

THE AUDITOR OF FEES

FEE ARBITRATION SCHEME RULES

Introduction

These Rules, effective from 31 August 1994, apply to applications for arbitration made to The Institute of Chartered Accountants of Scotland, incorporated by Royal Charter and having its offices at CA House, 21 Haymarket Yards, Edinburgh EH12 5BH ("the Institute") in respect of disputes relating to fees between its members in public practice and their clients. A dispute may only be referred to arbitration under the Scheme where both parties have agreed to do so after the dispute has arisen. The Scheme applies to

- (a) disputes involving a member of the Institute practising in Scotland, England and Wales, Northern Ireland and the Isle of Man, a client who has instructed the member, and an allegation that the fees charged, or proposed to be charged, to a client by the member may be excessive, given the nature and complexity of the work, the professional time spent thereon, the adequacy of the professional service rendered, and the whole other circumstances, or
- (b) adjudication on any issues relative to fees and professional disbursements referred to the Auditor by a party or parties to a dispute of any nature, or by civil courts hearing such disputes.

Preliminary

- 1 These Rules shall apply to all arbitrations carried out under the auspices of the Institute's Fee Arbitration Scheme.

Commencement of Arbitration

- 2 An application for arbitration shall be made to the Institute as Appointing Authority in such form and manner as it may from time to time prescribe. At such time as the Institute shall think fit, it shall appoint an arbiter, who shall be termed "the Auditor", from a panel selected for the purpose by its Council.

Jurisdiction and Powers of the Auditor

- 3 Without prejudice to the jurisdictions and powers set out in the Schedule to these Rules, the Auditor shall have the widest discretion permitted by law to ensure the just, expeditious, economical and final determination of the dispute. His Award shall either endorse, vary, mitigate or modify (but not increase) the quantum of the fees subject of the referral.
- 4 Without prejudice to any powers conferred on the Auditor by law or by the agreement between the parties, the Auditor may exercise the powers set out in the Schedule to these Rules. It is, however, expressly declared that the Auditor may not act in relation to any dispute where the fees claimed by the member firm have been paid by the client at the time when an application for referral to the Auditor is made, save where enquiry into such fees may be relevant to the determination of an Award in relation to any other, or additional, fees unpaid at the date of application which are the subject of dispute between the parties.

Procedure

- 5 The Auditor, at his sole discretion, shall decide the means by which the arbitration shall proceed, whether by consideration of written submissions and documentary evidence, (including examination of the accountant's file), by hearing parties' oral submissions individually or collectively, formally or informally, or by any other means. The Auditor may, in his absolute discretion, relate to each party submissions or documentation supplied by the other but shall not be under any duty to do so. The Auditor shall in any case confirm which procedures are to be followed by directions issued to the parties in writing. He may issue further, or substitute, directions at any stage of the arbitration, informing the parties accordingly.
- 6 Within 21 days of the issuance of the Auditor's procedural directions, the client shall submit to the Auditor a brief statement of claim, setting out the amount of the member's fee and his grounds for maintaining that they are excessive.
- 7 The member shall comply with such directions as the Auditor shall make as to his defence to the claim and shall do so within such time as the Auditor shall direct.
- 8 The Auditor may request parties to make additional submissions at any stage of the arbitration or to clarify earlier ones. He shall also, in his unfettered discretion, decide when submissions are closed.
- 9 The Auditor shall have the power to extend or vary any of the time limits stipulated in these Rules.

Costs

- 10 In making his award under these Rules, the Auditor shall, at his sole discretion, order by whom and in what proportion the parties shall pay his fees and expenses.

Miscellaneous

- 11 Awards made under these Rules shall be final and binding upon the parties.
- 12 The Auditor shall not be liable to any party for any act or omission in connection with any arbitration conducted under these Rules.
- 13 The provisions of Section 3(1) of the Administration of Justice (Scotland) Act 1972 shall not apply to any appointments accepted by the Auditor in terms of these Rules.

SCHEDULE - JURISDICTION AND POWERS OF THE AUDITOR

Jurisdiction

The Auditor shall have jurisdiction to:

- (a) determine any question as to the existence, validity or termination of any contract between the parties;
- (b) determine any question of law arising in the arbitration and in so determining may instruct legal opinion which shall be an expense for the purposes of Rule 10 hereof;

- (c) determine any question as to his own jurisdiction, including any objection with respect to the existence or validity of the arbitration agreement or to his terms of reference;
- (d) determine any question of good faith, dishonesty or fraud arising in the dispute, if specially pleaded by a party;
- (e) determine any referral made to him by the Investigation Committee of the Institute in terms of Rule 61A.

Powers

The Auditor shall, without prejudice to any powers conferred by these Rules, have power to:

- (a) allow any party, upon such terms (as to costs and otherwise) as he shall determine, to amend any statement of case, counterclaim, defence to counterclaim and reply, or any other submissions;
- (b) order the parties to produce relevant information or documents for inspection by him, and to supply any copies of any documents in their possession, custody or power which the Auditor shall in his unfettered discretion determine to be relevant;
- (c) require, allow, limit or refuse to allow the appearance of witnesses, whether witnesses of fact or expert witnesses;
- (d) seek legal advice in such form as he thinks fit and determine the applicable law (Scots, English, Northern Irish etc);
- (e) rely upon his own knowledge and expertise to such an extent as he thinks fit;
- (f) direct the parties, in such proportions as he deems just and in any manner he thinks fit, to make one or more deposits to secure his fees and expenses;
- (g) order the claimant to provide security for all or part of any amount in dispute in the arbitration;
- (h) proceed in the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with his orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that he intends to do so;
- (i) issue an order for termination of the reference to arbitration if the parties agree to settle the dispute before an award is made.

It is also expressly provided that the Auditor may, at his sole discretion, conduct such enquiries as may appear to him to be necessary or expedient, or receive oral or written evidence from any party which he considers relevant. He may receive secondary evidence and draw inferences from a party's conduct where that party fails to comply with an order or direction made by him.

It is further expressly provided that the Auditor shall be entitled to make an Award on the basis of fairness and reasonableness, without necessarily being bound by mandatory rules of law.

Miscellaneous

Exclusion of Liability

Neither the Institute nor its officers, servants or agents nor any member who is appointed to act as Auditor in accordance with these Rules will be liable to any party for any act, omission or misconduct in connection with any arbitration conducted under these Rules.

Waiver

Any party who becomes aware that any provision or requirement of these Rules has not been complied with and who fails to state an objection thereto within a reasonable time shall be deemed to have waived the right to object.

Award

The Award shall be in writing. It shall be signed by the Auditor and sent to the parties thereafter. He may, but shall not be bound to, issue reasons for his decision. The terms of the Award and settlement shall be implemented within 21 days of its issuance.

Definitions

In these Rules:-

“Appointing Authority” means The Institute of Chartered Accountants of Scotland.

“Auditor” means the arbiter appointed under Rule 2.

“Award” is a decree arbitral and means the fee as assessed by the Auditor, including his own costs.

“Chartered Accountant” and “Member” mean a sole practitioner, a partnership or a limited company carrying on practice as chartered accountants.

“Client” means the individual, firm or limited (or unlimited) company responsible for the payment to the member of the fees made the subject of an arbitration under these Rules.

“Council” means the Council of the Institute.

“Professional time” shall mean the time spent upon carrying out the client’s instructions and anything reasonably incidental thereto. The expression shall include time spent by the member or any of his or its staff, qualified or otherwise.

These Rules shall be construed according to the provisions of the Interpretation Act 1978.