

BOMBAY CHAMBER OF COMMERCE AND INDUSTRY
RULES OF ARBITRATION AND CONCILIATION
Arrangement of Rules

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**RULES OF ARBITRATION AND CONCILIATION
OF THE BOMBAY CHAMBER OF COMMERCE AND INDUSTRY**

PREAMBLE:

The Bombay Chamber of Commerce and Industry recommends to all parties desirous of making reference to Arbitration of the Bombay Chamber the inclusion of the following model arbitration clause in their contracts agreements:-

"All disputes or differences whatsoever arising between the parties out of or in connection with this contract, including its existence, validity or termination and the construction, meaning or operation or effect of this contract agreement or breach thereof, shall be finally settled by arbitration in accordance with the Rules of Arbitration and Conciliation of the Bombay Chamber of Commerce & Industry and the Award made in pursuance thereof shall be binding on the parties."

RULES

1. Title and commencement:		<i>Title</i>
1.1	These Rules, which will supersede all prior Rules which may have been framed by the Chamber, will be applicable to the new arbitration cases referred to the Chamber. The said Rules will also be appropriately applicable to the existing arbitration cases, especially with regard to appointment of arbitrators.	
2. Definitions :		<i>Definitions</i>
2.1	In these Rules, the following expressions shall have the respective meaning:	
	(a) "Act" means the Arbitration and Conciliation Act, 1996, as amended from time to time.	
	(b) "Chamber" means the Bombay Chamber of Commerce & Industry.	
	(e) "Tribunal" means and consists, in the case of arbitration, of the Sole Arbitrator (where the disputes are referred to arbitration by a sole arbitrator) or three Arbitrators (where the disputes are referred to arbitration by a Panel of Arbitrators) and in the case of conciliation, the Conciliator appointed by the Chamber for adjudicating upon or conciliating in a dispute or difference referred to the Chamber by any of the parties.	
	(f) "Panel" means the panel/list as maintained by the Chamber, of persons who may be appointed as Arbitrators and Conciliators under these Rules.	
	(g) "Court" means the principal Civil Court of original jurisdiction in a District and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction, under the arbitration agreement and under prevailing laws, to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit.	
	(h) "Party" means a party to an arbitration agreement.	
	(j) "Award" includes a partial, interim or final award and includes an award of an emergency arbitrator.	
2.2	All other expressions shall have the same meaning as have been assigned to them under the Act.	

PART I

ARBITRATION

3	Appointment of Arbitrators to the Panel	
3.1	The panel shall comprise of Retired Judges, Advocates, Chartered Accountants, Engineers, Civil servants and other such professionals who shall be appointed to the Panel by the Chamber with the approval of the Director General.	
4.	Reference to Chamber for arbitration by Notice	<i>Reference to Chamber</i>
4.1	<p>Any person or party may, pursuant to an Arbitration Agreement or otherwise, elect to request the Chamber for arbitration in accordance with these Rules.</p> <p>The selection of the Chamber for arbitration of any dispute shall be communicated by the party to the dispute who has so elected to submit the dispute to the Chamber (such party is hereinafter referred to as "the Claimant"), by a Notice of reference to the Chamber, with a copy to the other party/parties to the dispute (such party/parties being hereinafter referred to as "the Respondent").</p> <p>The Notice of reference must include:</p> <p>(i) a request that the dispute be referred to arbitration</p> <p>(ii) the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of the parties to the arbitration and their representatives, if any;</p> <p>(iii) a reference to the arbitration agreement invoked and a copy of the arbitration agreement; For this purpose "Arbitration Agreement" shall mean arbitration agreement as defined in the Act.</p> <p>(iv) a reference to the contract or other instrument (if not the same as the arbitration agreement/incorporating the arbitration agreement)out of or in relation to which the dispute arises and a copy of the contract or other instrument;</p> <p>(v) a brief statement describing the nature and circumstances of the dispute, specifying the relief to be claimed and an (initial) quantification of the claim amount;</p> <p>(vi) a proposal of atleast 1 and not more than 3 persons from the Panel, who the Claimant is agreeable to have appointed as Arbitrator in cases where the arbitration agreement provides for arbitration by a Sole Arbitrator; and alternatively, in cases where the arbitration agreement provides for arbitration by three arbitrators, the nomination by the Claimant of its nominee arbitrator from the Panel;</p>	

	<p>Provided that the persons proposed by the Claimant in terms of this sub-Rule do not have any relationship which falls under any of the categories in the Seventh Schedule of the Act, with either the Claimant or the Claimant's Advocates/Solicitors; and that the Claimant shall makes a written statement confirming the same in the Notice of reference.</p> <p>Provided further that such statement will not be required to be made in the event that the parties have expressly agreed, in writing, to waive this requirement, in terms of the First Proviso to sub-section (5) to section 12 of the Act;</p> <p>and</p> <p>(vii) payment of the requisite initial fee</p> <p>(viii) A copy of the Notice of Reference (with enclosures thereto) shall be served by the Claimant on the Respondent within 2 (two) days of filing with the Chamber.</p>	
5.	Response to the Notice of Reference	
5.1	The Respondent shall file a brief response with the Chamber within 14 days of receipt of the Notice of Reference. The Response shall include:	
	(i) a confirmation or denial of the Arbitration Agreement.	
	(ii) a brief statement describing the nature and the circumstances of any counterclaim, specifying the relief to be claimed and an (initial) quantification of the counterclaim amount;	
	(iii) where the Respondent is agreeable to any of the choices of the Sole Arbitrator proposed by the Claimant, a statement to that effect, failing which a proposal of at least 1 and not more than 3 persons who the Respondent is agreeable to have appointed as Sole Arbitrator;	
	(iv) If the Claimant is agreeable to any of the names of the Sole Arbitrator proposed by the Respondent, the Claimant shall notify the Chamber to that effect in writing within three days from receipt of the said Response by the Claimant.	
	(v) In cases where the arbitration agreement provides for arbitration by three arbitrators, the nomination by the Respondent of its nominee arbitrator from the Panel.	
	<p>Provided that the persons proposed by the Respondent in terms of this sub-Rule do not have any relationship which falls under any of the categories in the Seventh Schedule of the Act, with either the Respondent or the Respondent's lawyers/attorneys; and that the Respondent makes a written statement confirming the same in the Notice of reference.</p> <p>Provided further that such statement will not be required to be made in the event that the parties have expressly agreed, in writing, to waive this requirement, in terms of the Proviso to sub-section (5) to section 12 of the Act.</p>	
	(vi) payment of the requisite filing fee	

5.2	The Respondent shall, at the same time as it files a Response with the Chamber, send a copy of the Response to the Claimant, and shall notify the Chamber that it has done so, specifying the mode of service employed and the date of service. The acknowledgement for such service shall be filed with the Chamber within two days of receipt thereof by the Respondent.	
5.3	The Respondent may request the Chamber, in writing, for an extension of a further period of a maximum of 7 days for filing its Response. While making a request for extension, the Respondent must show sufficient cause for requiring additional time for filing the Response. The Chamber may, upon examination of such request, grant, at its discretion, such additional time as it may deem fit not exceeding a period of 7 days from the expiry of the 14-day period referred to in Rule 5.1 above. Provided that no further extension of time will be granted by the Chamber for filing the Response.	
5.4	Upon receipt of the Response to the Notice of Reference, or in the event that no Response is received within 14 days of the Notice of Reference or such extended time as the Chamber may have granted, the Chamber will proceed to constitute the Arbitral Tribunal in the manner specified below.	
6.	Constitution of Tribunal:	<i>Nomination of Arbitrators</i>
6.1	<p>Upon receipt of the Notice of Reference and the Response, the Chamber will:</p> <ul style="list-style-type: none"> (i) in case of arbitration by a Sole arbitrator, appoint the Sole arbitrator where there is consensus on the same amongst the parties and intimate the parties of the same in writing; (ii) in case of arbitration by a Sole arbitrator, appoint the Sole Arbitrator from the Panel and intimate the parties of the same in writing, where there is no consensus between the parties; or (iii) in case of arbitration by three arbitrators, confirm the appointment of the two nominee arbitrators nominated by each party and appoint a Presiding Arbitrator from the Panel; <p>Provided that in cases where although the arbitration agreement provides for arbitration by three arbitrators, both parties may make a joint request to the Chamber for reference to and adjudication of the disputes between them, by a Sole Arbitrator. The parties may also mutually agree upon the person to be appointed as Sole Arbitrator in such a case, from amongst the Panel, or may alternatively request the Chamber to appoint any person from the Panel as the Sole Arbitrator. The Chamber will consider the request and will take a decision thereon after taking into consideration the quantum of the claim and the complexity and nature of the disputes. In each of the cases above, the Chamber shall inform the parties by a written communication, of the final Tribunal. The decision of the Chamber in respect of the finalization of the Tribunal will be final and the parties will be bound by such decision of the Chamber. Simultaneously the Chamber shall also inform the Arbitrator/Arbitrators of his/her/their appointment as such arbitrator/s.</p>	

6.2	Before finalization of the proposed Tribunal as per the preceding sub-Rule, the Chamber shall intimate the Arbitrator/s of their proposed appointment and seek the consent of such Arbitrator/s to act as Arbitrator/s along with a disclosure in terms of Section 12(1) read with the Fifth and Sixth Schedules of the Act, of circumstances which are likely to give rise to justifiable doubts as to the Arbitrator/s' independence or impartiality and/or which are likely to affect the Arbitrator/s' ability to devote sufficient time to the arbitration and in particular, to complete the entire arbitration within the period stipulated under section 29A of the Act..	
7.	Directions to parties:	<i>Directions to parties</i>
7.1	Within 10 days of its appointment the Tribunal shall, after notice to the parties or their representatives, fix a preliminary meeting and at such meeting, give directions with regard to :	
	(a) filing of statement of claim, written statement, counterclaim, if any; rejoinder and reply to counterclaim;	
	(b) filing of compilation of the documents on which the parties rely;	
	(c) the names and addresses of witnesses, if any, whom the parties wish to examine in support of their case;	
	(d) costs of arbitration and deposit thereof;	
	(e) Fees payable to the Chamber and time limit for the payment	
	(f) such other matter/matters as the Tribunal considers necessary.	
8.	Conduct of arbitration proceedings :	<i>Conduct of proceedings</i>
8.1	The Tribunal shall conduct the arbitration proceedings in such manner as it considers appropriate, provided that the same is consistent with the provisions of the Act. The Tribunal will, however, provide effective hearing and opportunity to all the parties consistent with the rules and principles of natural justice.	
9.	Competence of the Tribunal to rule on its own jurisdiction	<i>Competence to rule on own jurisdiction</i>
9.1	The Tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration agreement. For this purpose: (i) An arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and (ii) A decision by the Tribunal that the contract is null and void shall not entail <i>ipso jure</i> the invalidity of the arbitration clause, and the Tribunal shall not cease to have jurisdiction by any reason of any allegation that the contract is non-existent or null and void.	
9.2	Any objection that the Tribunal: (i) does not have jurisdiction, shall be raised no later than in a Statement of Defense or in a Statement of Defense to a Counterclaim; Provided that a party shall not be precluded from raising an objection as to the jurisdiction of the Tribunal merely because it has nominated, or participated in the appointment of an arbitrator.	

	<p>(ii) is exceeding the scope of its authority, shall be raised as soon as the matter alleged to be beyond the scope of the Tribunal's authority arises during the arbitral proceedings.</p> <p>Provided that the Tribunal may admit a later objection raised by a party under this Rule if it considers the delay justified.</p>	
10.	Interim and Emergency Interim Reliefs	
10.1	The Tribunal may, upon an application by a party during the arbitral proceedings or any time after making the arbitral award if no application either under Section 33 of 34 of the Act is pending, issue an order or an Award granting such interim measures, either during the arbitral proceedings as it deems appropriate, in terms of and in any case, not exceeding the scope of Section 17(1).	
10.2	<p>(i) In the event that any party wishes to seek emergency interim reliefs prior to the constitution of the Tribunal, such party may make an application to the Chamber seeking appointment of an emergency arbitrator for seeking grant of urgent interim reliefs. Upon receipt of such application, the Chamber will appoint such person as it deems fit from amongst the Panel, to act as emergency arbitrator and to hear the application for grant of urgent reliefs. The emergency arbitrator's powers to grant such reliefs will be co-extensive with the power of the arbitral tribunal for the purpose of grant of interim reliefs. Provided that the emergency arbitrator's powers will in no case extend beyond the grant of interim reliefs, and will come to an end as soon as the Tribunal is constituted.</p> <p>(ii) In the event of appointment of an emergency arbitrator and grant of interim reliefs by such emergency arbitrator, the party who had made the application for grant of interim reliefs, shall issue a Notice of Reference for initiation of arbitration within a period of 3weeks from the date of grant of interim reliefs; the Respondent will file its response with a further period of 3 weeks; and the Chamber will ensure that the Tribunal is constituted and the arbitral proceedings are commenced within a further period of 6 weeks therefrom i.e., within a total period of 90 days from the date of the grant of interim reliefs.</p> <p>(iii) Upon the Tribunal being constituted pursuant to the preceding sub-rule, the Tribunal, after hearing the parties in this regard, will determine whether to confirm or vacate the interim reliefs granted by the emergency arbitrator.</p>	
11.	Venue for arbitration proceedings :	<i>Venue of arbitration</i>
11.1	The arbitral proceedings under these Rules will be held in Mumbai and/or at such other venue or place as the Tribunal decides, having regard to expediency and convenience of the parties and the Tribunal.	
12.	Language for conduct of arbitration :	<i>Language</i>
12.1	Unless otherwise agreed by the parties, the Tribunal shall determine the language or languages to be used in the arbitration.	
12.2	If a party submits a document written in a language other than the language(s) of the arbitration, the Tribunal may direct that party to submit a translation in a form to be determined by the Tribunal.	

13.	Service of documents :	<i>Service of documents</i>
13.1	A party supplying documents or information to the Tribunal party shall, at the same time, supply such documents and/or information to the other party or parties, as the case may be, with a copy thereof to the Chamber.	
14.	Admissibility etc. of evidence :	<i>Admissibility of evidence</i>
14.1	The admissibility, relevancy, materiality and/or weight of the evidence offered by any party shall be determined by the Tribunal.	
15.	Appearance before Tribunal :	<i>Appearance before Tribunal</i>
15.1	The parties will be at liberty to appear before the Tribunal in person or through their representative or Advocate.	
15.2	Any change in the advocate/representative of a party shall be promptly communicated in writing by such party to the Tribunal, the other parties to the proceedings and the Chamber.	
16.	Hearings	<i>Hearings</i>
16.1	Unless the parties have agreed on a documents-only arbitration and have consented to waived oral hearings and leading of evidence in terms of Rule 19 hereof, the Tribunal shall hold such number of hearings as it deems fit for the presentation of documents, leading of evidence and for oral submissions on the merits of the dispute.	
16.2	The Tribunal shall, after consultation with the parties, set the date, time, and place of any meeting or hearing and shall give the parties reasonable notice.	
16.3	If any party fails to appear at a meeting or hearing without showing sufficient cause for such failure, the Tribunal may proceed with the arbitration and may make the Award based on the submissions and evidence before it.	
17.	Witnesses, including expert witnesses	<i>Witnesses</i>
17.1	At such stage as the Tribunal may deem fit, the Tribunal shall issue directions to the parties for filing of the evidence of such witnesses as named by the parties pursuant to the directions passed at the preliminary meeting, or such other/further witnesses as the parties may desire after seeking and obtaining leave of the Tribunal in writing. The evidence will be filed by way of an Affidavit of evidence and/or in lieu-of-examination-in-chief along with a compilation of the documents relied upon by the witness or in such other form as the Tribunal may in writing direct.	
17.2	The Tribunal may allow, refuse or limit the appearances of witnesses to give oral evidence.	
17.3	Any witness who gives oral evidence may be questioned by each of the parties/their representatives and the Tribunal in such manner as the Tribunal may determine.	

17.4	The testimony of each witness, including the examination-in-chief and cross-examination of the witness, will be recorded by the Tribunal in such manner as the Tribunal deems fit.	
17.5	The Tribunal may <i>suo moto</i> appoint an expert to report on such specific issues where the Tribunal feels it would be necessary to seek an expert report for the purpose of enabling the Tribunal to arrive at a considered and informed decision on such issues.	
18.	Applicable law	<i>Applicable law</i>
18.1	The Tribunal shall apply the law or rules of law designated by the parties as applicable to the substance of the dispute, Failing such designation by the parties, the Tribunal shall apply the law or rules of law which it determines to be appropriate having regard to the terms of the contract between the parties and the intention of the parties as can be adduced therefrom.	
19.	Fast-track Procedure	<i>Fast-track procedure</i>
19.1	The parties to the arbitration may by mutual consent make a joint application to the tribunal at any stage before the issuance of directions for leading of evidence by the parties are issued by the Tribunal, seeing to have the arbitral disputes resolved by the fast-track procedure set out in this Rule.	
19.2	The adoption of the fast-track procedure will entail: (i) Adjudication of the arbitral disputes on the basis of written pleadings, documents and written submissions filed by the parties; (ii) If the Tribunal while following the Fast-track Procedure may require the parties to lead oral evidence if the Tribunal so deems fit in the interest of justice (iii) Exclusion of oral hearings, unless and to the extent felt necessary by the Tribunal, after considering the written pleadings and documents of the parties, for clarification on any issue; and (iv) Shortening of any time lines under these rules at the discretion of the Tribunal.	
19.3	An Award under the fast-track procedure shall be made within a period of 6 months from the constitution of the Arbitral Tribunal.	
20.	Award by Arbitral Tribunal :	<i>Award by Arbitral Tribunal</i>
20.1	The Arbitral Award shall be made by the Tribunal within a period contemplated under Section 29A of the Act. However, if Fast Track procedure is followed u/sec. 29A r/w Rule 19 then the Arbitral Award shall be made within the period contemplated in sub-section (4) and (5) of Sec. 29A of the Act.	
20.2	The Arbitral Award shall be in writing and signed by the Tribunal (and by all members thereof in case of a three-member Tribunal). The Arbitral Award should state the reasons on which it is based, unless: (i) the parties have expressly consented, in writing, to a non-speaking Award; or (ii) the Award is a Consent Award made under the successive rule i.e., Rule 21	
20.3	Where there is more than one Arbitrator, an Award, decision or ruling which is made by a majority of the Arbitrators will prevail and will be deemed to be a decision of the Tribunal.	

20.4	The Arbitral Award shall be in accordance with Sec. 31 of the Act.	
20.5	The Arbitral Tribunal may award costs as contemplated by Sec. 31A of the Act.	
21.	Settlement between parties & Consent Award	<i>Settlement between parties & Consent Award</i>
21.1	In the event that the parties arrive at an amicable settlement of the arbitral disputes at any time in the course of the arbitral proceedings, the Tribunal shall record the same in the form of a Consent Award, which shall be final and binding on the parties. It shall be open to the Tribunal to encourage settlement of the dispute between the parties.	
22.	Award of interest :	<i>Award of interest</i>
22.1	Where the Award is for payment of money, the Tribunal may subject to the provisions of sub-section (7) of Sec. 31 of the Act award interest on the whole or any part thereof and for such period and at such rate .as the Tribunal considers reasonable	
23.	Award to be delivered to the Chamber :	<i>Award to be delivered to Chamber</i>
23.1	The Tribunal shall deliver to the Chamber the original Award in triplicate, on stamp paper. The Chamber will serve one Original to each party on payment of all fees, charges and expenses of arbitration including the administrative charges of the Chamber. The Chamber will retain in its records the third Original.	
24.	Liability of the Tribunal/Chamber :	<i>Liability of Tribunal/ Chamber</i>
24.1	The members of the Tribunal and the Chamber, including its Board and its employees, shall not be liable to any party for any act or omission or negligence in connection with any arbitration conducted under these Rules.	
25.	Fees and Deposits	<i>Fees and Deposits</i>
25.1	The Tribunal's fees and the Chamber's fees shall be ascertained in accordance with the Schedule of Fees in force at the time of commencement of the arbitration.	
25.2	As set out in Rules 4 and 5 above, the parties will respectively deposit 50% of the deposit amounts as specified in the Schedule of Fees with the Chamber towards advance on the costs of arbitration, where the term "costs of arbitration" includes: (i) the Tribunal's fees and expenses, where applicable; (ii)The Chamber's administration fees and expenses; and (iii) the costs of any expert appointed by the Tribunal and costs of any other assistance reasonably required by the Tribunal.	

**Part II
CONCILIATION**

26.	Reference to Chamber for conciliation :	<i>Reference to Chamber for conciliation</i>
26.1	If parties to a dispute are desirous of settling the same by conciliation under the Act, they may make a joint request to the Chamber, briefly identifying the subject of the dispute, to recommend the name of a suitable person willing to act as a Conciliator.	
27.	Appointment of Conciliator :	<i>Appointment of Conciliator</i>
27.1	On receipt of such request, the Chamber will (after prior consent of the persons concerned) communicate to the parties the name of the person from the Panel who would conciliate in the dispute between the parties.	
28.	Procedure of Conciliator :	<i>Appointment of Conciliator</i>
28.1	If the person recommended by the Chamber is acceptable to the parties, such person will proceed with the conciliation and call upon the parties to submit their brief written claim/submission on the nature of the disputes and the points at issue.	
29.	Furnishing of documents :	<i>Furnishing of documents</i>
29.1	The Conciliator may also call upon the parties to file copies of all such documents and/or other evidence on which they wish to rely upon and/or which the Conciliator considers necessary to furnish.	
30.	Conduct of proceedings :	<i>Conduct of proceedings</i>
30.1	The Conciliator shall conduct the conciliation proceedings in such manner as he thinks fit but guided, however, by the principles of impartiality, objectivity, fairness, equity and justice. Provided that the conciliator will not be required to follow the provisions of, or in any event, will not be bound to apply the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.	
31.	Confidentiality of proceedings :	<i>Confidentiality</i>
31.1	Every person involved in the conciliation proceedings in whichever capacity, including the Conciliator; the parties to the conciliation; and the Chamber including its Board, and all employees of the Chamber, shall keep confidential all matters relating to the conciliation proceedings as required by Section 75 of the Act.	
32.	Finality of conciliation :	<i>Finality of conciliation</i>
32.1	Any settlement/agreement reached between the parties as a 'result of conciliation shall be final and binding on the parties and shall have the same status and effect as if it is a Consent Award made under Section 30 of the Act.	
33.	Fees, charges, etc. :	<i>Fees, charges etc.</i>
33.1	The fees, charges, and expenses and administrative charges of the Chamber shall be as fixed by the Chamber from time to time and shared in equal proportion by the parties or in such manner and/or ratio as may be decided by the Conciliator.	

**Part III
GENERAL**

34.	Rules to prevail over contract between the parties :	<i>Rules to prevail over contract</i>
34.1	Notwithstanding anything to the contrary contained in the contract between the parties, on the parties agreeing to conduct the arbitral or conciliation proceedings through the Chamber, the provisions of these Rules shall apply.	
35.	Statutory provisions regarding arbitration and conciliation to prevail over Rules:	<i>Statutory provisions prevail over Rules</i>
35.1	Where any Rule hereof is in conflict with any provision of the law applicable to arbitration or conciliation, provisions of law shall prevail.	
36.	Revision of Rules and/or Schedule of fees etc. :	<i>Revision of Rules and schedule of fees</i>
36.1	The Chamber may from time to time revise, amend or alter these Rules/and or the Schedule of fees and charges.	