

RULES
OF
CONCILIATION
OF
THE BENGAL CHAMBER OF COMMERCE

RECOMMENDED CONCILIATION AGREEMENT

The Bengal Chambers of Commerce recommends the following conciliation clause in the contracts:

"Any dispute or difference arising out of or touching or concerning this contract including its construction, scope, implication, performance, effect, validity, breach thereof or for determining any claim, right or liability of the parties hereunder may, before referring the same to arbitration, be referred to conciliation of The Bengal Chambers of Commerce & Industry in accordance with its Rules of Conciliation and subject to the provisions of Arbitration & Conciliation Act, 1996 or any statutory amendment thereof from time to time in force."

Rules of Conciliation

PRELIMINARY

Short title and scope

1. (1) These rules may be called the Rules of Conciliation of The Bengal Chamber of Commerce & Industry.

(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 by The Bengal Chamber of Commerce under its 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) The parties may agree to exclude or vary any of these Rules at any time.

(5) Where any of these Rules is in conflict with a provision of law from which the parties cannot derogate, that provision prevails.

Definitions

2. In these rules, unless the context otherwise requires, -

(a) "Arbitration Committee" means the Arbitration Committee of the Chamber formed under the Rules of Arbitration;

(b) "Registrar" means the Registrar appointed under the Rules of Arbitration.

(c) "Rules of Arbitration" means the Rules of Arbitration of the Chamber.

(d) "Rules of Conciliation" or "Rules" means these Rules;

(e) "Chamber Committee" means the Chamber Committee of the Chamber;

(f) "Chamber" means The Bengal Chamber of Commerce;

(g) "Panel of conciliators" means the panel of persons approved by the Arbitration Committee to act as conciliators;

(h) "Party" means a party to the agreement referred to in rule 1(2) ;

PANEL OF CONCILIATORS

3.(1) A Panel of Conciliators shall be appointed by the Arbitration Committee from –

(i) The legal fraternity including practising lawyers and retired Judges;

- (ii) Entrepreneurs and corporate professionals in business, professions and industry;
- (iii) Former civil servants and persons with experience of holding authoritative positions under the Central or State Governments in India;
- (iv) Persons based in India having achieved mark of significance in any vocation or trade;
- (v) Persons having specialised qualifications or outstanding credentials.

(2) The Arbitration Committee may at any time add the name of any person to the Panel of Conciliators or delete the name of any person from the panel.

(c) The Registrar shall prepare and maintain the Panel of Conciliators together with comprehensive information about their qualification, expertise and experience.

(d) A consent in writing of persons so selected should be obtained before placing his or her name in the Panel of Conciliators. The person so agreeing shall sign an undertaking in favour of the Chamber to conduct the proceedings, if assigned to him or her by the Chamber with utmost integrity, fairness, judicious approach, best intellect and application of mind committed to the interests of justice, law and equity.

INITIATION OF CONCILIATION

Commencement of conciliation proceedings

4. (1) The party initiating conciliation shall send to the other party a written invitation to conciliate under these rules, briefly identifying the subject of the dispute.

(2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.

(3) If the other party rejects the invitation, there will be no conciliation proceedings.

(4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and inform the other party accordingly.

Number and appointment of conciliators

5. (1) There shall be one conciliator unless the parties have agreed that there shall be two or three conciliators. Where there are more than one conciliator, they ought, as a general rule, act jointly.

(2) The parties may agree to seek the assistance of the Chamber in connection with the appointment of conciliator, and in particular :-

(a) a party may request the Chamber 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 Chamber, a party may request the Chamber in writing to appoint a conciliator.

(3) Where request in pursuance of clause (a) or clause (b) of sub-rule (2) is made to the Chamber, the party making the request shall send to the Chamber, -

(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 Chamber.

(4) In recommending or appointing an individual to act as conciliator, the Chamber will follow the procedure specified in rule 8 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 its predecessor had been appointed.

SERVICES FOR PROCEDURE UNDER THE RULES

6. To facilitate the conduct of conciliation proceedings that the parties have agreed to conduct under the Rules, the Chamber will -

(a) perform the functions of the appointing authority whenever-

(i) the Chamber has been so designated by the parties in conciliation clause of their contract or in a separate agreement, or

(ii) the parties have agreed to submit a dispute to the Chamber under the Rules of Conciliation without specifically designating it as the appointing authority; 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.

Services as Registry

7. (1) On receiving a request in pursuance of rule 5(2)(a) or 5(2)(b), the Chamber 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 Chamber.

(2) The Chamber will scrutinize every request and the documents, make necessary entries in the register and prepare a file of the case.

Services as recommending or appointing authority

8. (1) On receipt of a request in pursuance of rule 5(2)(a), the Chamber will communicate to the party making the request a list containing the names, addresses, nationalities and a description of qualifications and experience of at least three individuals from the panel of conciliators.

(2) On receipt of a request to appoint a conciliator in pursuance of rule 5(2)(b), the Chamber will follow the following procedure -

(i) the Chamber will communicate to each party a list containing the names, addresses nationalities and a description of qualifications and experience of at least three individuals from the panel of conciliators;

(ii) within thirty days following the receipt of the list, a party may delete any name to which he objects and after renumbering the names in the order of his performance, return the list to the Chamber.

(iii) on receipt of the list returned by the parties, the Chamber will appoint the conciliator from the list taking into account the order of preference indicated by the parties;

(iv) if for any reason the appointment cannot be made according to the procedure specified in clauses (i) to (iii), the Chamber may, unless the parties recommend the name of the conciliator to be appointed by the Chamber, appoint the conciliator from the panel of conciliators.

(3) In recommending or appointing a conciliator the Chamber will have regard to the matters referred to in rule 5(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 Chamber will be made by the Registrar in consultation with the Arbitration Committee.

CONCILIATION PROCEEDINGS

Submission of statements to conciliator

9. (1) The conciliator may, upon his appointment, request each party to submit to him and the Chamber 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 Chamber 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 other party.

(3) At any stage of the conciliation proceedings, the conciliator may request a party to submit to him and the Chamber such additional information as he deems appropriate.

Representation and assistance

10. 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.

Role of Conciliator

11. (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.

Administrative Services

12. The Chamber will arrange the administrative services specified hereunder if -

(a) the parties designate the Chamber for arranging such services in the agreement to conciliate;

(b) the parties, or the conciliator with the consent of the parties, request the Chamber to arrange such services.

Communication between the conciliator and the parties

13. (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 Chamber is sought under rule 8, the place where meetings with conciliator are to be held shall be determined in consultation with the Chamber.

Disclosure of Information

14. 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.

Co-operation of parties and conciliator

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

Suggestion by parties for settlement of dispute

16. 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.

Settlement Agreement

17. (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 statement 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. Such settlement agreement shall be signed in the presence of the Chamber.

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

Confidentiality

18. 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.

Termination of conciliation proceedings

19. (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 Chamber.

Resort to arbitral or judicial proceedings

20. 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.

Costs

21. (1) Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties. The fee of the conciliator and any assistance provided pursuant to rule 5(2)(b) and fee and charges or any

administrative assistance pursuant to rule 9 shall be fixed by the conciliator in accordance with the Schedule :

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

(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 5(2) and rule 8;
- (d) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

(3) Where more than one conciliator is appointed, each conciliator shall be paid separately the fee set out in the Schedule.

(4) The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

Deposits

22. (1) The conciliator will, upon his appointment, in consultation with the Chamber direct each party to deposit with the Chamber an equal amount as an advance for the costs referred to in rule 21(2) which he expects will be incurred.

(2) During the course of the conciliation proceedings, the conciliator may, in consultation with the Chamber, direct supplementary deposits with the Chamber 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 Chamber 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.

Role of conciliator in other proceedings

23. 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.

Admissibility of evidence in other proceedings

24. 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.

Interpretation and Application

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

Administrative Services

26. (1) The Chamber may provide the administrative services specified in this Rule–

- (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 Chamber for providing such services.

(2) All oral or written communications from a party to the conciliator, except at meetings, may be directed to the Chamber which will transmit them to the conciliator and, where appropriate, to the other party.

(3) Agreement by the parties that the Chamber 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 addressee when received by the Chamber. When transmitting communications to a party, the Chamber will do so to the addresses provided by each of them to the Chamber for this purpose.

(4) The Chamber will also assist in the exchange of information and of settlement proposals.

(5) The Chamber 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 Chamber will provide a meeting room for the conciliator and the parties or their counsel in the offices of the Chamber on the charges set out in the Schedule. However, where these facilities are provided in any place other than the offices of the Chamber, the charges will be determined by the Chamber and billed separately in each case.

(7) Upon request, the Chamber will make arrangements for transcripts of meetings or hearings.

(8) Upon request, the Chamber will make arrangements for the services of interpreters or translators. The cost of interpretation or translation will be determined by the Chamber and billed separately and is not included in the fee for administrative services.

(9) (a) The Chamber will hold advance deposits to be made towards the costs of the conciliation proceedings.

(b) On termination of the conciliation proceedings, the Chamber 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 Chamber will provide other appropriate administrative services the cost of which will be determined by the chamber and billed separately and are not included in the fee for administrative service.

(b) The kinds of services which can be provided are as follows:-

(i) long distance and local telephone access, telecopier and internet facilities;

(ii) photocopying and other usual office services;

(iii) video conferencing facility.

(11) (a) The Chamber 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 Chamber 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 Chamber, the Chamber may not provide the services requested for.

27. FEES AND EXPENSES

A. Registration Fee

A registration fee of Rs.2500/- shall be paid along with the application for reference to conciliation. The registration fee will not be refunded and become the property of the Chamber.

B. Administrative Fee

(1) The fee of the Chamber for making appointment of conciliator and for providing administrative services, other than those specified in sub-rules (6), (7), (8) and (10) of rule 25, is based upon the amount in dispute as disclosed when the statement of dispute is submitted to the Chamber in pursuance of sub-rule (1) of rule 5.

(2) Where the Chamber is requested to act as appointing authority under rule 4(2), the requesting party shall pay the Chamber a sum of Rs.5000/- as a non-refundable fee at the time of the request.

(3) The Rules provide that the costs of conciliation include the costs of the administrative and conciliators' fees. The Schedule of fee is given as under. These costs are, borne equally by the parties unless the settlement agreement provides for a different apportionment.

SCHEDULE OF FEES

The Administrative fee (of Chamber) and Conciliator's fee (for each conciliator) will be fixed separately with regard to the amount in dispute in each case, as under:

Amount in Dispute	Conciliator Fee	Administrative Fee
Upto Rs.5 lacs (Rs.500,000)	Rs.30,000/-	Rs.15,000/-
From Rs.5 lac one to Rs.25 lac	Rs.30,000/- plus Rs.1,500 per lac	Rs.15,000/- plus Rs.750/- per lac

Rs.500,001 to 2,500,000)	or part thereof subject to a ceiling of Rs.60,000/-	or part thereof subject to a ceiling of Rs.30,000/-
From Rs.25 lac one to Rs.1 Crore (Rs.2,500,001 to Rs.10,000,000)	Rs.60,000/- plus Rs.1,200 per lac or part thereof subject to a ceiling of Rs.1,50,000/-	Rs.30,000/- plus Rs.600/- per lac or part thereof subject to a ceiling of Rs.75,000/-
From Rs.1 Crore one to Rs.5 Crore (Rs.10,000,001 to Rs.50,000,000)	Rs.1,50,000/- plus Rs.22,500 per crore or part thereof subject to a ceiling of Rs.2,40,000/-	Rs.75,000/- plus Rs.11,250/- per crore or part thereof subject to a ceiling of Rs.1,20,000/-
From Rs.5 crore one to Rs.10 Crore (Rs.50,000,001 to Rs.100,000,000)	Rs.2,40,000/- plus Rs.15,000 per crore or part thereof subject to a ceiling of Rs.3,15,000/-	Rs.1,20,000/- plus Rs.8,000/- per crore or part thereof subject to a ceiling of Rs.1,60,000/-
Over Rs.10 crore (Rs.1,00,000,000)	Rs.3,15,000/- plus Rs.12,000 per crore or part thereof.	Rs.1,60,000/- plus Rs.6,000/- per crore or part thereof.

In addition to the above, the Chamber 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 Arbitration Committee may prescribe the Conciliator's fees and the Administrative fees of the Chamber at a figure higher than those prescribed in the said Sub-Rules, if in the exceptional circumstances of the case this appears to be necessary.

Other expenses : The conciliator may be paid an amount of Rs.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.

A conciliator who has to travel shall be paid traveling expenses by air or rail (air conditioned wherever available) or car (which 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.15,000/- per day in metropolitan towns, Rs.5000/- in class A cities and Rs.2,500/- 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.1500/- per day, without production of vouchers. The limits for stay of the Chamber officials will be of those applicable to Chamber service rules.

Functions of the Chamber to be discharged by the Arbitration Committee or Registrar

28. The functions of the Chamber herein assigned would be discharged by the Arbitration Committee or the Registrar, as the case may, in the name of the chamber.

Amendment of Rules

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