

## **FACT RULES OF ARBITRATION**

### **Rule 1**

- (i) These Rules may be called the Rules of Arbitration of the FICCI Arbitration and Conciliation Tribunal (FACT).
- (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 a defined legal relationship, whether contractual or not, shall be settled under the Rules of Arbitration of FACT.

### **Rule 2 INTERPRETATION**

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

- (a) '**Federation**' means the Federation of Indian Chambers of Commerce and Industry (FICCI);
- (b) '**Executive Committee**' means the Executive Committee, for the time being, of the Federation;
- (c) '**Committee**' means the Arbitration Committee of the FACT as provided for hereinafter;
- (d) '**Tribunal**' means the FICCI Arbitration and Conciliation Tribunal hereby constituted;
- (e) '**Sub Committee**' means the Sub Committee of the Arbitration Committee of the FACT;
- (f) '**Bench**' means the arbitrator or arbitrators appointed for determining a particular dispute or difference;
- (g) '**Rules**' means the Rules of Arbitration of the Tribunal;
- (h) '**Court**' means a Civil Court having jurisdiction to decide the questions forming the subject matter of the reference, if the same had been the subject matter of a suit;
- (i) '**Reference**' means any agreement to refer a difference or dispute, present or future, to arbitration under the Rules of the Tribunal;
- (j) '**Party**' shall include any individual, firm, company, Government, Government organization or Government undertaking;
- (k) '**Registrar**' The Secretary General or the Secretary for the time being of the Federation, or such other member of the staff of the Federation, as the Committee may nominate, shall be the Registrar of the Tribunal and shall also include persons nominated by the Committee as Additional Registrars to discharge the functions of the Registrar and such other administrative work as may be delegated by the Registrar from time to time, with reference to a particular case or classes of cases;
- (l) '**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;
- (m) '**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 (i) an individual who is a national of, or habitually resident in, any country other than India; or (ii) a body corporate which is

incorporated in any country other than India; or (iii) whose central management and control is exercised in any country other than India; or (iv) the Government of a foreign country;

- (n) ‘**Panel**’ means the Panel of Arbitrators and Conciliators maintained by the FACT;
- (o) ‘**Arbitral Award**’ includes an interim award;
- (p) ‘**Fast Track Arbitration**’ means arbitration in accordance with Rule 71;
- (q) Words importing the singular number include, where the context admits or requires, the plural number and vice versa.

## THE ARBITRATION COMMITTEE

**Rule 3 (a)** The Executive Committee of the Federation shall constitute a Committee consisting of the President of the Federation, who will be the ex-officio Chairman of the Committee, and three members of the Executive Committee of the Federation elected by the Executive Committee of the Federation from amongst themselves. The Committee shall hold office for a year.

The Secretary General of the Federation shall be the ex-officio member of the Arbitration Committee of the Tribunal.

**(b)** The Committee may co-opt not more than seventeen persons to be additional members of the Committee during its term of office. Persons who are not members of the Executive Committee may also be co-opted to be members of the Committee.

**(c) (i)** A Sub Committee may be set up by the Arbitration Committee of FACT at any one or more Regional/State offices for the purposes of selection of Arbitrators.

**(ii)** The Chairman of the Regional office shall be the ex-officio Chairman of this Sub Committee. The Sub Committee shall hold office for a year.

**(iii)** The Chairman of the Sub Committee, in consultation with the Chairman of the Arbitration Committee of FACT, may co-opt not more than 17 members to be additional members of the Sub Committee, during its term of office.

**(iv)** Duties of the Sub Committee, among others, as may be delegated by the Committee, shall be to select Arbitrators from the common panel of the FACT for dispute proceedings to be conducted in the respective Regional/State.

**(d)** The Committee may revise or alter the rules of procedure of the Tribunal or the schedule of fees and other charges to be paid. However, such amendment shall not be to the detriment of the parties who have already submitted to Arbitration and shall be applicable only prospectively.

**(e)** The duties of the Committee, among others, as may be delegated by the Executive Committee, shall be to select arbitrators of the Tribunal and to supervise the work of the Registrar.

**(f)** 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.

## OBJECTS OF THE TRIBUNAL AND ITS CONSTITUTION

- Rule 4(a)** The objects of the Tribunal are determination, settlement and adjudication of disputes and differences relating to trade, business and manufacture and other commercial matters, arising between parties in India or a party in India and a party in a foreign country, who agree or have agreed in writing to submit such disputes and differences for arbitration under the Rules of the Tribunal
- (b) If one or both of the parties to a dispute, which is referred to arbitration by the Tribunal, belong to a country or countries other than India, in the absence of an agreement by the Parties on the substantive law to be applied, it will be determined by the Bench. The procedural law shall be the laws of India and parties shall be deemed to have submitted to the jurisdiction of the Courts in India.
- (c) In every case where the arbitration clause of the FACT is used, the Rules or any amendment thereof in the form obtaining at the time when the dispute is referred to arbitration of the FACT, shall apply
- (d) In case the parties have provided different procedure for appointment of arbitrator or schedule of cost including the arbitrator's fee, the Tribunal 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 Tribunal.
- (e) The Tribunal 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** The Tribunal shall consist of such persons as are from time to time recommended by the *members* of the Federation and accepted by the Committee and of such other persons as may be selected by the Committee and who are willing to serve on the Tribunal.

### PANEL OF ARBITRATORS

- Rule 6** The Committee shall prepare or cause to be prepared by the Registrar a list of the members of the Tribunal and the list, complete for the time being, shall be kept by the Registrar and will be open to inspection by all persons at the discretion of the Registrar.
- Rule 7** (a) 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. 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. 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.
- (b) The Committee may at any time if it thinks proper to do so, add to the said list, the names of other persons or delete the names of any persons from the Panel list.
- Rule 8** The persons who have attained the age of more than 75 years will automatically cease to be member of the Tribunal. In the case of a member, who has been appointed as

Arbitrator before attainment of the age of 75 years, his panel membership will continue till the pronouncement of the Award in pending arbitration matters referred to him.

## **THE REGISTRAR**

### **Rule 9**

The Registrar shall be the chief administrative officer of the Tribunal. He shall receive applications to the Tribunal and shall receive payment of fees and costs, keep an up-to-date list of the Panel of the Tribunal, together with adequate information as to their qualifications and experience, appoint, as provided hereinafter, arbitrator or arbitrators who will constitute the Bench to deal with any dispute, receive all applications made to the Bench by the parties and communicate to them the orders and directions of the Bench, keep a register of such other books and memoranda and make such other returns as the Committee shall from time to time require and generally carry out the directions of any Bench so constituted and take such other steps as may be necessary to assist any such Bench in the execution of its functions.

The Registrar may delegate to any officer of the Tribunal, 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.

## **INSTITUTION OF ARBITRATION**

### **Rule 10**

In every case where a dispute or difference has arisen between the parties who have agreed that such dispute or difference shall be referred for decision under the Rules of the Tribunal, an application for arbitration addressed to the Registrar together with the statement of the case instituted before the Tribunal containing such particulars as are desired under **Rule 11** may be submitted by either party to the Registrar. Along with the application the Registration fee of Rs. 2500/- for claim upto Rs. one crore and Rs. 5000/- for claims more than Rs. one crore as provided in **Rule 61** shall be paid and no applications will be entertained unless accompanied by this fee.

### **Rule 11**

The party or parties applying for arbitration shall, along with the application, submit to the Registrar the following:

- (a) The name and addresses in full of the parties to the dispute
- (b) Statement of Claim
- (c) The original or certified copies of such documents or information relevant or relied upon and on which the case is based.
- (d) 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
- (e) The arbitration shall be deemed to have commenced on the day the application for arbitration, registration fee and statement of claim are received in the office of the FACT

### **Rule 12**

If any Court makes an order directing that arbitration be held under these Rules, in addition to the documents listed in Rules 11, the order of that Court or a copy thereof shall accompany the application for arbitration.

**Rule 13**

(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 a like 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.

**REJOINDER TO THE CLAIM**

**Rule 14**

On receipt of the application together with the statement, the Registrar shall send to the other party or parties, a copy of the statement and ask such other party or parties to furnish within the date specified or within any extended date a Rejoinder, setting out his or their case accompanied by the original or certified copies of such documents as may be relied upon or on which his case is based and information in support of or bearing on the matter.

**Rule 15**

A copy of the Rejoinder and all the appended documents, if any, shall be sent to the Claimant for information.

**Rule 16**

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 Tribunal, 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 Tribunal 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.

**COUNTER-CLAIM AND REPLY TO COUNTER-CLAIM**

**Rule 17**

In the Rejoinder referred to in Rule 14, the Respondent may make a counter-claim against the Claimant provided the counter-claim arises under the same transactions as the original claim. He must do so within the period laid down for the Rejoinder to the claim and the Claimant may, within twenty one days of the notification of the counter-claim or within such extended time, submit a statement in reply to the counter-claim. The Bench 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 the Bench already constituted on the basis of the original claim.

**Rule 18**

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

**COPIES OF STATEMENTS**

**Rule 19**

All statements, 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 party shall furnish to the Registrar such number of further copies as may be required by the Registrar.

**CONSTITUTION OF THE BENCH**

**Rule 20**

On receipt of such application, the Registrar shall proceed to constitute a Bench for the adjudication of the dispute or difference as provided hereunder.

**Rule 21**

The number of arbitrators to hear a dispute shall be either one or three, to 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 11 (e), does not exceed Rs. One Crore and where the arbitration agreement does not specify three or more arbitrators, the reference shall be deemed to be to a sole arbitrator, unless the parties to the dispute agree to refer the dispute to three arbitrators, within 30 days from the date of notification of request for arbitration or within such extended time or the Registrar in his discretion thinks that an adjudication by three arbitrators is preferable in the particular case.
- (b) Where the claim, including determination of interest, if any, being claimed upto the date of commencement of arbitration in terms of Rule 11 (e) exceeds Rs. One Crore, the dispute will be heard and determined by three arbitrators, unless the parties to the dispute agree to refer the dispute to a sole arbitrator within 30 days from the date of notification of request for arbitration or within such extended time.
- (c) Where three arbitrators have to be appointed as per the above sub-rule and any of the parties to the dispute fails to make the necessary deposit towards the cost and expenses of arbitration, instead of three arbitrators, the Registrar may appoint a sole arbitrator, where the claim is upto One crore. Where the claim is for more than Rs. One crore, the Registrar may appoint arbitrator/s on behalf of the Respondent as well the as Presiding Arbitrator.

**Rule 22**

The appointment of a 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 notice call upon the parties to forward the name of an agreed arbitrator from among the members of the Tribunal within a period which will not be less than thirty days from the date of the said notice from the Registrar. If the parties fail to agree on the person to be appointed as sole arbitrator within the time granted by the Registrar, the Registrar shall appoint him from among the members of the Tribunal. If one of the parties is a national or resident of a country other



than India, the sole arbitrator shall, as far as possible, be chosen or appointed by the Registrar from among the nationals of a country other than that of the parties. The sole arbitrator so nominated shall constitute the Bench 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 Bench.

- (b) Where the reference is to three arbitrators, the Registrar shall, in the first instance, call upon the parties to the dispute to nominate one arbitrator each from among the members of the Tribunal 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 less 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 within the period specified or any extended period or if he requests the Registrar to appoint an arbitrator on his behalf, the Registrar shall nominate an arbitrator 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 from among the members of the Tribunal to be an additional arbitrator. If one of the parties is a national or resident of a country other than India, the additional arbitrator shall, as far as possible, be chosen or appointed from among the nationals of a country other than that of the parties. The arbitrators so nominated or appointed shall constitute the Bench and shall be appointed as such in writing by the Registrar. The additional arbitrator nominated by the Registrar shall be the Presiding Arbitrator of the Bench. The Registrar shall give notice to the parties of the constitution of the Bench.

### **Rule 23**

The arbitrator or arbitrators shall, as far as possible, be selected from among the members of the Tribunal ordinarily resident or carrying on business within the jurisdiction of a Court having jurisdiction to decide the questions forming the subject matter of a suit. However, the Registrar may, in a fit and proper case, permit a party to select an arbitrator who is a resident of some other place. The arbitration proceedings shall ordinarily be held within the jurisdiction of the Court referred to above. Upon the agreement of the parties or upon application by any party, the Bench may, however, fix the hearing at any other place.

### **Rule 24**

The consent to act as arbitrator shall be obtained by the Registrar from persons nominated by him or by the parties.

### **Rule 25**

- (a) Before accepting his nomination the prospective arbitrator shall disclose any circumstances such as financial or personal interest 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.
- (b) 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 30 days after his appointment has been communicated to the challenging party or within 30 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.

## **Rule 26**

- (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 prescribed time and the Parties do not agree to extend the time for making the award, the Registrar in consultation with the Arbitration Committee may terminate the authority of such an appointed arbitrator and inform him accordingly.
- (b) In case of the resignation or death or termination of authority of an appointed arbitrator under Sub-Rule(a) above, a new arbitrator will be appointed in his place by the Registrar in case he 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, the Registrar 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 49 (a)** 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

## **SUBMISSION OF THE CASE TO THE ARBITRAL TRIBUNAL**

### **Rule 27**

The Registrar shall send copies of all statements, replies, documents, etc. received from the parties to the dispute to the arbitrators of the Bench constituted under **Rule 22** and the Bench shall be deemed to have entered reference on the day on which such statements, replies, documents, etc have been dispatched to the arbitrators. Intimation shall be given to the parties of the day on which the Bench is deemed to have entered on the reference.

### **Rule 28**

- (i) The Registrar may, before passing the case to the arbitrators under Rule 27, require the parties or any of them to pay to the FACT such sum as he may deem necessary towards the costs and expenses of the arbitration. Such deposits shall be subject to final apportionment by the arbitrators.
- (ii) (a) 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.
- (b) 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



## **NOTIFICATION AND/OR COMMUNICATION FROM THE REGISTRAR**

### **Rule 29**

All notifications and communications of the Registrar shall be deemed to have been well and duly made if delivered by hand against acknowledgement or sent by registered post to the address given by the parties, or by any other means which may provide a record of attempts to deliver the same.

### **Rule 30**

All applications, which the parties desire to make to the Bench 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 Bench thereon to the parties.

## **PLACE OF ARBITRATION**

### **Rule 31**

In the absence of a specific agreement between the parties with regard to the place of arbitration, 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. In a case in which one or both the Parties are from overseas, the Arbitration proceedings may also be held at any place outside India at the discretion of the Arbitral Tribunal.

## **HEARING BY THE ARBITRAL TRIBUNAL**

### **Rule 32**

- (a) A dispute will normally be decided by the Bench on the written statements of the parties and the documents accompanying them, unless one of the parties requests a hearing. The Bench shall have power, however, to call for any other documents or things and if it thinks fit to appoint a time and place for the hearing of the reference and to take any oral evidence, if necessary. The Registrar shall intimate the parties the time and place for the hearing.
- (b) Amendments of the claim, defence statement, counter-claim or reply submitted to the Bench must be formulated in writing by the Party so desiring. The Bench 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 61(2).

### **Rule 33**

- (a) At a hearing, any party shall be entitled to appear by counsel, attorney, advocate or a duly authorized adviser or representative or personally.
- (b) In any case of such formal hearing, any party intending to be represented by counsel, attorney, advocate or a duly authorized adviser or representative, shall notify the other party and file a copy of such notice with the Registrar at least three days prior to the date of such formal hearing at which such counsel, attorney, etc is first to appear. When the initiation of an arbitration is made by counsel or the reply of the other party is by counsel, notice of the same shall be given to the other party by the Registrar.



## **RULES GOVERNING THE PROCEEDINGS**

### **Rule 34**

The Bench may at its discretion at any time or times before making the final award and at the expense of the parties concerned, refer to, act upon and adopt the advice, recommendations, suggestions, or reports of any person having special knowledge relating to the particular industry, commodity, produce or branch or trade concerned in the reference or of any expert or qualified accountant and may also at the like expenses of the parties, consult and adopt the advice of solicitors or counsel or advocates upon any question of law, evidence, practice or procedure arising in the course of the reference. The Bench may also, at its discretion, and at the expense of the parties concerned, appoint any expert, accountant or lawyer to sit with them as an assessor and may act upon the advice of such assessor.

### **Rule 35**

- (i) 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 in India:
- (a) Submit to be examined by the Bench on oath or affirmation in relation to the matter in dispute.
  - (b) Produce before the Bench all books, deeds, papers, accounts, writings and documents, in their possession or power, respectively, which may be required or called for by the Bench.
  - (c) Comply with the requirement of the Bench as to the production or selection of sample and
  - (d) Generally do all other things which, during the pendency of the reference, the Bench may require.
- (ii) 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.

### **Rule 36** The Bench may:

- (a) Administer oath or affirmation to the parties or witnesses appearing and giving evidence
- (b) State a special case for the opinion of the Court or give its award in the form of a special case for the opinion of the Court
- (c) Make any award conditional or in the alternative
- (d) Correct in any award, any clerical mistake or error arising from or incidental to any slip or omission
- (e) Administer to the parties to the arbitration any interrogatories it may consider necessary
- (f) 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
- (g) Decide the law governing:
  - The contract or the matter in dispute,
  - The arbitration agreement, and
  - The arbitration procedure
- (h) Award interest including *pendente lite* interest.

### **Rule 37**

When the parties have already agreed to submit their case to arbitration under these Rules, they shall be bound to submit to arbitration. Should any party refuse or fail to submit to arbitration, the Bench shall order that the arbitration be proceeded with, notwithstanding such refusal or absence.

**Rule 38**

The parties shall do all acts necessary to enable the Arbitral Tribunal to make a just award and shall not willfully do or cause or allow to be done, any act to delay or to prevent the Arbitral Tribunal from making an award, and if either or any party shall do or cause or allow to be done any such act, the party shall pay the other party such costs as the Arbitral Tribunal may deem reasonable.

**Rule 39**

Where a party wishes to have any question arising in any proceedings before the Bench referred to the opinion of the Court in the form of a special case, he shall apply in writing to the Registrar. If the Bench decides to accede to such request, the party applying shall also be responsible for all legal and other costs, charges and expenses that may be incurred by the Bench in respect of and incidental to the same and shall make such deposit on account thereof and within such time as the Bench may direct. In case of default in making the deposit as above, the reference shall not be made to the Court or if made, shall be withdrawn by the Bench and the arbitration proceeded with as if there has been no reference to the Court.

**Rule 40**

Where there are two or more disputes pending with the same Bench and the contesting parties are the same and the issues involved in the disputes arise out the same or similar transactions, the Bench may, if it thinks proper to do so and with the consent of the parties, order the hearings of the disputes to be held jointly. The awards, however, shall be given separately in each case.

**Rule 41**

The Bench shall have full discretion to retain and/ or return all books, documents or papers produced before it in any proceedings and may direct at any time that the books, documents or papers produced or any of them may be returned to the parties or either or any of them on such terms and conditions, if any, as the Bench may impose.

**Rule 42**

The Bench may proceed with the reference notwithstanding any failure to comply with any of the directions of the Bench and may also proceed with the reference in the absence or any or both of the parties who, being entitled to appear under Rule 33 refuses or neglects to attend at the time and place appointed by the Bench, in spite of due notice.

**Rule 43**

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 44**

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 be borne by the party/parties making the request.

**Rule 45**

The arbitral tribunal may issue such orders or directions as it may deem necessary for safeguarding, interim custody, preservation, protection, storage, sale or disposal of the whole or

part of the subject matter of the dispute or for its inspection or sampling without prejudice to the rights of the Parties or the final determination of the dispute.

## **AWARDS**

### **Rule 46**

No award shall be made by the Bench unless the case of the party applying for arbitration has been brought to the notice of the other parties and until after the lapse of such specified time within which they have been asked to submit their rejoinder under Rule 14. If for any reason any of the parties could not be served personally or by registered post, the notice shall be served by the Registrar in such other manner as he may deem fit and the parties shall be deemed to have been duly notified of the complaint.

### **Rule 47**

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

### **Rule 48**

If the parties settle their dispute during the course of the arbitration, the Bench may, upon the request, set forth the terms of the agreement in an award.

### **Rule 49**

- (a) The Bench shall make the award as expeditiously as possible, preferably within six months from the date of the reference, subject to a maximum of two years from the date of commencement of the arbitral proceedings. If necessary, the maximum limit of two years for making the award may be extended by agreement between the parties to the dispute or by the Registrar.
- (b) 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 50**

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

### **Rule 51**

The arbitrator constituting the Bench or the presiding arbitrator, where Rule 47 is applicable, shall sign the award and shall cause notice in writing to be given 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 FACT on receipt of the award and requisite deposit made by the parties.

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 52**

- (a) The Bench, may by the award, dismiss the application or claim:
- (i) If the Claimant does not prosecute the arbitration proceedings or file papers within the time granted
  - (ii) Or neglects or refuses to pay the dues or deposits ordered to be paid by the Bench or the Registrar.

(b) The Bench may make an ex-parte award:

(i) If the Respondent neglects or refuses to appeal or make his defence or fails to file the papers within the granted time.

(ii) Or neglects or refuses to pay the dues or deposits ordered to be paid by the Bench or Registrar.

**Rule 53**

(a) When completed, a copy of the award shall be sent by the Registrar to each of the parties by registered post, provided the arbitration costs have been fully paid by the parties or one of them. Additional copies, certified true by the Registrar shall be available to the parties at all times on request but to no one else, and on payment as fixed by the Registrar.

(b) The Registrar may request either party to notify him of compliance with the award.

(c) The award may be made public only with the consent of both parties.

**FILING OF AWARD**

**Rule 54**

The Bench 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 an 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 55**

A party shall 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 a revocation of the submission or reference.

**Rule 56**

Whenever an award directs that a certain act or things shall be done by one party to the reference eg delivering or taking delivery of goods and such party fails to comply with the award, the party in whose favour the award is made may make a fresh application for a further award for determining the amount of damages or compensation payable by reason of such failure. The Registrar on receipt of such application shall proceed to constitute a new Bench, in the manner aforesaid, which may or may not consist of the same persons constituting the Bench which made the first award, and the new Bench shall proceed under these rules to arbitrate on the said application and the award thereon may be filed separately on the said application or together with the original award. Such proceedings before the new Bench shall be deemed to be a new arbitration and all Rules and Regulations herein including those relating to fees, costs and expenses, and deposits shall apply to such new arbitrations.

**Rule 57**

The cost of the reference and the award including costs, charges, fees and other expenses shall be in the discretion of the Bench, which may direct to and by whom, and in what manner and in what proportion such charges, fees and other expenses or 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. The Bench may also award such amount as may be determined by it to be paid to the FACT by any or all of the parties.



## **FEES AND EXPENSES**

### **Rule 58**

The Bench shall be entitled to allow fees and expenses of witnesses, expenses connected with the selection and carriage of samples and examination of goods licensed measurers' 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 Bench and any other incidental expenses and charges in connection with or arising out of the reference or award as the Bench shall in its absolute discretion think fit.

### **Rule 59**

The Bench may, from time to time, during the course of the arbitration prescribe that such sum as may be decided upon by it shall be paid by the parties to the dispute or such of the parties to the dispute in addition to such sum as may be required by the Registrar to be paid under Rule 28 as security for the costs and expenses incidental to the reference. In particular, where the Respondent neglects or refuses to make the deposit, the Bench may require such deposit to be paid by the Applicant himself, which fact shall be taken into consideration by the Bench in apportioning costs and expenses in the award.

Such sums and deposits as are ordered shall be made payable to the FACT.

### **Rule 60 Deposits:**

(i) The Registrar may require the Parties before passing the case on to the arbitrators under Rule 27, to deposit in advance in one or more installments such sums of money as he deems necessary to defray expenses of the arbitration including the administrative charges and arbitrator's fee. As a general rule, the deposits shall be called for in equal shares from the Claimant(s) and the Respondent(s). The Bench 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.

(ii) When one of the Parties neglects or refuses to make the deposit, the Registrar or the Bench, 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 Bench shall proceed only in respect of those claims or counter-claims for which the deposits have been duly paid to the Tribunal and otherwise may order the suspension or termination of the arbitral proceedings.

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

### **Rule 61**

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

#### **(1) Registration Fee**

A registration fee shall be paid along with the application for reference as under. The registration fee will not be refunded and becomes the property of FACT.

- Rs.2,500/- upto Rs. One Crore claim
- Rs.5,000/- more than Rs. One Crore claim

**(2) Administrative Fee and Arbitrator's Fee**

The Administrative fee (of FACT) and Arbitrator's fee (for each arbitrator) will be fixed separately with regard to the amount in dispute, including determined interest in each case, as under:

Amount in Dispute	Arbitrator's Fee (in Rs.)	Administrative Fee (in Rs.)
Upto Rs. 5 lac (Rs. 5, 00, 000)	<b>30, 000</b>	<b>15, 000</b>
From Rs. 5 lac one to Rs 25 lacs (Rs. 5, 00, 001 to Rs. 25, 00, 000)	<b>30, 000</b> plus <b>1, 500</b> per lac or part thereof subject to a ceiling of 60, 000	<b>15, 000</b> plus <b>750</b> per lac or part thereof subject to a ceiling of 30, 000
From Rs. 25 lac one to Rs. 1 crore (Rs.25, 00,001 to Rs.1, 00, 00,000)	<b>60, 000</b> plus <b>1, 200</b> per lac or part thereof subject to a ceiling of 1, 50, 000	<b>30, 000</b> plus <b>600</b> per lac or part thereof subject to a ceiling of 75, 000
From Rs. 1 crore one to Rs. 5 crores (Rs.1, 00, 00,001 to Rs.5, 00, 00,000)	<b>1, 50, 000</b> plus <b>22, 500</b> per crore or part thereof subject to a ceiling of 2, 40, 000	<b>75, 000</b> plus <b>11, 250</b> per crore or part thereof subject to a ceiling of 1, 20, 000
From Rs. 5 crores one to Rs. 10 crores (Rs.5, 00, 00,001 to Rs.10, 00, 00,000)	<b>2, 40, 000</b> plus <b>15, 000</b> per crore or part thereof subject to a ceiling of 3, 15, 000	<b>1, 20, 000</b> plus <b>8000</b> per crore or part thereof subject to a ceiling of 1, 60, 000
Over Rs.10 crore (Rs. 10, 00, 00,000)	<b>3, 15, 000</b> plus <b>12, 000</b> per crore or part thereof	<b>1, 60, 000</b> plus <b>6000</b> per crore or part thereof

(3) In addition to the above, FACT will be entitled to receive a Special Fee of Rs. 2500/- per hearing for providing facilities of hearing rooms, for arbitration hearings and secretarial assistance etc at the arbitration hearing.

(4) Notwithstanding the provisions in Sub-Rule (2) of this Rule, the Committee/Chairman of the Committee may prescribe the Arbitrator's fees and the Administrative fees of the FACT 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.

(5) Notwithstanding the provision in Sub-Rule (2) hereinabove, in arbitration cases to which **Rule 40** applies, the Arbitrator's fee and the Administrative fee of the FACT will be fixed by computing the fee applicable to larger claim in addition to 60% of the applicable fees of all claims being tried jointly. Provided that the Committee will have the power to prescribe the Arbitrator's Fee and Administrative Fee under this Sub-Rule in any other manner, having regard to the nature and facts of the matters under reference.

**Rule 62: Other Expenses –**

The arbitrator may be paid an amount of Rs. 750/- 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 63**

(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. 6,000/- per day in metropolitan towns, Rs.3,000/- in class A cities and Rs. 2,000/- in 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.1,000/ - 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 FACT under Rule 22(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 Bench.

(3) 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 official rate of exchange.

(4) 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 under Rule 28 (i) and the Bench under Rule 54, 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.

(5) The provisions relating to fees, costs and expenses in Rule 61 (2&3) above in relation to a claim will apply also to the amount of counter-claim and the Registrar under Rule 28 (i) and the Bench under Rule 54 may require such deposits as may be deemed necessary in respect of the counter-claim to be payable from such of the parties as may be required, subject to later adjustment.

(6) The amount of interest, wherever specified, will be included in the claim amount for the purpose of calculation of administrative fee. Further, claims and counter-claims referred for arbitration shall be taken into consideration separately for the purpose of calculation of arbitrator as well as administrative fees under Sub Rule 61(2).

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

(8) Other expenses: In addition to the above fees and expenses, any traveling expenses incurred by the arbitrator or the Registrar shall be included in the arbitration costs and shall be payable as determined by the Bench.

**Rule 64**

Certified copies of the awards: A fee of Rs. 50/- is payable for each certified copy of the award.

**Rule 65**

Stamp duties 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.

**Rule 66**

Such fee as may be decided by the Registrar, in addition to the court fees, on the scale for the time being in force under the Indian Law is payable by the party requiring the award to be filed.

**Rule 67 – Copies of proceedings**

No party is entitled to copies of proceedings before arbitrators. In case where the Tribunal is requested to make copies of cases or exhibits thereto, submitted by either party, for the purpose of sending such copies to the other party, then a charge as demanded by the Registrar shall be paid by the party requiring such copies.

**Rule 68 – Settled or Withdrawn Cases:**

If a party instituting a reference desires to withdraw it before a Bench has been constituted, the Registrar shall return to him any deposits made, after deducting such charges as he might have incurred in connection with the reference. The registration fee, however, shall not be refundable.

**Rule 69 INDEMNITY OF ARBITRATORS AND THE FACT SECRETARIAT**

- (i) No party shall bring or prosecute any suit or proceedings whatever against the Bench, or any member thereof, for or in respect of any matter or thing purporting to be done under these rules nor any suit or proceeding in respect thereof (save for the enforcement of the award against the other party).
- (ii) The FACT, the Arbitration Committee and officers of the Tribunal 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 70 *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.

**Rule 71 *Fast Track Arbitration***

The Parties may opt for Fast Track Arbitration and request the Bench, 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 Bench will be authorised to decide the dispute on the written pleadings, documents and written submissions filed by the Parties without any oral hearings.

(2) The Bench 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 Bench considers an oral hearing necessary in any particular case.

(4) If an oral hearing is held, the Bench may dispense with any technical formalities and adopt such procedure as it deems appropriate and necessary for economic and expeditious disposal of the case.

## **FACT RULES OF CONCILIATION**

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## PRELIMINARY

### Rule 1 Short title and scope

- (1) These rules may be called the FACT 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 FACT 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.
- (4) For the purpose of these Rules, the term “Mediation” shall mean and include “Conciliation” and all reference to Mediators shall mean and include “Conciliators”.

### Rule 2 Definitions

In these rules, unless the context otherwise require:-

- (a) ‘Conciliation Committee’ means the Conciliation Committee of the FACT and shall be the same as the Arbitration Committee of FACT;
- (b) ‘Sub Committee’ means the Sub Committee of the Conciliation Committee of the FACT;
- (c) ‘Rules of Conciliation’ or “rules” means the FACT Rules of Conciliation;
- (d) ‘Executive Committee’ means the Executive Committee for the time being of the Federation;
- (e) ‘FACT’ means FICCI Arbitration and Conciliation Tribunal, New Delhi;
- (f) ‘Panel of conciliators’ means the panel of persons approved by the Conciliation 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

### PROCEDURE FOR CONCILIATION PROCEEDINGS

#### Rule 3 The Conciliation Committee

- (a) The “Conciliation Committee” shall mean the Conciliation Committee of the FACT and shall be the same as the Arbitration Committee of FACT.
- (b) The Conciliation Committee may co-opt not more than seventeen persons to be additional members of the Conciliation Committee during its term of office. Persons who are not members of the Executive Committee may also be co-opted to be members of the Conciliation Committee.
- (c) The duties of the Conciliation Committee, among others, shall be to select Conciliators of FACT and to supervise the work of the Registrar.
- (d) The Conciliation Committee may revise or alter the Rules of procedure of FACT or the schedule of fees and other charges to be paid. However, such amendment shall not be to the detriment of the parties which have already submitted to Conciliation and shall be applicable only prospectively.
- (e) (i) A **Sub Committee** may be set up by the Conciliation Committee of FACT at any one or more Regional offices for the purposes of selection of Conciliators





- (ii) The Chairman of the Regional office shall be the ex-officio Chairman of this Sub Committee. The Sub Committee shall hold office for a year.
- (iii) The Chairman of the Sub Committee, in consultation with the Chairman of the Conciliation Committee of FACT, may co-opt not more than 17 members to be additional members of the Sub Committee, during its term of office.
- (iv) Duties of the Sub Committee, among others, as may be delegated by the Committee, shall be to select Conciliators from the common panel of the FACT for dispute proceedings to be conducted in the respective Region.

#### **Rule 4 The Registrar**

The Registrar shall be the chief administrative officer of the FACT. He shall receive applications to the FACT and shall receive payment of fees and costs, keep an up-to-date list of Panel members of the FACT, appoint, as provided hereinafter, arbitrator or arbitrators who will constitute the Bench to deal with any dispute, receive all applications made to the Bench by the parties and communicate to them the orders and directions of the Bench, keep a register of such other books and memoranda and make such other returns as the Conciliation Committee / Sub Committee shall from time to time require and generally carry out the directions of any Bench so constituted and take such other steps as may be necessary to assist any such Bench in the execution of its functions.

The Registrar may delegate to any officer of FACT, Chambers of Commerce or Trade Association at the premises of which the conciliation 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.

#### **Rule 5 Panel of Conciliators**

- a) The FACT shall establish a Panel of Conciliators with sufficient training and experience for conducting conciliation proceedings. A list of such Conciliators shall be maintained by the FACT for the information of persons interested in availing conciliation services.
- b) The Panel of Conciliators shall be bound by the policies and procedures prescribed by FACT and shall act in accordance thereof.
- c) The Panel shall ensure maintenance of strict ethics and confidentiality.
- d) The persons who have attained the age of more than 75 years will automatically cease to be member of the Panel. In the case of a member, who has been appointed as Conciliator before attainment of the age of 75 years, his panel membership will continue till the conclusion of the proceedings pending before him.

#### **Rule 6 Commencement of conciliation proceedings**

- (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, with a copy to FACT.
- (2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate. Upon acceptance of the invitation by the other party, the following information shall be submitted by both the parties along with the registration fees:
  - i. Notice of request for conciliation
  - ii. Names and full contact details of the parties and their counsels;

- iii. Category of dispute (Commercial/IPR/Technology/Others);
- iv. Statement of Claim setting out nature of dispute, points at issue and relief sought along with supporting documents;
- v. Original or certified copies of the conciliation clause in the contract or the conciliation agreement.

(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.

### **Rule 7 Number and appointment of conciliators**

- (1) There 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 FACT in connection with the appointment of conciliator, and in particular:-
  - (a) a party may request the FACT 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 FACT, a party may request the FACT 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 FACT, the party making the request shall send to the FACT-
  - (a) a copy of the invitation to conciliate;
  - (b) a copy of the acceptance by the other party;
  - (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 FACT.
- (4) In recommending or appointing an individual to act as conciliator, the FACT will follow the procedure specified in rule 27 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.
- (6) No person shall act as Conciliator in any dispute in which that person has any financial or personal interest, except by consent of the parties. Before accepting an appointment, the Conciliator shall disclose to the parties and to FACT, any circumstances likely to create a presumption of bias or prevent speedy resolution of the dispute.
- (7) Prior to commencement of the Conciliation proceedings, the FACT and the Conciliator shall confirm that all formalities prior to commencement of such Conciliation have been completed

and all consents required prior to such commencement have been executed and received by FACT.

### **Rule 8 Submission of statements to conciliator**

- (1) The conciliator may, upon his appointment, request each party to submit to him and the FACT a brief statement in writing describing the general nature of the dispute, the points at issue and the amount, if any, of the claim. Each party shall send a copy of such statement to the other party.
- (2) The conciliator may request each party to submit to him and the FACT 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 the FACT such additional information as he deems appropriate.

### **Rule 9 Representation and assistance**

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.

### **Rule 10 Role of conciliator**

- (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.
- (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 the parties may express, 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 therefor.
- (5) The Conciliator(s) and the Parties may decide upon calling for additional expert opinions as per the circumstances of each case. All such expenses shall be borne by all the parties equally unless otherwise agreed to by and between the parties.

### **Rule 11 Administrative services**

The FACT will arrange the administrative services specified in Part B if-

- (a) the parties designate the FACT for arranging such services in the agreement to conciliate;
- (b) the parties, or the conciliator with the consent of the parties, request the FACT to arrange such services.

### **Rule 12 Communication between conciliator and parties**

- (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 FACT is sought under Rule 11, all such conciliation proceedings shall be conducted at the offices of FICCI or at a place designated by FACT as the venue for such proceedings.

### **Rule 13 Disclosure of information**

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.

### **Rule 14 Cooperation of parties with conciliator**

The parties shall in good faith co-operate with the conciliator and, in particular, shall endeavor to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

### **Rule 15 Suggestions by parties for settlement of dispute**

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.

### **Rule 16 Settlement agreement**

- (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 agreement on a 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.

### **Rule 17 Confidentiality**

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.

### **Rule 18 Termination of conciliation proceedings**

- (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.
  
- (2) The conciliator shall, upon termination of the conciliation proceedings, send an intimation thereof in writing to the FACT.

### **Rule 19 Resort to arbitral or judicial proceedings**

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.

### **Rule 20 Costs**

- (1) The Conciliator shall receive his fees upon the termination of the conciliation proceedings. The cost of conciliation, including the fee of the conciliator and any assistance provided pursuant to Rule 7(2)(b) and fee and charges for any administrative assistance pursuant to Rule 11 shall be fixed by FACT in accordance with the FACT Fee Schedule.

Provided that the FACT may, on request from the conciliator and after receiving written consent from the parties, 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.

- (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 7(2) and Rule 11;
  - (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.

### **Rule 21 Deposits**

- (1) FACT shall direct each party to deposit with the FACT an equal amount as an advance for the costs referred to in rule 20(2) which he expects will be incurred.
  - (2) During the course of the conciliation proceedings, the conciliator may, in consultation with the FACT, direct supplementary deposits with the FACT in an equal amount from each party for the costs referred to in sub rule (1).
  - (3) If the required deposits under sub-rules (1) and (2) are not made in full within thirty days, the conciliator will inform the parties in order that one or the other party may make the required deposit and if the required deposit is not made, the conciliator may suspend the proceedings, or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.
  - (4) Subject to any settlement agreement, upon termination of the conciliation proceedings, the FACT 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.

### **Rule 22 Role of conciliator in other proceedings**

Unless otherwise agreed by the parties,-

- (a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding 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.

### **Rule 23 Admissibility of evidence in other proceedings**

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.

### **Rule 24 Interpretation and application**

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

## **PART-B**

### **SERVICES FOR PROCEDURES UNDER THE RULES OF CONCILIATION**

**Rule 25** To facilitate the conduct of conciliation proceedings that the parties have agreed to conduct under the Rules of Conciliation, the FACT will-

- (a) perform the functions of the appointing authority whenever-
  - (i) the FACT 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 FACT under the Rules of Conciliation without specifically designating it as the appointing authority *in their contract*; and
- (b) provide the administrative services herein specified when required by the agreement, or when requested by all the parties, or by the conciliator with the consent of the parties.

#### **Rule 26 Services as the Registry**

- (1) On receiving a request in pursuance of rule 7(2)(a) or 7(2)(b), the FACT 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 FACT.
- (2) The FACT will scrutinise every request and the documents, make necessary entries in the register and prepare a file of the case.

#### **Rule 27 Services as recommending or appointing authority**

- (1) On receipt of a request in pursuance of rule 7(2)(a), the FACT will communicate to the party, making the request, the FACT panel of Conciliators, containing the names, addresses, nationalities and a description of qualifications and experience of the Conciliators.
- (2) On receipt of a request to appoint a conciliator in pursuance of rule 7(2)(b), the FACT will follow the following procedure-

##### **In the case of appointment of a Sole Conciliator:**

- (a) FACT will communicate to each party the Panel of Conciliators, containing the names, addresses, nationalities and a description of qualifications and experience of the Conciliators, calling upon the parties to forward the name of an agreed Conciliator from among the Panel within a period which will not be less than thirty days from the date of the said notice from FACT.
- (b) If for any reason the appointment cannot be made according to the procedure specified in clause (a), the FACT may appoint the conciliator from the panel of conciliators.
- (c) The consent to act as conciliator shall be obtained by FACT from persons nominated by the parties or appointed by FACT.
- (d) The sole conciliator so nominated by the parties or appointed by FACT shall be appointed as such in writing and notice of such appointment shall be given to the parties by FACT.

##### **In the case where parties agree for two or three Conciliators**

- (e) Where the parties wish for two Conciliators, FACT will communicate to each party the Panel of Conciliators, containing the names, addresses, nationalities and a description of qualifications and experience of the Conciliators, and shall call upon the parties, by a notice in writing, to nominate one Conciliator each from among the FACT Panel, within a period which will not be less than thirty days from the date of the said notice from FACT. The consent to act as conciliator shall be obtained by



FACT from persons nominated by the parties. The Conciliators so nominated by the parties shall be appointed as such in writing and notice of such appointment shall be given to the parties by FACT.

- (f) Where the parties wish for three Conciliators, the procedure in clause (d) shall be followed. Thereafter, on receipt of the nominations from the respective parties, FACT shall appoint another person from among the Panel to be the Presiding Conciliator. The consent to act as conciliator shall be obtained by FACT from persons nominated by the parties or appointed by FACT. The Conciliators so nominated or appointed shall be appointed as such in writing and notice of such appointment shall be given to the parties by FACT.
- (3) In recommending or appointing a conciliator, the FACT will have regard to the matters referred to in rule 7(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 FACT will be made by the Conciliation Committee / Sub Committee.

#### **Rule 28 Administrative services**

- (1) The FACT 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 FACT for providing such services in their contract.
- (2) All oral or written communications from a party to the conciliator, except at meetings, may be directed to the FACT which will transmit them to the conciliator and, where appropriate, to the other party.
- (3) Agreement by the parties that the FACT 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 other party / Conciliator when received by the FACT. When transmitting communications to a party, the FACT will do so to the addresses provided by each of them to the FACT for this purpose.
- (4) The FACT will also assist in the exchange of information and of settlement proposals.
- (5) The FACT 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 FACT will provide a meeting room for the conciliator and the parties or their counsel in the offices of the FACT on the charges set out in the Schedule. However, where these facilities are provided in any place other than the offices of the FACT, the charges will be determined by the FACT and billed separately in each case.
- (7) Upon request, the FACT will make arrangements for reporter transcripts of meetings or hearings, however, the charges will be determined by the FACT and billed separately in each case.

- (8) Upon request, the FACT will make arrangements for the services of interpreters or translators. The cost of interpretation or translation will be determined by the FACT and billed separately and is not included in the fee for administrative services.
- (9) (a) The FACT will hold advance deposits to be made towards the costs of the conciliation proceedings.
- (b) On termination of the conciliation proceedings, the FACT 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.
- (10) (a) Upon request, the FACT will provide other appropriate administrative services, the cost of which will be determined by the FACT 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 facsimile facilities;  
(ii) photocopying and other usual office services.
- (11) (a) The FACT 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 the cost of such services;
- (b) The FACT 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 FACT, the FACT may not provide the services requested for.

## **Rule 29 Fees and Expenses**

### **A. Registration Fee**

A registration fee of Rs. 5000/- shall be paid along with the application for reference to conciliation. The registration fee will not be refunded and shall become the property of the FACT.

### **B. Administrative Fee**

- (1) The fee of the FACT for appointing a conciliator and for providing administrative services, other than those specified in sub-rules (6), (7), (8) and (10) of rule 28, is based upon the amount in dispute as disclosed when the statement of dispute is submitted to the FACT in pursuance of sub-rule (1) of rule 8.
- (2) The Schedule of Fees of the FACT Rules of Conciliation, as given hereunder, provides the costs of conciliation, which include the costs of the administrative fee and conciliators' fees (for each conciliator), which shall be fixed separately and shall be with regard to the amount in dispute in each case.

### Schedule of Fees

Amount in Dispute (in Rs.)	Conciliator's Fee (in Rs.)	Administrative Fee (in Rs.)
Upto. 5 lac (Rs. 5, 00, 000)	<b>30, 000</b>	<b>15, 000</b>
From 5 lac one to 25 lacs (5, 00, 001 to 25, 00, 000)	<b>30, 000</b> plus <b>1, 500</b> per lac or part thereof subject to a ceiling of <b>60, 000</b>	<b>15, 000</b> plus <b>750</b> per lac or part thereof subject to a ceiling of <b>30, 000</b>
From. 25 lac one to 1 crore (25, 00,001 to 1, 00, 0,000)	<b>60, 000</b> plus <b>1, 200</b> per lac or part thereof subject to a ceiling of <b>1, 50, 000</b>	<b>30, 000</b> plus <b>600</b> per lac or part thereof subject to a ceiling of <b>75, 000</b>
From 1 crore one to 5 crores (1, 00, 00,001 to 5, 00, 00,000)	<b>1,50, 000</b> plus <b>22, 500</b> per crore or part thereof subject to a ceiling of <b>2, 40, 000</b>	<b>75, 000</b> plus <b>11, 250</b> per crore or part thereof subject to a ceiling of <b>1, 20, 000</b>
From 5 crores one to 10 crores (Rs.5, 00, 00,001 to Rs.10, 00, 00, 000)	<b>2,40, 000</b> plus <b>15, 000</b> per crore or part thereof subject to a ceiling of <b>3, 15, 000</b>	<b>1, 20, 000</b> plus <b>8000</b> per crore or part thereof subject to a ceiling of <b>1, 60, 000</b>
Over 10 crore (10, 00, 00,000)	<b>3,15, 000</b> plus <b>12, 000</b> per crore or part thereof	<b>1, 60, 000</b> plus <b>6000</b> per crore or part thereof

(3) In addition to the above, the FACT will be entitled to receive a Special Fee of Rs.2500/- per hearing for providing facilities of hearing rooms and secretarial assistance etc. at the conciliation hearings.

(4) Notwithstanding the provisions in Sub-Rule (1) of this Rule, the Conciliation Committee or its Chairman /Sub Committee or its Chairman may prescribe the Conciliator's fees and the Administrative fees of the FACT 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.

#### (5) Other expenses:

(i) The conciliator may be paid an amount of Rs. 750/- towards local conveyance for attending each conciliation hearing in the city of his residence. Any traveling 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.

(ii) A conciliator 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. 6,000/- per day in metropolitan towns, Rs. 3,000/- in class A cities and Rs. 2,000/- in 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.1000/- per day, without production of vouchers. The expense limits for stay of the FACT officials will be of those applicable to conciliators.

**Rule 30 Indemnity**

The FACT, the Conciliation Committee / Sub Committee and officers of FACT shall not be liable for any act or omission in whatever capacity they may have acted in connection with or in relation to the conciliation proceedings under these Rules and the parties shall not raise any claim against them for the same.

**17/08/06**