “Chairman” means the Chairman of the ICA Arbitration Committee;
  - c) “Rules of Conciliation” or “rules” means the ICA Rules of Conciliation
  - d) “Governing Body” means the Governing Body of ICA;
  - e) “ICA” means the Indian Council of Arbitration, New Delhi;
  - f) “Panel of conciliators” means the panel of persons approved by the Arbitrator Committee to act as conciliators;
  - g) “Party” means a party to the agreement referred to in rule 1 (2);
  - h) “Schedule” means the Schedule to these rules.

## Part-A

### Rules of Procedure for Conciliation

## 3. Commencement of Conciliation Proceedings

3. (1) The party initiating conciliation shall send to the other party a written invitation to conciliate under these rules, briefly identifying the subject of the dispute.
- (2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.
- (3) If the other party rejects the invitation, there will be no conciliation proceedings.
- (4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and inform the other party accordingly.



## 4. Number and appointment of Conciliators

4. (1) These shall be one conciliator unless the parties have agreed that there shall be two or three conciliators.
- (2) The parties may agree to enlist the assistance of the ICA in connection with the appointment of conciliator, and in particular:-
  - (a) A party may request the ICA to recommend the names of suitable individuals to act as conciliator;
  - or
  - (b) Where the agreement between the parties provides for the appointment of conciliator by the ICA, a party may request the ICA in writing to appoint a conciliator.
- (3) Where a request in pursuance of clause (a) or clause (b) of sub-rule (2) is made to the ICA, the party making the request shall send to the ICA.-
  - (a) A copy of the invitation to conciliate;
  - (b) A copy of the agreement, if any, between the parties providing for an amicable settlement of dispute between them by conciliation;
  - (c) A copy of the agreement, if any, between the parties providing for an amicable settlement of dispute between them by conciliation;
  - (d) Any qualifications required of the conciliator;
  - (e) Any additional information, if required, by the ICA.
- (4) In recommending or appointing an individual to act as conciliator, the ICA will follow the procedure specified in rule 24 and will have regard to
  - (a) Any qualifications required of the conciliator by the agreement of the parties;
  - (b) Such considerations as are likely to secure the appointment of an independent and impartial conciliator, and
  - (c) Where, the parties are of different nationalities, the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.



- (5) A successor conciliator will be appointed in the manner in which his predecessor had been appointed.

## 5. Submission of Statement of Conciliator

5. (1) Conciliator may, upon his appointment, request each party to submit to him and to ICA within 30 days a brief statement in writing describing the general nature of the dispute, the points at issue and the amount, if any, of the claim including counter claim. Each party shall send a copy of such statement to the other party. Any party may file Defence Statement to Claim or Counter within 15 days of receipt of Statement of Claim or Counter Claim.
- (2) The conciliator may request each party to submit to him and to the ICA a further statement in writing of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.
- (3) At any stage of the conciliation proceedings, the conciliator may request a party to submit to him and to the ICA such additional information as he deems appropriate.

## 6. Representation and Assistance

6. Each party shall advise in writing, the other party and the conciliator of-
- (a) The name and address of any person who will represent or assist him, and
- (b) The capacity in which that person will represent.

## 7. Role of Conciliator

7. (1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
- (2) The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.



# ICA RULES OF CONCILIATION

(As Amended on and With Effect From 01-04-2016)

- (3) The conciliator may conduct the conciliation proceedings in such manner as he considers appropriate, taking into account the circumstances of the case, the wishes of the parties, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.
- (4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefore.
- (5) The Conciliator shall assist the parties to negotiate between themselves a mutually acceptable resolution of dispute by:-
  - (a) Helping the parties to identify and define the issues in dispute.
  - (b) Develop a procedure in consultation by the parties which is quick, fair and cost effective.
  - (c) Helping the parties in narrowing the issues.

## 8. Administrative Services

8. The ICA will arrange the administrative services specified in Part B if-
  - (a) The parties designate the ICA for arranging such services in the agreement to conciliate;
  - (b) The parties, or the conciliator with the consent of the parties, request the ICA to arrange such services.

## 9. Communication between Conciliator and Parties

9. (1) The conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.
- (2) Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place shall be determined by the conciliator, taking into consideration the circumstances of the conciliation proceedings.

Provided that where administrative assistance by the ICA is sought under Rule 8, the place where meetings with conciliator are to be held shall be determined in consultation with the ICA.



## 10. Disclosure of information

10. When the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate;

Provided that when a party gives any information to the conciliator, subject to a specific condition that it be kept confidential, the conciliator shall not disclose that information to the other party.

## 11. Cooperation of parties with Conciliator

11. The parties shall in good faith to cooperate with the conciliator and, in particular, shall endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

## 12. Suggestions by parties for settlement of dispute

12. Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

## 13. Settlement Agreement

13. (1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach an agreement on the settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up the settlement agreement.

(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

(4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.



## 14. Confidentiality

14. The conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of its implementation and enforcement.

## 15. Termination of Conciliation Proceedings

15. (1) The conciliation proceedings shall be terminated-
- (a) By the signing of the settlement agreement by the parties on the date of agreement; or
  - (b) By a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or
  - (c) By a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
  - (d) By a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.
  - (e) If any of the parties fails to make deposit of cost, fee and expenses within the time specified.
- (2) The conciliator shall, upon termination of the conciliation proceedings, send an intimation thereof in writing to the ICA.

## 16. Resort to Arbitral or Judicial Proceedings

16. The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings, except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

## 17. Costs

17. (1) The fee of the conciliator and administrative fee shall be fixed by the ICA in accordance with the Schedule, which may be amended from time to time.

Provided that the ICA may, on request from the conciliator, fix the fee of the conciliator at a figure higher than that set out in the Schedule if, in exceptional circumstances of the case, this appears to be necessary.



# ICA RULES OF CONCILIATION

(As Amended on and With Effect From 01-04-2016)

- (2) For the purpose of sub-rule (1), “costs” means costs relating to-
  - (a) The fee and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties.
  - (b) Any expert advice requested by the conciliator with the consent of the parties;
  - (c) Any assistance provided pursuant to rule 4 (2) and rule 8;
  - (d) Any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.
- (3) Where more than one conciliator is appointed, each conciliator shall be paid separately the fee set out in the Schedule.
- (4) The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

## 18. Deposit

18. (1) The Registrar of ICA, upon appointment of conciliator, call upon each party to deposit with the ICA an equal amount as an advance for the conciliator and administrative fee and costs referred to in rule 17(1) to 17(4).
- (2) Subject to any settlement agreement, upon termination of the conciliation proceedings, the ICA shall apply the deposits to the costs of the proceedings, render an accounting to the parties of the deposits received and applied and return any unexpended balance, to the parties.

## 19. Role of Conciliator in other proceedings

19. Unless otherwise agreed by the parties:-
  - (a) The conciliator shall not act as an arbitration or as a representative or counsel of a party in arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings;
  - (b) The conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.



## 20. Admissibility of evidence in other proceedings

20. The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject-matter of the conciliation proceedings:-
- (a) Views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
  - (b) Admissions made by the other party in the course of conciliation proceedings;
  - (c) Proposals made by the conciliator;
  - (d) The fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

## 21. Interpretation and application

21. If any question arises as to the interpretation or application of these rules or any procedural matters thereunder, the decision of the Arbitration Committee shall be final and binding on the parties.

## Part B

### Services for Procedure under the Rules of Conciliation

22. To facilitate the conduct of conciliation proceedings that the parties have agreed to conduct under the Rules of Conciliation, the ICA will-
- (a) Perform the functions of the appointing authority whenever-
    - (i) The ICA has been so designated by the parties in the conciliation clause of their contract or in a separate agreement, or
    - (ii) The parties have agreed to submit a dispute to the ICA under the Rules of Conciliation without specifically designating it as the appointing authority; and
  - (b) Provide the administrative services herein specified by all the parties, or by the conciliator with the consent of the parties.



## 23. Services as the Registry

23. (1) On receiving a request in pursuance of rule 4(2) (a) or 4(2) (b), the ICA will register the request and intimate in writing to the parties, the registration number of the case which shall be quoted by the party while making any subsequent communication to the ICA.
- (2) The ICA will scrutinize every request and document, make necessary entries in the register and prepare a file of the case.

## 24. Services as recommending or appointing authority

24. (1) On receipt of a request in pursuance of rule 4(2) (a), the ICA will communicate to the party making the request a list containing the names, addresses, nationalities and a description of qualifications and experience of at least three individuals from the panel of conciliators.
- (2) On receipt of a request to appoint a conciliator in pursuance of rule 4(2) (b), the ICA will follow the following procedure-
  - (i) The ICA will communicate to each party a list containing the names, addresses nationalities and a description of qualifications and experience of at least three individuals from the panel of conciliators;
  - (ii) Within thirty days following the receipt of the list, a party may delete any name to which he objects and after renumbering the name in the order o his preference, return the list to the ICA.
  - (iii) On receipt of the list returned by the parties, the ICA will appoint the conciliator from the list taking into account the order of preference indicated by the parties;
  - (iv) If for any reason the appointment cannot be made according to the procedure specified in clauses (i) to (iii), the ICA may, unless the parties recommended the name of the conciliator to be appointed by the ICA, appoint the conciliator from the panel of conciliators.
- (3) In recommending or appointing a conciliator the ICA will have regard to the matters referred to in rule 4(4) and will carefully consider the nature of the dispute in order to include in the list, persons having appropriate professional or business experience, language ability and nationality.
- (4) All appointments on behalf of the ICA will be made by the Arbitration Committee.



## 25. Administrative Services

- (25)(1) The ICA may provide the administrative services specified in this part-
- (a) Upon the request of the parties;
  - (b) Upon the request of the conciliator with the consent of the parties; or
  - (c) If the parties designate the ICA for providing such services.
- (2) All oral or written communications from a party to the conciliator, except at meetings, may be directed to the ICA which will transmit them to the conciliator and, where appropriate, to the other party.
- (3) Agreement by the parties that the ICA will provide the administrative services, constitutes consent by the parties that, for purposes of compliance with any time requirements of the rules, any written communications shall be deemed to have been received by the addresses when received by the ICA. When transmitting communications to a party, the ICA will do so to the addresses provided by each of them to the ICA for this purpose.
- (4) The ICA will also assist in the exchange of information and settlement of proposals.
- (5) The ICA will assist the conciliator to establish the date, time and place of meetings and will give the parties advance notice of such meetings.
- (6) The ICA will provide a meeting room for the conciliator and the parties or their counsel in the offices of the ICA on the charges set out in the Schedule. However, where these facilities are provided in any place other than the offices of the ICA, the charges will be determined by the ICA and billed separately in each case.
- (7) Upon request, the ICA will make arrangements for reporter transcripts of meetings or hearing.
- (8) Upon request, the ICA will make arrangements for the services of interpreters or translators. The cost of interpretation or translation will be determined by the ICA and billed separately and is not included in the fee for administrative services.
- (9) (a) The ICA will hold advance deposits to be made towards the costs of the conciliation proceedings.
- (b) On termination of the conciliation proceedings, the ICA will apply the proceeds of the advance deposits towards any of its unpaid administrative fee and charges and the costs of the conciliation proceedings and will render an accounting to the parties of the deposits received and applied and return any unexpended balance to the parties.



# ICA RULES OF CONCILIATION

(As Amended on and With Effect From 01-04-2016)

- (10) (a) Upon request, the ICA will provide other appropriate administrative services the cost of which will be determined by the ICA and billed separately and are not included in the fee for administrative services.
- (b) The kinds of services which can be provided are as follows:-
- (i) Long distance and local telephone access and telex and telecopier facilities;
  - (ii) Photocopying and other usual office services.
- (11) (a) The ICA may require the party requesting one or more of the services referred to in sub-rule (6), (7), (8) or (10) to deposit an amount specified by it as advance towards other cost of such services.
- (b) The ICA may also require the parties to make supplementary deposits towards the costs of the services referred to in clause (a);
- (c) If the required deposit under clause (a) or clause (b) is not made in full within the time specified by the ICA, the ICA may not provide the services requested for.

## 26. Fees and Expenses

### A. Registration Fee

A registration fee of Rs. 15,000/- plus applicable taxes shall be paid along with the application for reference to conciliation. The registration fee will not be refunded and will become the property of the Council.

### B. Administrative Fee

- (1) The fee charged by the ICA for appointing the conciliator and for providing administrative service, other than those specified in sub-rule(6), (7), (8) and (10) of rule 25, is based upon the amount in dispute, as disclosed when the statement of dispute is submitted to the ICA in pursuance of sub- rule(a) of rule 5.
- (2) Where the ICA is requested to act as appointing authority under rule 4(2), the requesting party shall pay the ICA a sum of Rs. 4,000/- as a non-refundable fee at the time of the request.



- (3) The Rules of Conciliation provide that the costs of conciliation include the costs of the administrative and conciliators' fee. The Schedule of fee is given asunder. These costs are to be borne equally by the parties unless the settlement agreement provides for a different apportionment [rule 14(4)].

## 27. Schedule of Fees

The Administrative fee (of ICA) and the Conciliator's fee (for each conciliator) will be fixed separately with regard to the amount in dispute including determined interest in each case, as given in the box hereunder:

In addition to the above, the ICA will be entitled to receive a Special Fee of Rs. 5,000/- per hearing for providing facilities of hearing rooms and secretarial assistance etc. at the conciliation hearings.

Notwithstanding, the provisions in Sub-Rule (1) of this Rule, the Arbitration Committee/Chairman of the Arbitration Committee may prescribe the Conciliator's fees and the administrative fees of the Council at a figure higher than those prescribed in the said Sub-Rules, if in the exceptional circumstances of the case this appears to be necessary.

**Other Expenses:** The conciliator may be paid an amount of Rs. 1500/- towards local conveyance for attending each conciliation hearing in the city of his residence. Any travelling and other expenses incurred by the conciliator or the Registrar for attending the conciliation hearings in a city other than the place of residence, shall also be reimbursed to him as provided hereinafter. All the above expenses shall form part of the conciliation costs.

A conciliator who has travel shall be paid travelling expenses by air or rail (air conditioned wherever available) or car (when neither air nor rail transport is available) at actuals. In addition, he may be paid out-of-pocket at actuals for boarding, lodging and local transport subject to maximum of Rs. 12,000/- per day in metropolitan cities and Rs. 8,000/- in all other cities. A conciliator who makes his own arrangements for boarding, lodging, local transport etc. may be paid out of pocket expenses at the rate of Rs. 6,000/- per day, without production of vouchers. The limits for stay of the ICA officials will be of those applicable to conciliators.

## 28. Amendments of Rules

The Governing Body of the ICA may revise, amend or alter these Rules or the Schedule of Fees and other monies to be charged and paid as and when they think necessary.



# ICA RULES OF CONCILIATION

(As Amended on and With Effect From 08-05-2012)

Amount in Dispute	Conciliator Fee for each conciliator	Administrative Fee
Upto Rs. 5 lac (Rs.5,00,000/-)	Rs.60,000/-	Rs.45,000/-
From Rs.5 lac one to Rs.25 lac (Rs.5,00,001 to 2,500,000)	Rs.60,000/- plus Rs.3,000/- per lac or part thereof	Rs.45,000/- plus Rs.2,250/- per lac or
From Rs.25 lac one to Rs.1 crore (Rs.2,500,001 to 10,000,000)	Rs.1,20,000/- plus Rs.2,400/- per lac or part thereof subject to a ceiling of Rs.3,00,000/-	Rs.90,000/- plus Rs.1,800/- per lac or part thereof subject to a ceiling of Rs.2,25,000/-
From Rs.1 crore one to Rs.5 crore (Rs.10,000,001 to 50,000,000)	Rs.3,00,000/- plus Rs.45,000/- per crore or part thereof subject to a ceiling of Rs.4,80,000/-	Rs.2,25,000/- plus Rs.33,750/- per crore or part thereof subject to a ceiling of Rs.3,60,000/-
From Rs.5 crore one to Rs.10 crore (Rs.50,000,001 to 100,000,000)	Rs.4,80,000/- plus Rs.30,000/- per crore or part thereof subject to a ceiling of Rs.6,30,000/-	Rs.3,60,000/- plus Rs.22,500/- per crore or part thereof subject to a ceiling of Rs.4,72,500/-
Over Rs.10 crores	Rs.6,30,000/- plus Rs.24,000/- per crore or part thereof, subject to a ceiling of Rs. 30 lac	Rs.4,72,500/- plus Rs.18,000/- per crore or part thereof, subject to a ceiling of Rs.25 lac



# INDIAN COUNCIL OF ARBITRATION AND ITS SERVICES

## INDIA'S APEX ARBITRAL INSTITUTION

Costly, time-consuming business disputes can take a real bite of your company's bottom line. That is why more and more companies are turning to Indian Council of Arbitration, the undisputed leader in dispute resolution services in India. For about five decades, Indian Council of Arbitration has been providing users of arbitration with an unrivaled array of time-tested services that include ICA Arbitration, ICA Conciliation and ICA Maritime, as well as education and training programs. Coupled with our quality case administration and panel of arbitrators, ICA is the one resource for all your dispute resolutions needs.

### Introduction

In most of the industrialized countries, central or national arbitral organizations have been established which provide facilities for arbitration of commercial disputes. They enjoy unique prestige and confidence of the trade and industry. In India, the Indian Council of Arbitration, established in 1965, is the apex arbitral organization at the national level. The main objective of the Council is to promote amicable and quick settlement of industrial and trade disputes by arbitration. The Government of India, the Federation of Indian Chambers of Commerce and Industry, other important Chambers of Commerce and trade associations in India as well as export promotion councils, public sector undertakings, companies and firms are in its membership.

The Council facilitates settlements of international disputes through arbitration. Its Rules of Arbitration have recently been revised in order to match global developments and maintain international standards, which lead to provide a guarantee for quick and just settlement of disputes. The Council maintains a panel of about 2000 arbitrators, which consists of Former Judges, Advocates, Shipping Experts, Chartered Accountants, Chartered Engineers, Businessmen, Foreign Nationals and Executives and other experts having specialization in more than 20 fields.

To provide technical knowledge on Arbitration Laws and ADR procedure, the Council organizes Conferences/training programmes (National and International), publishes literature and provides advisory services to business organizations and arbitration practitioners.

### Rules of Arbitration of ICA

The ICA Rules of Arbitration subscribe to international standards for conduct of arbitration proceedings.

Under the Rules of Arbitration of the ICA, where the claim is below Rupees one crore, a sole arbitration is appointed, unless the two parties agree for appointment of three arbitrators. For claims above Rupees one crore, three arbitrators are appointed, unless the parties agree that a sole arbitrator be appointed. The sole arbitrator is appointed by consent of the parties and, failing such a consent, the Council appoints the sole arbitrator. Where three arbitrators have to be appointed, each of the parties appoints one arbitrator and the Council appoints the Presiding Arbitrator of the Arbitral Tribunal.

Under institutional arbitration in India, the parties are free to choose their arbitrators from the panel of arbitrators established by the institution. The arbitrators are empanelled by the Arbitration Committee after the latter is satisfied about their competence, integrity and impartiality.

### ICA Arbitration Clause

The Ministry of Commerce and the Department of Public Enterprises has issued circulars to Central Public Undertakings and Government Departments recommending use of ICA arbitration services and its clause in agreements entered into by



# INDIAN COUNCIL OF ARBITRATION AND ITS SERVICES

them with private parties. As a result, many disputes involving foreign parties have already been referred to the Council and awards have been rendered.

Still, a large number of public undertakings and Government Departments have evolved their own system for settlement of disputes by appointing officials of the same department as arbitrators. The Ministry of Commerce, Government of India has addressed a communication to all departments of the Government of India, Public Sector Undertakings (PSUs), Export Promotion Councils (EPCs), commodity boards and apex chambers of commerce and industry, recommending them to consider use of ICA's services and its arbitration clause (Office Memorandum No. 37(1)/98TPD dated 1st June, 1999 issued by the Ministry of Commerce, Government of India.

## Fast Track Arbitration

A singular special feature of the Rules of Arbitration of the Council is the Fast Track Arbitration under which parties may request the arbitral tribunal, before the commencement of the arbitration proceedings. To settle disputes within a fixed time frame of 3-6 months or any other time frame agreed by the parties. Under fast track arbitration, the arbitration has to decide the matter within the time frame on written submission without oral hearings. This will inspire confidence in the foreign investors who want to dispose of the matter in a minimum time frame to achieve ultimate reduction of substantial cost, which is the objective of arbitration.

## Rules of Conciliation

Apart from rendering arbitration services and facilities, the Council offers its Conciliation and ADR (Alternative Dispute Resolution) services for amicable and quick settlement of domestic and international trade complaints and disputes. The Council's Rules of Conciliation, based on UNCITRAL Conciliation Rules 1980, have recently been amended to give more thrust on economical and expeditious process. Conciliation is carried out mainly through correspondence with a view to bringing the parties around to an amicable settlement of disputes. Personal meetings with the concerned parties are also arranged. As a result of conciliation a number of trade complaints are settled amicably to the satisfaction of both parties. However, there is no legal sanction with the Council to compel the parties to any particular solution of the dispute. The Council maintains a list of conciliators for use by the parties in conciliation proceedings.

## Rules of Maritime Arbitration

The Council also provides arbitration services for settlement of maritime disputes arising out of charter party contracts and it has framed maritime arbitration rules for such disputes. The Ministry of Surface Transport, Government of India has recommended the use of the ICA arbitration clause in charter party contracts so that disputes, if any, can be settled under the ICA maritime arbitration rules.

## ICA Code of Conduct

With a view to making arbitration efficient, simple, just, user friendly, speedy, trustworthy, equitable, serviceable and at relatively low cost, the ICA Code of Conduct aims to establish a set of standards for Arbitration Committee, Arbitrators, Parties and Counsel and they are expected to confirm to such standards while discharging their respective duties under the auspices of the Indian Council of Arbitration.

This code has been formulated in the wake of the fundamental principle that only an arbitral institution can guarantee the enforcement of such ethical norms, which is required at various stages of arbitration right from the appointment of an arbitrator till the rendering of an arbitration award. However, ad hoc arbitration can, as a self regulator measure, adopt this code of conduct to generate confidence in the institution of arbitration in general. As this code evolves over the years, it would be a continuing objective to revise and update it from time to time to keep pace with international standards.



# INDIAN COUNCIL OF ARBITRATION AND ITS SERVICES

## ICA Service Agreements with Foreign Arbitral Organizations

The Council has entered into arbitration service agreements with important foreign arbitral institutions in more than 30 countries such as USA, UK, Russian Federation, Canada, Italy, Germany, Singapore, Australia etc. These agreements basically provide for conduct of arbitration proceedings by the Council under the rules of respective foreign arbitration organizations, if the arbitration hearings are held in India.

## Online Service of ICA

The Council has its own website at [www.icaindia.co.in](http://www.icaindia.co.in) which has been developed and hosted on behalf of the Council by BISNET INDIA, the business information services network of FICCI. This website provides complete information about the New Arbitration Law and Rules as well as the services of the Council. Members can obtain from this website, updated information about the activities of the Council. The Council is making efforts to compile information about arbitration law and procedure in different countries through this website.

## Regional and State-Level Offices of ICA

The Council has developed its infrastructure facilities and has its regional offices at Kolkata, Chennai and Mumbai and also maintains state-level offices at Ahmedabad, Bangalore, Bhubneshwar, Hyderabad, Pune and Jaipur in order to cater to the needs of users of arbitration in the respective regions and to generate awareness about the advantages of arbitration in trade disputes.

## ICA Arbitration Quarterly

The ICA publishes an Arbitration Quarterly containing important articles, information on Institutional Arbitration facilities, court decisions, and news and notes on matters of interest in the field of arbitration, from different parts of the world. There are several other publications of ICA, on different aspects of the law and practice of arbitration and allied matters, including a joint publication with UNCTAD and WTO on Arbitration and Alternate Dispute Resolution: How to settle international business disputes. The publication may be obtained from the ICA office.

Issues of the ICA Arbitration Quarterly Journal are circulated to all members of the Council on a complimentary basis to keep them informed about the latest developments in the law & procedure of arbitration. Concession and discounts are also offered to members on the price of publication and literature published by the Council.

## Membership of ICA and Its Benefits

Apart from the Government of India, the apex chambers, which are founder sponsors of the Council, a large number of important public sector undertakings, companies, firms and individuals interested in commercial and arbitration matters are in the membership of the Council. Membership of the Council basically reflects the desire to support the institution and the aims, objects and services rendered by it for the benefit of the trade and industry. However, certain privileges and incentives are provided to the organizations and individuals in the membership of the Council.

Information and assistance is rendered to members on request, with regard to the drafting of trade contracts and in the settlement of disputes with Indian and Foreign parties arising under the contracts.

Members of the Council are also entitled to apply for membership to the Panel of Arbitrators maintained by the Council. But membership of the Council does not ipso-facto entitles a member for empanelment in the panel of arbitrators. The inclusion of names in the panel is decided by the Arbitration Committee of the Council, keeping in view the background, qualifications and experience of the applicant as also the existing strength of persons on the panel with similar background and experience in the region of the concerned person.



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