

ARBITRATION RULES OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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PART I

SCOPE AND APPLICATION

Rule 1

Scope and application

- (i) These Rules may be called the " Arbitration Rules of the Institute of Chartered Accountants of India"
- (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 "Arbitration Rules of the Institute of Chartered Accountants of India" provided that the parties may incorporate the following clause in their agreement:

"Any dispute or difference whatsoever arising between parties in relation to the construction, meaning and operation or effect of this contract or the breach thereof or any other commercial or professional or industrial dispute amongst the parties shall be settled by arbitration in accordance with these rules and award made in pursuance thereof shall be binding on the parties"

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- (iii) These Rules shall govern the arbitration, except that, where any of these Rules is in conflict with the provisions of The Arbitration and Conciliation Act 1996, from which the parties cannot derogate, that provision shall prevail

Rule 2

Definitions:

- (i) “Act” means Arbitration and Conciliation Act, 1996.
- (ii) “Arbitral Tribunal” means an arbitrator or arbitrators appointed for determining a particular dispute or difference.
- (iii) “Arbitrator” means a sole arbitrator or a panel of arbitrators appointed in terms of these rules.
- (iv) “Arbitral Award” includes an interim award.
- (v) “Applicant” means the person who makes the application for initiating arbitral proceedings.
- (vi) “Council” means the Council constituted under the Chartered Accountants Act, 1949.
- (vii) “Institute or ICAI” means the Institute of Chartered Accountants of India.
- (viii) “International 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 at least one of the parties is-
 - an individual who is a national of, or habitually resident in, any country other than India; or
 - a body corporate which is incorporated in any country other than India; or
 - The Government of a foreign country
- (ix) “Member” means member of ICAI.
- (x) “Panel” means the Panel of Arbitrators maintained by ICAI.
- (xi) “Respondent” means the person against whom applicant lodges an arbitration application, whether or not there is a claim against such person.
- (xii) “Rules” means the ICAI Rules for arbitrators
- (xiii) “Party” means party to an arbitration agreement.

PART II**ICAI PANEL OF ARBITRATORS AND INITIATION OF ARBITRATION**

Rule 3

ICAI Panel of arbitrators

A panel of arbitrators shall be maintained by the Committee on Economic and Commercial laws of the Institute, from amongst the members who have qualified in the Certificate Course on Arbitration conducted by the Institute and are willing to act as arbitrators generally or in specific fields and agree to abide by the ICAI Code of Ethics for arbitrators. ICAI panel of arbitrators shall be hosted on the website of the Institute and shall be updated from time to time.

Notice of Arbitration

- (i) The party initiating the arbitration (hereinafter called the "applicant") shall give to the other party (hereinafter called the "respondent") a notice of arbitration
- (ii) The date of commencement of the arbitration shall be the date on which the Request for Arbitration is received by the respondent
- (iii) The notice of arbitration is deemed to have been received if it is physically delivered to the respondent or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the respondent's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.
- (iv) A notice of request for arbitration shall include the following:-
 - (a) Request that the dispute be referred to arbitration;
 - (b) The names and addresses of the parties to the dispute;
 - (c) A reference to the contract out of or in relation to which the dispute has arisen;
 - (d) A reference to the arbitration clause or arbitration agreement relied upon;
 - (e) The general nature of the claim and where the claim is or can be quantified in terms of money, amount of the claim;
 - (f) The relief or remedy sought;

(g) The preferred number of arbitrators, if not already agreed upon

(h) The statement of claim

Rule 4

Representation and assistance

- (i) The parties may be represented or assisted by persons of their choice.
- (ii) In such case, the names and addresses of such authorised persons must be communicated in writing to the Arbitral Tribunal and must also specify whether the appointment is being made for purposes of representation or assistance

PART III

COMPOSITION AND ESTABLISHMENT OF THE TRIBUNAL

Rule 5

Number of arbitrators

- (i) Unless otherwise specified in the agreement, the arbitral tribunal shall consist of a sole arbitrator.
- (ii) If the parties fail to agree on the arbitrator within thirty days from the receipt of a request by one party from the other party, the appointment shall be made as per Section 11(5) of the Arbitration and Conciliation Act 1996.
- (iii) If three arbitrators are to be appointed; each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal.
- (iv) If the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made as per the provisions of Section 11(5) of the Arbitration and Conciliation Act 1996.

Rule 6

Code of Ethics for arbitrators

- (i) Arbitrators shall be bound by ICAI Code of Ethics for Arbitrators, as contained in Annexure I.

Rule 7

Acceptance, Availability and Notification

- (i) Each prospective arbitrator shall accept appointment in writing
- (ii) Each arbitrator shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the arbitration to be conducted and completed expeditiously.

PART IV

CONDUCT OF ARBITRAL PROCEEDINGS

Rule 8

Rules of Procedure

- (i) Unless otherwise specified in the agreement the arbitral tribunal may conduct the proceedings in the manner it considers appropriate provided the parties are given equal treatment and each party is given a full opportunity to present his case
- (ii) The power of the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence

Rule 9

Place of arbitration

- (i) The place of arbitration shall be at the place specified by the parties in the agreement
- (ii) Failing any such agreement the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties

- (iii) The arbitral tribunal may meet at any place it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.
- (iv) The award shall be made at the place of arbitration

Rule 10

Language of Arbitration

- (i) The parties may agree that the language of the arbitration shall either be the language of the Arbitration Agreement or in English
- (ii) The agreement unless otherwise specified, shall apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.
- (iii) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal

Rule 11

Statement of Claim

- (i) Unless the Statement of Claim already accompanied the Request for Arbitration, the Claimant shall, within 30 days after receipt of notification of the establishment of the Tribunal, communicate his statement of claim in writing to the respondent and to each of the arbitrators
- (ii) A copy of the contract and of the arbitration agreement if not contained in the contract, shall be annexed thereto.
- (iii) The statement of claim shall include the following particulars:
 - (a) The names and addresses of the parties;
 - (b) A statement of the facts supporting the claim;
 - (c) The points at issue;
 - (d) The relief or remedy sought.

- (iv) The claimant may annex to his statement of claim all documents he deems relevant or may add a reference to the documents or other evidence he will submit

Rule 12

Statement of Defence

- (i) Within 30 days after receipt of the Statement of Claim or within 30 days after receipt of notification of the establishment of the Tribunal, whichever occurs later,, the respondent shall communicate his statement of defense in writing to the claimant and to each of the arbitrators
- (ii) The Statement of Defense shall reply to the particulars of the Statement of Claim
- (iii) The Statement of Defense shall be accompanied by the corresponding documentary evidence which he relies for his defence or may add a reference to the documents or other evidence he will submit.

Rule 13

Amendments to Claims or Defense

Subject to any contrary agreement by the parties, a party may amend or supplement its claim, counter-claim, and defense or set-off during the course of the arbitral proceedings, unless the Tribunal considers it inappropriate to allow such amendment having regard to its nature or the delay in making it.

Rule 14

Further Written Statements

The arbitral tribunal shall decide if further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

Rule 15

Hearings and written proceedings

- (i) Unless otherwise agreed by the parties the arbitration proceedings shall be conducted on the basis of documents and other materials
- (ii) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property
- (iii) The Tribunal shall make minutes after each hearing of any agreements or orders made at the meeting and after obtaining the signatures of the parties shall within 7 days of that meeting, send a written record of such agreements or Orders to each of the parties.
- (iv) No party or person acting on behalf of a party shall have a communication with the Tribunal in the absence of the other party concerning the substance of the dispute or any contentious matter relating to the proceeding.

Rule 16

Interim measures of protection

- (i) At the request of either party, the arbitral tribunal may take any interim measures it deems necessary in respect of the subject-matter of the dispute, including measures for the conservation of the goods forming the subject-matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.

Such interim measures may be established in the form of an interim award

Rule 17

Default of a party

- (i) If the Claimant, without showing good cause, fails to submit its Statement of Claim the Tribunal shall terminate the proceedings.
- (ii) If the Respondent, without showing good cause, fails to submit its Statement of Defense the Tribunal may nevertheless proceed with the arbitration and make the award.
- (iii) The Tribunal may also proceed with the arbitration and make the award if a party, without showing good cause, fails to avail itself of the opportunity to present its case within the period of time determined by the Tribunal.

- (iv) If a party, without showing good cause, fails to comply with any provision of, or requirement under, these Rules or any direction given by the Tribunal, the Tribunal may draw the inferences there from that it considers appropriate

PART V

MAKING OF ARBITRAL AWARD AND TERMINATION OF PROCEEDINGS

Rule 18

Decisions

- (i) 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
- (ii) Where the place of arbitration is situated in India:-
 - (a) In an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;
 - (b) In an international commercial arbitration,-
 - (i) The arbitral tribunal shall decide the dispute in accordance with the Rules of law designated by the parties as applicable to the substance of the dispute;
 - (ii) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws/Rules;
 - (iii) Failing any designation of the law by the parties, the arbitral tribunal shall apply the Rules of law it considers to be appropriate given all the circumstances surrounding the dispute.
- (iii) The arbitral tribunal will decide in justice and good faith or on the basis of amicable settlement only if the parties have expressly authorised it to do so

- (iv) . In all cases, the arbitral tribunal will decide in accordance with the terms of the contract and will take into account the usages of the trade applicable to the transaction.

Rule 19

Form and content

- (i) The award shall be made in writing and shall be final and binding on the parties.
- (ii) The arbitral award shall state the reasons upon which it is based, unless:
 - (a) the parties have agreed that no reasons are to be given, or
 - (b) The award is an arbitral award on agreed terms.
- (iii) 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
- (iv) An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature
- (v) A signed copy shall be delivered to each party.
- (vi) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award

Rule 20

Settlement or other grounds for termination

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

Rule 21

Time limit for making the Award

The Arbitral Tribunal shall make the award as expeditiously as possible, but not later than six months, from the date of the commencement of arbitration. If necessary, the

maximum limit for making the award may be extended by agreement between the parties to the dispute subject to approval by the Arbitral Tribunal

Rule 22

Correction and interpretation of award

(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties-

(a) A party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) If so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of subsection (1), on its own initiative, within thirty days from the date of the arbitral award.

Rule 23

Additional Award

(4) Unless otherwise agreed by the parties, a party with notice to the other party may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

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

(6) The arbitral 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

PART VI

FEES AND COST

Rule 24

Fees and Cost

An indicative fee structure for arbitrator's fees is given below:

Domestic arbitrations - 0.50% of the amount in dispute with minimum of Rs.20,000/- subject to a maximum of Rs.2,00,000/-

International arbitrations: 0.50% of the amount in dispute with minimum of S\$2500/- and maximum of US\$50,000/-

However, parties to the dispute and the arbitral tribunal are free to mutually discuss and agree upon the arbitrators' fees, reimbursement of expenses of arbitrators and others costs of arbitration.

Rule 25

Application to include claim amount

The amount of the claim shall be stated in the application by the party applying for arbitration. If the amount is stated in a currency other than the rupee, it shall be converted into Rupees, at the current Reserve Bank of India' reference rate prevailing at the date of application

PART VII GENERAL

Rule 26

Finality of Arbitral Awards

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.

Rule 27

Exclusion of liability

- (i) The Arbitrators, ICAI, and the officers of the Institute shall not be liable for any act or omission in whatever capacity they may have acted in connection with or in relation to arbitration under these Rules.
- (ii) After the Award has been made, the Institute shall not be under any obligation to make any statement to any person about any matter concerning the arbitration, and no party shall seek to make any arbitrator or the Institute, and the officers of the Institute a witness in any legal proceedings arising out of the arbitration.

Rule 28

Waiver of Defamation

The parties and, by accepting appointment, the arbitrator agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the arbitration shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint

Rule 29

Waiver of Rules

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

Rule 30

Amendment to the Rules

ICAI may revise, amend or alter these Rules or the schedule of fees as and when expedient and necessary.