Guidelines on Arbitration Framework in Loan Agreement

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Fintech Association for Consumer Empowerment (FACE)
RBI-recognised Self-regulatory Organisation in the FinTech Sector (SRO-FT)

Contents

Context

1. Regulated Entities (REs) widely use alternative dispute resolution, including mediation and arbitration, in their lending agreement with borrowers. For the most part, the Arbitration and Conciliation Act, 1996 (Act), governs these proceedings.

2. There is judicial[1] and public scrutiny noting misconduct in arbitrations by REs:

a. Practice of RE-controlled/curated appointment mechanisms, unilateral RE appointment rights, RE-affiliated arbitration forums, and perceived lack of neutrality in dispute resolution. The courts have affirmed that the principles of independence, impartiality, and fairness are the pillars of arbitration and cannot be given a go-by at the instance of one party, in derogation of the Act and settled Supreme Court jurisprudence that prohibit such practices.
b. Practice of unilaterally commencing arbitration proceedings as a recovery tool, with rapid ex interim and ex parte orders (without issuing proper notice), and withdrawal of the arbitration proceedings when challenged before a competent court. The Court notes this as a coercive recovery practice that enables parties who may not have the wherewithal to approach the Court.
c. Public complaints about arbitration proceedings, such as the intentional choice of a seat/venue far from the borrower's residence, resulting in harassment and making participation in the proceedings nearly impossible.

3. These create an imbalance in financial agreements, are inconsistent with fair-practice expectations from REs, and make the outcome vulnerable to legal challenge under the relevant section of the Act.

4. In the backdrop of the above, we release the following guidelines that aim to promote industry awareness and adoption of good practices for:

   a. Fair, transparent, and enforceable dispute resolution mechanisms
   b. Principles of neutrality, due process, and party autonomy under arbitration law
   c. Elimination of structural bias in arbitrator appointment
   d. Trustworthy adoption of institutional arbitration and ODR frameworks

5. We issue these guidelines under the FACE Standards Setting policy[2] and with approval from the FACE Board on 1 Sep 2026.

6. We clarify that these guidelines do not constitute legal advice on the agreement or the specific arbitration clause, which may require modification on a case-by-case basis and legal validation.

7. The guidelines do not substitute for any directions and requirements under laws and regulations. In the case of inconsistency, the laws and regulations always prevail.

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[1] Bombay High Court Order dated April 30, 2026 in three arbitration petitions involving IIFL Finance Limited [DS Textiles (12097 of 2026), Madhuram Fabrics Pvt. Ltd. (12128 of 2026), and P.R. Packing Service (12154 of 2026)].
[2] https://faceofindia.org/wp-content/uploads/2026/06/Standards-policy_Jun-2026.pdf
[4]Maintains an empanelled, qualified panel of arbitrators selected through objective processes.

Applicability

8. These guidelines apply to FACE member REs for the incorporation and operation of 'arbitration clauses' in lending agreement, as applicable to them.

Key definitions

9. **Arbitration clause**: any agreementual provision negotiated and agreed between the parties by which the parties knowingly and willingly agree to be subject to the jurisdiction of an arbitrator/arbitration tribunal, instead of the traditional Court process for dispute resolution in a lending agreement.

10. **Arbitration institution**: refers to an independent, designated body empowered to administer arbitral proceedings and appoint arbitrators pursuant to its rules, utilizing either conventional physical forums or online dispute resolution (ODR) platforms

11. **Unilateral appointment mechanism:** any arrangement whereby the RE directly or indirectly a) appoints the sole arbitrator; or b) controls the panel or selection process of arbitrators.

12. **Online dispute resolution (ODR):** Process of using digital technologies, such as specialised platforms, video conferencing, and electronic document exchange, to conduct arbitration entirely online, eliminating the need for physical appearances.

Guidelines

Legal and regulatory principles

13. Arbitration clauses shall be consistent with:

a. The Arbitration and Conciliation Act, 1996 (as amended)
b. Principles laid down by courts regarding independence and impartiality of arbitrators

14. REs to ensure that arbitration clauses do not:

a. Dispense with the mandatory requirement to issue a notice of arbitration
b. Confer unilateral control over arbitrator appointment
c. Restrict statutory remedies available to borrowers

Structure

15. A lending agreement between RE and borrower, containing an arbitration clause, should comply with the below structure:

a. **Institutional arbitration requirement:** Conduct the arbitration through an independent arbitration institution (physical or ODR/online) with relevant expertise and experience. The arbitration institution (physical or ODR/online) must be independent of the RE and not controlled, managed, or materially influenced by the RE or its affiliates. If RE considers a multi-institution mechanism, the arbitration clause in the agreement should include a selection mechanism for the arbitration institution.

b. **Appointment of arbitrator(s)**: Appoint the arbitrator(s) exclusively through the arbitration institution in accordance with its published rules. The RE cannot have unilateral right to appoint, shortlist, or control the selection of arbitrators.

c. **Neutrality requirement:** Arbitrators must comply with statutory disclosure requirements regarding independence and impartiality, and any conflict of interest should automatically result in mandatory substitution.

Disclosure

16. Refer to Annexure 1a-b for illustrative model clauses but consult a legal expert before incorporating it into the agreement.

Consent framework

17. Arbitration to operate on consent of the borrower, evidenced through a signed agreement with an arbitration clause.

18. At the time of invocation of arbitration, send clear notices in accordance with Section 21 of the Act and the arbitration clause and notice section of the agreement.

19. Track and record all notices (digital or physical) for delivery/non-delivery report.

Procedural fairness

20. Arbitration institution/ODR platforms/arbitrator to ensure procedural fairness, entitling borrowers:

a. Equal opportunity to present evidence and submissions
b. Reasonable timelines for proceedings
c. Digital or physical access for hearings as applicable
d. Reasoned arbitral awards
e. Initiate arbitration for any violation of their rights on the same footing as RE.

Waiver and limitation of rights

21. Any waiver of rights under the arbitration clause must be:

a. Express, specific, and separately consented to
b. Not embedded within general terms and conditions without clear emphasis

22. Borrowers shall not be deemed to have waived:

a. Statutory consumer protection rights
b. Right to approach regulatory grievance mechanisms
c. Rights to challenge arbitral awards under applicable law

23. No waiver will be interpreted to permit:

a. RE-controlled appointment mechanisms
b. Deviation from institutional arbitration requirements.

Amendment and variation

24. Any amendment to an arbitration clause will require:

a. Mutual written consent of both borrower and RE
b. Clear disclosure of the effect of the amendment on dispute resolution rights

25. Unilateral amendment rights by REs affecting appointment and choice of arbitrator or seat of arbitration to be treated as invalid and unenforceable unless borrower separately consents via digital or physical consent.

Selection of arbitration institution(s)

26. RE to adopt an institutional arbitration framework based on:

a. Independence from RE control
b. Published arbitration rules and conflict-of-interest safeguards
c. Transparency in arbitrator appointment process
d. Digital accessibility and ODR capability (where applicable)
e. Institutional governance independence
f. Rotational or algorithmic appointment systems

Compliance and audit

27. RE to periodically review and update arbitration clauses in a time-bound manner, for:

a. Compliance with evolving judicial precedent
b. Independence of designated institutions
c. Absence of unilateral appointment mechanisms

28. Internal audit to include sampling of:

a. Loan agreement
b. Arbitration invocation cases
c. Appointment records of arbitration institutions.

29. RE shall create and monitor a suitable arbitration clause compliance checklist. Refer to the sample in Annexure 2.

Annexures

Annexure 1a: Model clause for single named arbitration institution

1. If any dispute or controversy arises out of or in connection with this Agreement (Note: Include appropriate defined term.), including any question regarding its existence, validity or termination ("Dispute"), the Parties shall use all reasonable endeavours through mutual consultation and deliberation between the Borrower and the [*] (Note: Include designation of the relevant officer/ authority within the RE) of the RE (Note: Include appropriate defined term), in good faith to resolve the matter.
2. If the Parties are unable to resolve the Dispute within 30 (thirty) Business Days (Note: Revise as appropriate.) in accordance with Clause [*] above, then the Dispute shall be referred to and finally resolved by arbitration administered by [*] (Note: Details of arbitration institution/ ODR platform to be included.), an independent arbitration institution ("Institution") which is independent of the Parties and shall administer proceedings in accordance with its applicable rules.
3. Any dispute covered under this Agreement may be referred to arbitration in accordance with the arbitration clause. Arbitration is an alternative dispute resolution process and, for such covered disputes, replaces resolution through ordinary civil court proceedings, except where access to courts or other statutory remedies is required or permitted under applicable law.
4. In the event of such arbitration:
   4.1 the venue and seat of the arbitration shall be [*] in case of a physical hearing, if applicable, else virtual.
   4.2 the tribunal shall consist of a sole arbitrator appointed in accordance with the Rules
   4.3 the language of the arbitration shall be [*]
   4.4 The decision issued by the arbitrator (known as an arbitral award) shall be reasoned, final and binding on the Parties and may be enforced in accordance with applicable law.
   4.5 the tribunal shall be entitled to decide on and apportion the costs and reasonable expenses (including reasonable fees of counsel retained by the Parties) incurred in the arbitration;
   4.6 the existence or subsistence of a dispute between the Parties, or the commencement or continuation of arbitration proceedings, shall not, in any manner, prevent or postpone the performance of those obligations of Parties under the Agreement which are not in dispute, and the arbitrator shall give due consideration to such performance, if any, in making a final award
   4.7 each Party shall participate in good faith to reasonably expedite (to the extent practicable) the conduct of any arbitral proceedings commenced in accordance with this Clause

Annexure 1b: Model clause for multi-institution arbitration

1. If any dispute or controversy arises out of or in connection with this Agreement (Note: Include appropriate defined term.), including any question regarding its existence, validity or termination ("Dispute"), the Parties shall use all reasonable endeavours through mutual consultation and deliberation between the Borrower and the [*] (Note: Include designation of the relevant officer/ authority within the RE) of the RE (Note: Include appropriate defined term.), in good faith to resolve the matter.
2. If the Parties are unable to resolve the Dispute within 30 (thirty) Business Days (Note: Revise as appropriate.) in accordance with Clause[*] above, then the Dispute shall be referred to and finally resolved by arbitration administered by an independent arbitration institution ("Institution") in accordance with the rules of the Institution for the time being in force ("Rules"), which rules are deemed to be incorporated by reference in this Clause [*] (Dispute Resolution).
3. Any dispute covered under this Agreement may be referred to arbitration in accordance with the arbitration clause. Arbitration is an alternative dispute resolution process and, for such covered disputes, replaces resolution through ordinary civil court proceedings, except where access to courts or other statutory remedies is required or permitted under applicable law.
4. The party invoking arbitration ("Claimant") shall address a notice to the other party ("Respondent") suggesting the name of one of the following institutions ("Designated Institution"):
   a. [•]
   b. [•]
5. The Respondent shall either: (i) confirm in writing acceptance of the Designated Institution to the Claimant within a period of [*] days from the date of notice ("Notice Period"); or (ii) convey objection, if any, in writing to the Claimant, against the proposed name of the Designated Institution within the said Notice Period and propose the name of an alternate independent institution ("Alternate Institution") from the aforementioned institutions. However, if the Claimant does not receive any response from the Respondent within the said Notice Period or does not receive the details of the Alternate Institution, the Claimant shall be entitled to request the Designated Institution to administer the proceedings as per its Rules. If the Respondent conveys objection as per (ii) above and proposes an Alternate Institution from the aforementioned institutions, the Claimant shall request the Alternate Institution to administer the proceedings as per its Rules.
6. In the event of such arbitration:
   6.1 the venue and seat of the arbitration shall be [*] in case of a physical hearing, if applicable, else virtual.
   6.2 the tribunal shall consist of a sole arbitrator appointed in accordance with the Rules
   6.3 the language of the arbitration shall be [*]
   6.4 The decision issued by the arbitrator (known as an arbitral award) shall be reasoned, final and binding on the Parties and may be enforced in accordance with applicable law.
   6.5 the tribunal shall be entitled to decide on and apportion the costs and reasonable expenses (including reasonable fees of counsel retained by the Parties) incurred in the arbitration;

Annexure 2: Compliance checklist

Structure

- Is arbitration institutional
- Is an independent arbitration institution clearly identified or a selection mechanism defined?
- Does the institution have no ownership or control over the RE?
- Is the institution reputable and experienced in providing similar services to other REs?

Appointment

- Is the appointment of the arbitrator exclusively by the institution?
- Does the clause avoid any RE-controlled panel or shortlist?
- Is there no direct or indirect unilateral appointment right for the RE
- Has a declaration in accordance with Schedule V & Schedule VI been taken and placed on record?

Bias

- Does the clause avoid creating reasonable apprehension of bias?
- Are conflict-of-interest disclosure requirements referenced and mandatory?

Borrower Consent

- Is arbitration clearly disclosed in plain language?
- Has the borrower provided explicit affirmative consent (not implied)?
- Is arbitration explained as binding and enforceable?

Rights Protection

- Does the clause preserve statutory rights and regulatory grievance mechanisms?
- Is there no unlawful waiver of consumer protection rights?

Amendment Controls

- Is amendment of the arbitration clause mutual only with no unilateral RE right?
- Are changes to institution/seat/appointment mechanism borrower-consented?

Institutional Transparency

- Are institutional rules accessible to the borrower?
- Is fee structure disclosed or accessible?
- Is the arbitration process (ODR/physical) clearly described?

Documentation Hygiene

- Is the arbitration clause highlighted or acknowledged separately?
- Is the clause consistent across all loan agreements?

Legacy Risk

- Do existing templates still contain: unilateral RE-appointed arbitrators, closed panels or unilateral selection rights
- If yes, is there a remediation plan or sunset timeline?

Final Legal Sign-Off

- Clause reviewed against latest judicial precedent and amendments to the Act, if any
- Clause aligned with fair practice expectations for regulated entities and ensuring fairness, impartiality and independence in the appointment of the institution/arbitrator.
- Clause approved by control functions as per RE policy.

Fintech Association for Consumer Empowerment (FACE) is an RBI-recognised Self-regulatory Organisation in the FinTech sector (SRO-FT). FinTech companies of all kinds come together at FACE to build an industry that enables borrower-centric financial services that are safe, suitable, and transparent, delivering positive impacts on society and the economy.

We welcome questions and suggestions on guidelines at sro@faceofindia.org