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HIS HIGHNESS PRINCE AGA KHAN
SHIA IMAMI ISMAILI NATIONAL
CONCILIATION AND ARBITRATION
BOARD FOR INDIA

RULES FOR MATRIMONIAL PROCEEDINGS
(REVISED OCTOBER 2002)

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BISMI-LLAHI-R-RAHMANI-R-RAHIM

W H E R E A S:

- (A) From the time of the Imamate of Hazrat Mawlana Ali (A.S.) it has been a tradition of the Shia Imami Ismaili Muslims that when differences of opinion or disputes arise in matrimonial or family matters, these should be resolved by a process of mediation, conciliation and arbitration within themselves in conformity with the Islamic concepts of unity, brotherhood, justice, tolerance and goodwill.
- (B) Over the past many decades, this process of mediation, conciliation and arbitration has been entrusted to the Councils established in different parts of the world through rules of conduct and constitutions given by the Imam of the Shia Imami Ismaili Muslims.
- (C) The accumulated experience of the Councils has clearly demonstrated that the settlement of differences and disputes can through such a process of conciliation, mediation or arbitration be achieved with fairness, speed, confidentiality and without excessive cost.
- (D) The presence of the Shia Imami Ismaili Muslims in different fields of endeavour in various countries of the world, requires that the dispute settlement procedure be made uniform as far as possible and be given wider application and an international dimension.
- (E) To this end, and in order to strengthen, consolidate and enhance the beneficial effect of the systems and procedures established and evolved over the past many decades, the Constitution of the Shia Imami Ismaili Muslims ordained on 13th December 1986 has constituted the International Conciliation and Arbitration Board, National Conciliation and Arbitration Board and Regional Conciliation and Arbitration Boards to assist in the conciliation process and to act as arbitral bodies.

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(F) The Rules and Regulations of the Shia Imami Ismaili Muslims in India ordained on the 13th December 1987 provide that the National Conciliation and Arbitration Board shall have such practice directions and rules of procedure as it may from time to time adopt.

✓ (G) Pursuant to the said Rules and Regulations, the National Conciliation and Arbitration Board for India desires to adopt Rules for Matrimonial Proceedings to ensure achievement of the foregoing aims and to build a strong institution providing a prompt, efficient, discreet and cost effective dispute resolution machinery.

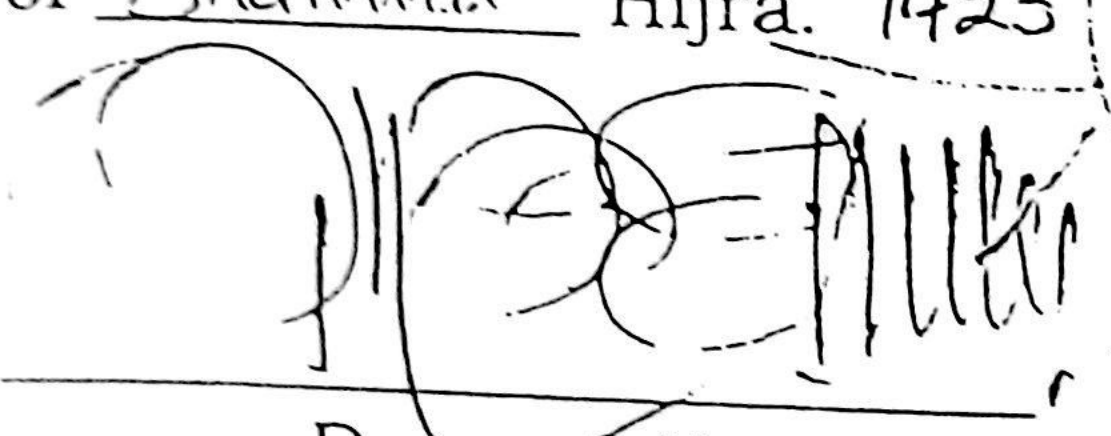
N O W T H E R E F O R E:

By this Resolution and in exercise of the said authority vested in the National Conciliation and Arbitration Board IT BE AND IS HEREBY RESOLVED THAT:-

✓ The Rules for Matrimonial Proceedings hereinafter appearing shall apply in respect of matrimonial proceedings before the National Conciliation and Arbitration Board for India and Regional Conciliation and Arbitration Boards in India and appeals in respect of matrimonial proceedings before the National Conciliation and Arbitration Board for India and the International Conciliation and Arbitration Board.

Passed by the National Conciliation and Arbitration Board for India at a duly convened Meeting held at Mumbai the 3rd day of December 2002 being the 5th day of Shawwal Hijra. 1423

Signed _____


Dawood N. Israni,
Chairman.

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TITLE, DEFINITIONS AND INTERPRETATIONS

1. These Rules shall be known as "Rules for Matrimonial Proceedings".
2. In these Rules unless the context otherwise requires:

✓ "Ismaili Constitution"

The Constitution of the Shia Imami Ismaili Muslims ordained by Mawlana Hazar Imam on 13th December 1986 and any amendments thereto from time to time amended.

"Rules and Regulations"

The Rules and Regulations of the Shia Imami Ismaili Muslims in India ordained by Mawlana Hazar Imam on 13th December 1987 and any amendments thereto from time to time.

"International Board"

His Highness Prince Aga Khan Shia Imami Ismaili International Conciliation and Arbitration Board.

"National Board"

His Highness Prince Aga Khan Shia Imami Ismaili National Conciliation and Arbitration Board for India.

"Regional Board"

Any Regional Conciliation and Arbitration Board in India

✓ "Appeal Board"

The National Board or the International Board as the case may be.

✓ "Conciliation Committee"

Any Conciliation Committee appointed by the National Board.

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3. a) In these Rules unless the contrary intention appears:
- i words importing the masculine gender include the feminine;
 - ii words importing the feminine gender include the masculine;
 - iii words in the singular include the plural;
 - iv words in the plural include the singular; and
 - v. "order" includes any decision.
- b) Headings are inserted in these Rules for ease of reference only and do not form part of the Rules for the purpose of construction.

MATRIMONIAL PROCEEDINGS

Dissolution Of Marriage

4. An application for permission to divorce may be presented to the Regional Board either by the husband or the wife.
5. a) Where an application is made pursuant to Rule 5 (b) or Rule 5 (c) for permission to dissolve the marriage, the Regional Board shall grant such permission if it is satisfied that any of the grounds set out therein exists.
- b) A husband may apply for permission to divorce on any of the following grounds:-
- i. that his wife has ceased to be an Ismaili;
 - ii. that the whereabouts of his wife have not been known for a period of at least four years;

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- vi. that her husband has failed to resume cohabitation with the wife for a period exceeding six months although ordered by a Regional Board to do so;
- vii. that after remarriage her husband has failed to fulfil the terms on which he was permitted to contract such remarriage;
- viii. that her husband failed to provide for the maintenance of the wife for a period of at least two years; or

ix. such other grounds for dissolution of marriage as are provided for under the Dissolution of Muslim Marriages Act, 1939, or any amendment or modification or re-enactment thereof. (33)

d) The Regional Board shall also grant permission to dissolve a marriage upon an application made by an Ismaili couple to dissolve their marriage by mutual consent, if the Regional Board is of the opinion that in all the circumstances it is just and proper that the marriage should be dissolved.

e) It shall be the duty of the Regional Board to make every earnest endeavour to bring about reconciliation between the parties before granting permission to dissolve marriage.

6. The provisions of Rule 5 shall apply to any husband or wife who did not belong to the Ismaili Tariqah at the time of his/her marriage but was subsequently admitted to the Ismaili Tariqah.

Conjugal Rights

7. An application for Restitution of Conjugal Rights may at any time be made to a Regional Board either by a husband or by a wife and the Regional Board on being satisfied that the allegations contained in the application are true and that

delegated
Board

Where the Respondent fails to comply with an order for Restitution of Conjugal Rights made by the Regional Board, may order the Respondent to resume cohabitation within the time prescribed by the Regional Board.

Where the application under Rule 7 is made by a wife, the Regional Board may order that in the event of its foregoing order not being complied with, the husband shall make to the wife such periodic payments by way of maintenance as it may consider just and reasonable.

Maintenance

A wife may at any time apply to the Regional Board for an order for maintenance on any of the following grounds: -

1. That her husband has deserted her; or

2. That her husband has neglected to provide reasonable maintenance for her and her children whom he is legally bound to maintain.

Remarriage During Subsistence of a Marriage

A husband may make an application to the Regional Board within whose jurisdiction he is ordinarily resident for permission to contract a subsequent marriage during the subsistence of a marriage on any of the following grounds: -

1. That his wife has ceased to be an Ismaili;

2. That the whereabouts of his wife have not been known for a period of at least two years;

3. That his wife has been sentenced to imprisonment for a term of at least four years or upward and the sentence has become final;

4. That his wife has failed to perform without reasonable excuse her marital obligations for a period of at least one year.

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- e) that his wife has been insane for a period of at least two years;
 - f) that his wife has failed to resume cohabitation with the husband for a period exceeding six months although ordered by a Regional Board to do so; or
 - g) in extreme circumstances which appear to the Regional Board to be a sufficient and proper ground.
11. The Regional Board shall grant permission if it is satisfied that any of the grounds set out in the preceeding Rule 10 exists and that it is just and proper in all the circumstances that such permission should be given.
12. When making an order under Rule 11 the Regional Board shall: -
- a) order that the husband shall pay to his wife such monthly sum or such further sums as the Regional Board having regard to the means of the parties considers just and reasonable; and
 - b) make such order as it deems just and reasonable regarding the custody, maintenance and education of the children of the existing marriage.
13. A husband shall not contract a subsequent marriage during the pendency of an appeal against an order under Rule 11 or Rule 12.

Betrothal (Muda)

14. An engagement effected by ceremony of Muda shall be deemed to be terminated if any party to such engagement ceases to be an Ismaili.
15. If any party or both parties to Muda desire that the engagement be revoked an order shall be made on application to the Regional Board in whose jurisdiction the Muda was registered.

16. If an engagement effected by the ceremony of Muda is revoked by an order of the Regional Board, a formal announcement may be made if so desired by any party in the Jamatkhana where the ceremony of Muda was performed.

Jurisdiction

- 17 ✓ a) Every application under these rules shall be made to the Regional Board within whose jurisdiction the parties had their matrimonial home or the last of their matrimonial homes or where the Applicant has been ordinarily resident for the period of at least twelve months immediately preceding the commencement of the proceedings.

- b) Where an application is made under a) above, if any party is not in India at the time of the filing of the application or leaves India after the application has been filed, the National Board shall have the jurisdiction to deal with and dispose of the application in accordance with these Rules.

Applications

18. Every application shall: -

- a) be made legibly written in English, Gujarati or Hindi;
- b) set forth concisely and under distinct heads and numbered ~~consecutively~~, the grounds of the application (without any argument or narrative) and the relief sought by the Applicant;

- c) state the Applicant's and Respondent's address and/or other last known address for service;

- d) state that no proceedings relating to the marriage or connected therewith is pending before any court of law;

- e) be signed by the Applicant with a solemn verification that the facts and details stated therein are true; and

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f) be presented to the Regional Board in duplicate.

Interim
Application

19. An application may include claims for maintenance, custody of children and any interim relief pending disposal of the application.

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20. A copy of the application shall be served on the Respondent by the Regional Board.

Reply

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21. The Respondent may if he desires file a written reply. Such reply shall be filed within thirty days or such time as the Regional Board may direct from the date of service on him of the application.

22. The reply shall be in a form, which complies with Rule 18.

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23. A copy of the reply shall be served on the Applicant by the Regional Board.

Amendment

24. An application or a reply may be amended:

- a) before service without leave; or
- b) after service with the leave of the Regional Board.

Service

25. If any document is to be served on a party it shall be served:

- a) by hand delivery;
- b) by Registered Post A.D.; or
- c) in any other manner which the Regional Board may deem fit.

Conciliation Committee

26. Within twenty-one days of the presentation of an application seeking permission for divorce, the Regional Board, may if it considers desirable, by writing request a Conciliation Committee to endeavour to resolve the differences between the parties by conciliation.

27. The Conciliation Committee shall within fourteen days of receipt of the written notification from the Regional Board approach the parties and endeavour to conciliate between them.

28. A report shall be submitted by the Conciliation Committee to the Regional Board within thirty days of the first approach to the parties. The report shall state whether or not conciliation has been effected. The Regional Board may in appropriate cases extend time for submission of the report.

Interim And Ancillary Matters

29. The Regional Board may on the application of a party or on its own motion and after hearing the parties, grant such interim and ancillary relief as it considers fair and reasonable

30. In any matter the Regional Board may at any time on the application of any party or on its own motion give such directions as it thinks proper.

31. Without prejudice to the generality of Rule 30 the Regional Board may at any time on the application of any party or on its own motion require any party to file or deliver any pleading, particulars or answers which the Regional Board thinks necessary for defining the issues in the proceedings.

32. The Regional Board may at any time and from time to time upon application or on its own motion adjourn or advance the date of any proceedings.

33. Subject to the provision of these Rules any of the times fixed by these Rules for:

- a) taking any step in any proceedings;
- b) filing any document; or
- c) giving any notice.

may be enlarged or abridged by the Regional Board on the application of any party or on its own motion.

HEARING

34. Where it appears to the Regional Board that the matter may not be resolved by conciliation, the Regional Board will arrange for the application to be posted for hearing by it.

35. The Chairman of the Regional Board shall preside over the proceedings. If the Chairman is unable to preside then the members present shall choose one of them to be the Chairman for the purposes of the hearing.

36. The Chairman of the Regional Board shall give the parties and the Regional Board members at least three weeks' prior written notice of the hearing of the application. The hearing notice shall be sent to the parties' addresses appearing on record or at their last known addresses.

37. a) If at the hearing of an application the applicant is not present, the Regional Board may dismiss the application or make such order as it may deem just and proper.

c) If at the hearing of an application the respondent is not present the Regional Board may proceed to consider the application ex-parte or pass such order as it may deem just and proper.

His Highness Prince Aga Khan Shia Imami Ismaili
National Conciliation & Arbitration Board for India

Joint Meeting – ICAB, NCAB for India and RCABs for India

2nd & 3rd April 2005
Hotel West End, Marine Drive, Mumbai

Agenda – 2nd April 2005

- ✓ 10.30 a.m. - 11.00 a.m. : Tea & Registration
- ✓ 11.00 a.m. - 11.05 a.m. : Venti
- ✓ 11.05 a.m. - 11.15 a.m. : Welcome Address
Rai Dawood N. Israni, Chairman, NCAB for India
- ✓ 11.15 a.m. - 11.20 a.m. : Presentation of Momentous
- ✓ 11.20 a.m. - 11.30 a.m. : Introduction of Chairmen & Members of CAB
- ~~11.30 a.m.~~ 11.30 a.m. - 12.00 noon : Presentation by NCAB – Case Statistics
Huzur Mukhiani Salma H. Merchant, Member NCAB
- ✓ 12.00 noon - 12.30 p.m. : Question & Answer
- 12.30 p.m. - 1.15 p.m. : Hidayats of Mawlana Hazar Imam
Alijah Habib N. Motani, Chairman, ICAB
- 1.15 p.m. - 2.30 p.m. : LUNCH BREAK
- 2.30 p.m. - 3.00 p.m. : Question & Answer
- 3.00 p.m. - 5.00 p.m. : Issues & Responses

Sunday – 3/4/05

- 10.00 a.m. - 10.30 a.m. : Presentation by Chairmen, RCABs
- 10.30 a.m. - 11.00 a.m. : Question & Answer
- 11.00 a.m. - 11.30 a.m. : CAB Five Year Plan,
Alijah Noordin S. Nanji, Member ICAB
- 11.30 a.m. - 12.30 p.m. : Question & Answer

LUNCH BREAK

c) If at the hearing of an application both the applicant and the respondent are absent, the Regional Board may dismiss the application or may pass such order as the Regional Board may deem just and proper.

d) An application may be made to the Regional Board by any party to the proceedings for an adjournment of the hearing and it shall be in the absolute discretion of the Regional Board either to grant the adjournment for such period or on such terms and conditions as it may deem proper or reject the same.

38. The Regional Board may allow the parties to be assisted by other Ismailis in conducting their respective cases.

39. No party to the proceedings shall be entitled as of right to be represented by a legal practitioner.

40. The Regional Board may seek the assistance of a legal or any other expert.

Conduct of Proceedings

41. For the purpose of conduct of the proceedings under these Rules the Regional Board shall have power:

- a) to administer Oaths;
- b) to summon Ismaili witnesses to attend and give evidence; and
- c) to order production of relevant documents.

42. The Oath may be administered by the Chairman or any member of the Regional Board.

43. The Oath shall be as follows:

- a) By Muslim Witnesses

"I (name of witness) make solemn Oath in the name of Allah and say that the evidence I shall give shall be the truth".

b) By Non - Muslim Witnesses

"I (name of witness) swear in the name of Almighty God that the evidence I shall give shall be the truth".

44. The Regional Board shall not be bound to apply the strict rules of evidence applicable to civil or criminal court proceedings and may act on information which appears to be relevant although it is not legally admissible evidence PROVIDED THAT no such information shall be received in evidence or acted upon if it is contrary to the principles of natural justice, equity and good conscience.
45. Subject to the provisions of Rule 44 the Board may hear and decide the matter in such manner as it sees fit and shall have such authority and discretion as are necessary in all procedural matters to ensure a just and equitable conclusion.
46. Any oral proceedings before the Regional Board shall take place in the presence of not less than three of its members at such place and time as the Chairman may determine having regard to the needs of the parties and any special circumstances regarding the type of evidence to be submitted.
47. After hearing all parties, the Regional Board shall make its order immediately or (subject to Rule 53) reserve it for a later date. The order of the Regional Board shall be in accordance with the opinion of the majority of the members who heard the application. In the event of equality of votes, the Chairman who presided over the proceedings shall have a second casting vote.
48. The Regional Board shall maintain as far as possible in English, Gujarati or Hindi, a record of its proceedings and order.

49. The Regional Board shall hear and determine all matters of which it may be seized in accordance with the Ismaili Constitution, the Rules and Regulations, these Rules and the principles of natural justice, equity and good conscience and no order of the Regional Board shall be invalid by reason of any procedural defect or of any omission or error in the record.
50. A member of the Regional Board shall, if he is directly or indirectly interested in any matter pending before it, declare his interest and take no part in the hearing or vote thereon.
51. The Regional Board shall at the time of granting permission to dissolve a marriage make such further order as it may think just and proper regarding:
- a) the amount of Mehr to be paid;
 - b) the custody, access to, maintenance and education of the children of the marriage;
 - c) the amount of maintenance to be paid by the husband to the wife during the period of Iddat and the amount of reasonable and fair provision and maintenance for the wife; and
 - d) such other matters as it may consider proper.
52. The Regional Board shall while granting permission for dissolution of marriage under Rule 5 b) or 5 c) and while granting permission to the husband for subsequent marriage under Rule 11 provide that such permission shall not take effect except in accordance with Rule 55 of these Rules.
53. An order of the Regional Board shall be signed and dated by the Chairman or the member who presided over the hearing and dispatched to the parties by Registered Post A.D. or delivered personally no later than thirty days after the hearing

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is concluded. The Regional Board may extend the time limit if it determines it is appropriate to do so. A copy of the order shall be certified as a true copy by such Chairman or by any other member and when so certified shall be receivable as prima facie evidence in all further proceedings or any other proceedings.

54. Unless delivered personally (in which case it shall be deemed to have been served upon delivery) an order shall be deemed to have been served on a party five days after it is posted by Registered Post A.D. to his address for service or last known address.
55. Notwithstanding any order of the Regional Board granting permission for dissolution of marriage or for subsequent marriage, such permission shall not take effect for sixty days after the date of the order, or if any appeal is filed until such appeal has been disposed of by the Appeal Boards, and the parties have complied with the conditions (if any) of such permission. If so desired by any party, the Chairman of the Regional Board shall after a dissolution of marriage takes effect in accordance with this Rule arrange for its formal announcement to be made in the Jamatkhana of the place:
- a) where the marriage was first registered;
 - b) where the parties had their last matrimonial home; and
 - c) where the parties are resident at the time of dissolution.
56. After dissolution of marriage takes effect in accordance with Rule 55, the Chairman of the Regional Board shall issue or cause to be issued a certificate of divorce.

Appeals

57. a) An appeal will lie from an order of the Regional Board to the National Board upon application by the aggrieved party ("Appellant") to and by special leave of the National Board.

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- b) An appeal will lie from an order of the National Board to the International Board upon application by the Appellant to and by special leave of the International Board.
 - c) An application for special leave shall be made in writing to the Appeal Board within twenty-one days after service upon the Appellant of the order from which the appeal is to be preferred.
 - d) The application in writing referred to in (c) above shall be served by the Appellant on the other party ("Respondent") as well as the Board from whose order the appeal is to be preferred at the same time as it is filed with the Appeal Board. The Respondent may file with the Appeal Board a reply within fourteen days after receipt of such application or such other period as the Chairman of the Appeal Board may designate.
 - e) Upon receipt by the National Board of a copy of any application for special leave to the International Board, it shall forward to each of the members of the International Board a copy of all the proceedings (including all orders) before it and the Regional Board.
 - f) The order of the International Board on application for special leave shall be final.
58. If leave is granted, the Appellant shall file a Memorandum of Appeal with the Appeal Board within thirty days of the date on which such leave is granted unless the Appeal Board chooses to treat the application for special leave as the Memorandum of Appeal.
59. The Memorandum of Appeal shall state the grounds of the appeal, supporting reasons, and whether the appeal is against the whole or part of the order and if against a part only, it must specify the part.

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60. The Appellant shall serve a copy of the Memorandum of Appeal on the Regional or National Board from whose order the appeal has been preferred at the same time as it is filed with the Appeal Board. Upon receipt of the Memorandum of Appeal, the Respondent may within fourteen days thereafter or such other period as the Chairman of the Appeal Board may designate file a Reply thereto with the Appeal Board.
61. The Appeal Board before making an order may in its discretion ask for further information or require the parties to present written submissions or require them to appear before it for oral submissions. It may also direct the Regional Board or the National Board to furnish it with such further information or documents as it may require on the subject matter or any question arising therefrom.
62. Every application for special leave and every appeal shall be determined by a simple majority at a session where there are at least three members of the Appeal Board present. In the case of the International Board, such session may be held by telephone or other means of telecommunication.
63. The Chairman of the Appeal Board shall preside over the appeal. In the event of the Chairman not being present such member as nominated by the Chairman shall preside over the appeal, and in the absence of such nomination, such member as decided by the members present at the time of hearing of appeal shall preside over the hearing. In the event of equality of votes the Chairman shall have a second casting vote.
64. The Appeal Board may:
- a) allow the Appellant to amend the grounds stated in the memorandum of appeal or make any other order on such terms as it thinks just to ensure the determination on the merits of questions in controversy in the proceedings before it;
 - b) receive further evidence on questions of fact in such manner as the Appeal Board may direct;

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- c) take into account facts and circumstances which took place or occurred subsequent to the filing of the application with the Regional Board or the order of the Regional Board or the National Board (as the case may be);
- d) draw any inference of fact, which might have been drawn in the proceedings out of which the appeal arose;
- e) enlarge time or excuse any delay in respect of anything to be done in the proceedings before it;
- f) allow the parties to be assisted by other persons in conducting their respective cases; or
- g) seek the assistance of a legal or any other expert as the case may require.

65. The Appeal Board:

- a) may make any order which ought to have been given or made by the Regional Board or National Board, and make such further or other order as the case may require;
- b) may remit the matter with the opinion of the Appeal Board for re-hearing and determination by the Regional or National Board against whose order the appeal has been preferred; and
- c) shall not be bound to allow the appeal on the ground merely of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Appeal Board substantial wrong or miscarriage of justice has been thereby occasioned.

Amendment of Orders

66. Clerical or arithmetical mistakes in orders or errors arising from any accidental slip or omission may at any time be corrected by the Regional Board or Appeal Board on its own motion or on the application of any of the parties and (in case of an application of any of the parties) after notice thereof to the other party and, if the Board so determines, a hearing.

Exclusion of Liability

67. No Regional, National or International Board, Conciliation Committee, nor any of their members shall be liable to any party or parties to any application, appeal or proceeding to any third parties for any loss or damage suffered or incurred by such party as a result of any acts or omissions, negligence breach of contract, misrepresentation or otherwise in any way connected with or pertaining to directly or indirectly any application, appeal, proceeding or order.

Additional Powers of the National Board

68. The National Board on the application of any party and after notice to the other party and after hearing such of them as desire to be heard, or on its own motion without such notice, may at any stage:
- a) transfer any application or proceeding pending for disposal to any Regional Board competent to try and dispose of the same;
 - b) withdraw any application or proceeding pending before any Regional Board;
 - c) dispose of any application or proceeding withdrawn or transferred from any Regional Board; or
 - d) transfer the same for disposal to the Regional Board from which it was withdrawn.

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69. Where any application or proceeding has been transferred or withdrawn under Rule 68 the National Board or the Regional Board which is thereafter to try to dispose of that application or proceeding may, subject to any special directions in the case of an order of transfer, either re-try it or proceed from the point at which it is transferred or withdrawn.

Transitional Provisions

70. In all proceedings pending in a Regional Board or Appeal Board at the time of the coming into force of these Rules, these Rules shall thereafter apply but without prejudice to the validity of anything previously done PROVIDED THAT:
- a) if and so far as it is impracticable in any such proceedings to apply provisions of the Rules, the practice and procedure theretofore prevailing shall be followed; and
 - b) in any case of difficulty or doubt the Regional Board or the Appeal Board may informally give direction as to the procedure to be adopted.
