

**INTRODUCTION OF NEW SECTION 11A AND 11(14) TO THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2015
AND THE NEWLY INSERTED FOURTH SCHEDULE****I. Bare Text:****a. Section 11A under the Arbitration and Conciliation (Amendment) Act, 2015**

“After Section 11 of the principal Act, the following new section shall be inserted, namely:-

11A. (1) If the Central government is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, amend the Fourth Schedule and thereupon the Fourth Schedule shall be deemed to have been amended accordingly.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both the Houses agree disapproving the issue of the notification or both Houses agree in making any modification, the notification shall not be issued or as the case may be, shall be issued only in such modified form as may be agreed upon by the Houses of Parliament”.

b. Section 11(14) under the Arbitration and Conciliation (Amendment) Act, 2015

“For the purpose of determination of the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal, the High Court may frame such rules as may be necessary, after taking into consideration the rates specified in the Fourth Schedule”.

b. Fourth Schedule under the Arbitration and Conciliation (Amendment) Act, 2015:

S. No.	SUM IN DISPUTE	MODEL FEE
1.	Up to Rs. 5,00,000/-	Rs. 45,000/-
2.	Above Rs. 5,00,000/- and up to Rs. 20,00,000/-	Rs.45,000/- plus 3.5 per cent of the claim amount over and above Rs. 5,00,000/-
3.	Above Rs. 20,00,000/- and up to Rs. 1,00,00,000/-	Rs. 97,500/- plus 3 per cent of the claim amount over and above Rs. 20,00,000/-
4.	Above Rs. 1,00,00,000/- and up to Rs. 10,00,00,000/-	Rs.3,37,500/- plus 1 per cent of the claim amount over and above Rs. 1,00,00,000/-
5.	Above Rs. 10,00,00,000/- and up to Rs. 20,00,00,000/-	Rs.12,37,500/- plus 0.75 per cent of the claim amount over and above Rs. 1,00,00,000/-

6.	Above Rs. 20,00,00,000/-	Rs.19,87,500/- plus 0.5 per cent of the claim amount over and above Rs. 20,00,00,000/- with a ceiling of Rs. 30,00,000/-
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Note: In the event an arbitral tribunal is a sole arbitrator he shall be entitled to an additional amount of twenty-five per cent on the fees payable as per the table set above.

II. INTRODUCTION

Section 11A has been newly inserted by way of the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as the “Act”). Section 11A and Section 11(14) are in addition to the Arbitration and Conciliation Act, 1996 as amended by the Act by way of which the fees of the Arbitral tribunal and the manner of payment thereof can be determined by the High Court taking into consideration the fourth schedule of the Act. The fourth schedule in reference to the same lays down a model fee structure payable to Arbitral Tribunal.

III. WHAT IS THE IMPORTANCE OF INTRODUCING THE SAID SECTION AND WHAT IS THE RELEVANCE OF THE FOURTH SCHEDULE UNDER THE SAID SECTION?

Section 11A allows the Central Government to consider the model fee structure and make necessary amendments in case there is any necessity to do so. This is important in view of the fact that the model fee structure as provided in the Act might be considered as a depart from the existing situation wherein the Arbitral Fees charged by Arbitrators is often hearing based and varies from amounts which might be considered from very less to high depending upon the Arbitrator/ Arbitral tribunal in comparison with the Model fees. This section thereby provides for the Centre to align the fee structure in consonance with the fees payable during the aforesaid period of time, such that it does not lead to any adversarial prejudice in favour of either the party or the arbitrator. The relevance of the Model Fee structure cannot be denied in any circumstance where the Fourth Schedule provides for standardization of the fee payable to the Arbitrator thereby preventing the Arbitral tribunal or sole Arbitrators from charging any unscrupulous amounts as fees which is often a cause of dispute.

IV. CAN THE HIGH COURT FRAME RULES FOR DETERMINATION OF FEES OF THE ARBITRAL TRIBUNAL AND THE MODE OF PAYMENT?

Yes. Section 11(14) of the Act empowers the High Court to frame rules for determination of fees and the manner of payment after taking into consideration the rates specified in the Fourth Schedule. The liberty to frame rules is discretionary upon the

High Court and thereby in case where a particular High Court chooses to exercise the said option, then the Amended Act has to be considered jointly in consonance with the respective rules. This is a beneficial addition in view of the differing practices in different states with regard to the Arbitral fees payable and further in respect of the general category of matters including the claim amounts which come up for arbitration and thus cannot be categorised by way of a single schedule as provided in the Act. Further, the Act also provides that the freedom to frame rules provided to the High Court for determination of fees and the manner of payment would not apply to international commercial arbitrations and in cases where the parties have agreed for determination of fees as per the rules of an arbitral institution.

V. WHAT IS THE STATUS UNTIL THE HIGH COURT HAS FRAMED SUCH RULES FOR PAYMENT OF FEES?

Although Section 11 (14) of the Act empowers the High Court to frame rules after taking into consideration the rates specified in the Fourth Schedule, however this provision is not mandatory upon the High Courts as evident from a bare reading of Section 11(14) of the Act, which uses the term “may” rather than the term “shall”. This would hence mean that in circumstances when the High Court has not framed any such rules or during the time period in between framing of such rules, the Model Fees as provided in the fourth schedule of the Act would apply for the purpose of determination of fees.

VI. CONCLUSION

The fourth schedule seeks to look into an often ignored aspect of Arbitration being the fees charged by Arbitrators which is often a cause of burden upon the disputing parties. The added section 11A also provides for the Central Government to look into the aspect of determination of fees payable by way of passing a notification to that effect. Section 11A (2) of the Act lays down the manner in which any proposed notification can be placed before both the Houses of the Parliament in order to bring about any change to that effect as provided under Section 11A (1) of the Act. Thus Section 11A is in addition to Section 11(14) of the Act by way of which the Act seeks to provide for resolving any future disagreements which may crop up owing to the model schedule wherein the fee structure may not be favoured by the effected parties. This would hence help the Central Government to create a model fee structure after receiving inputs and comments from the affected parties.