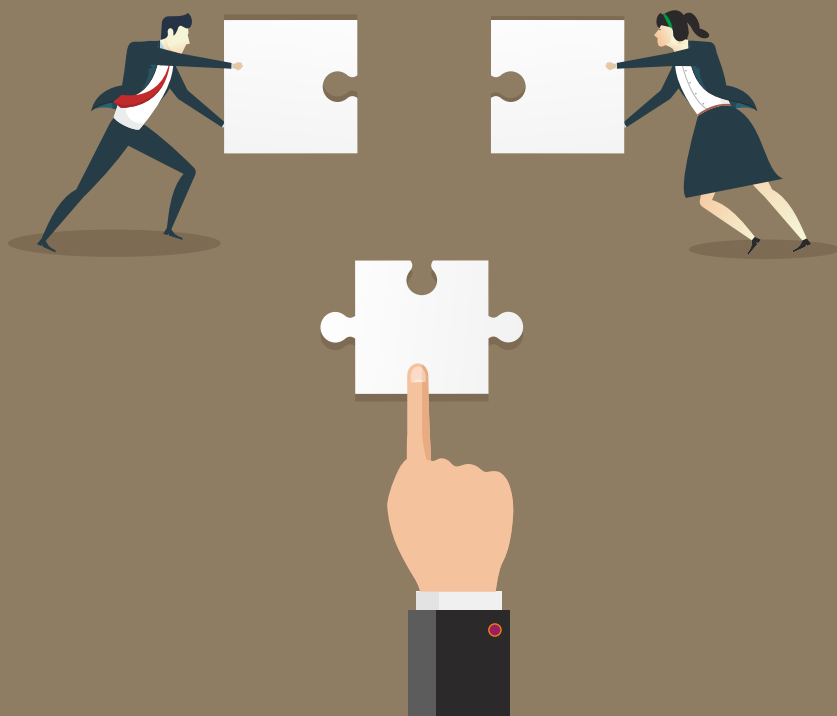


Dispute Resolution in India - Arbitration Primer



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character • competence • commitment



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INTRODUCTION

The Indian Government has on the top of its mind, economic reform and growth. Not since the liberalization of the Indian economy in the early nineties, has there been more legislative reform. The ‘Make in India’ mantra cannot be ignored as India seeks to move front-and-centre of the global business stage.

The increased foreign investment into India and growth in cross-border trade has made it essential that the dispute resolution process be made efficient in terms of both time and cost. Unfortunately, litigation in India has been extremely time-consuming and our courts plagued with unjustifiable delays. Parties involved in commercial activities cannot afford to, and will not willingly, participate in such long drawn litigious processes. Consequently, whether in purely domestic commercial contracts or those that are more international in flavor, arbitration has emerged as the primary form of dispute resolution in India. At the time of liberalization, the law on arbitration was consolidated into the Arbitration & Conciliation Act, 1996 (the “**Act**”), to bring it in line with contemporary requirements. It was a huge step in the right direction, but in practice, failed to keep pace with

international standards and practice. Coupled with the endemic delays in the Indian legal system, the international business and legal communities criticized Indian courts for conflicting jurisprudence and excessive interference in the arbitral process and arbitral awards.

After three draft proposals for amendment, India’s arbitration law was amended two decades later, by the Arbitration and Conciliation (Amendment) Act, 2015 (the “**2015 Amendments**”). This Amendments cured various lacunae and ambiguities that existed and that had given rise to sometimes strange, and often conflicting decisions, including the decisions following the notorious cases in *Bhatia International v. Bulk Trading SA* (2002 Supreme Court) and *Venture Global Engineering v. Satyam Computer Services* (2008 Supreme Court), amongst others. In *Bhatia International*, the Supreme Court ruled that the provisions relating to grant of interim relief by a court in Part I of the Act (which was applicable to arbitrations seated in India), would also apply to foreign seated arbitrations, unless excluded by express or implied implication by the parties. This ruling was well-intentioned, recognising the fact that there

was no recourse to Indian courts to otherwise protect the Indian subject matter of assets in an arbitration. However, and perhaps not surprisingly, this ruling opened the door to every aspect of procedure set out in Part I, such that ultimately in *Venture Global*, the Supreme Court held that a foreign award could also be challenged before an Indian court under Part 1 of the 1996 Act, unless it were excluded by the parties.

The 2015 amendments came into effect from October 23, 2015, and gave legislative sanction to the general pro-arbitration policy adopted by Indian courts since the Supreme Court's subsequent decision in *Bharat Aluminium Co v. Kaiser Aluminium Technical Services* (2012 Supreme Court), which overruled the position set out in *Bhatia International*, *Venture Global* and other similar judgments, to hold that where an arbitration was seated outside India, Indian courts would not have jurisdiction. While the *Bharat Aluminium* decision caused some difficulty as there was no recourse to Indian courts, based on the recommendations made by the Law Commission of India in its 246th Report (issued in August 2014, with a Supplementary Report in February 2015), the 2015 Amendments provided for recourse to Indian courts for protective interim relief even in respect of foreign seated arbitrations.

The 2015 amendments also included other clarifications and provisions, such as the introduction of various timelines to speed up the arbitral process, inclusion of the orange and red lists of the IBA Guidelines

on Conflict of Interest in International Arbitration, 2014, as schedules to the Act, and clarifications in relation to the much used and oft abused public policy challenge to arbitral awards. By and large however, the 2015 Amendments, though a long time coming, put India on the path to becoming an arbitration friendly jurisdiction.

That said, there were still some ambiguities and creases that were required to be ironed out. The Indian Government keen to ratchet up the World Bank rankings for Ease of Doing Business, was keen to establish confidence in the ability of a party to enforce its contracts in India. Four years later, on August 30, 2019, most of the proposed amendments of the Arbitration and Conciliation (Amendment) Act, 2019, were notified and came into force (the “**2019 Amendments**”). While there have been some welcome revisions, including clarification on the narrow scope of review of an arbitral award, including in relation to the public policy challenge, what the Government seems to have hoped would be a big push for institutional arbitration resulting in a big push to arguing for a credible India seat, has not been a great success. Greatly criticised are the introduction of parameters for qualification and accreditation of arbitrators (which seems to rule out, in one fell swoop, the ability to appoint a foreign-qualified lawyer as arbitrator), and arbitral institutions, by the to be set up ‘Arbitration Council of India’, which, though recommended as an independent autonomous body, seems to smack of Government influence (if not interference). Notably, as of the date of



writing this forward, these provisions have not been notified and it is possible that the Government is having a re-think owing to the scathing responses of the international arbitral community.

However, back to the ease of doing business and enforcing contracts – along with the 2015 amendments, the Indian Government also passed, the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (“**Commercial Courts Act**”), (also amended in 2015). Special commercial courts have been set up to deal with complex commercial matters, thus speeding up and streamlining the process of litigation before an Indian court.

The New Delhi International Arbitration Centre Act of 2019 (“**NDIAC Act**”), which came into force on March 2, 2019, is an attempt to bring targeted reforms to develop the NDIAC as a flagship institution for conducting international and domestic arbitration, and by providing cost effective facilities and administrative assistance for

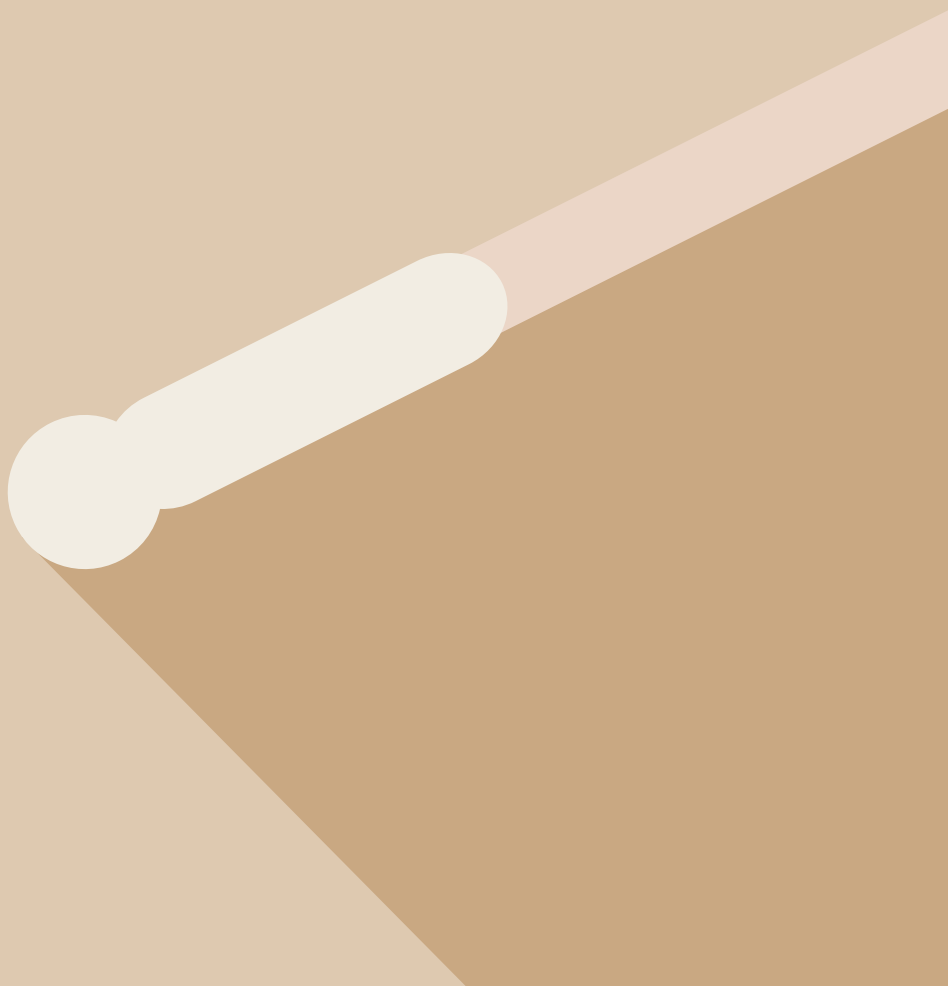
conciliation, mediation and arbitral proceedings.

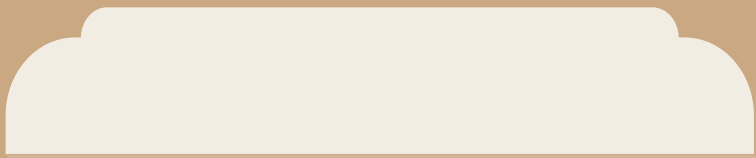
These reforms are meant to improve the way commercial disputes are resolved in India thereby improving India’s position as a destination for investment, business and arbitration. Coupled with these reforms is a very pro-arbitration judiciary, which has been applauded over the past few years on the pro-arbitration and enforcement focussed decisions that it has been passing.

The perception of India as an arbitration unfriendly jurisdiction is slowly changing. Doing business in a foreign country can be fraught with uncertainties and unpredictable outcomes. The support of a robust legal regime and familiarisation with the process can lessen such unpredictability or unforseeability. These reforms and an overview of the arbitration regime are further discussed in the relevant chapters of this primer, which we present to our readers in the hope that this will give them a reasonable understanding of the process.

IMPORTANT NOTE: All information given in this handbook has been compiled from credible, reliable sources and updated up to December 15, 2019. Although reasonable care has been taken to ensure that the information in this handbook is true and accurate, such information is provided as is, without any warranty, express or implied, as to the accuracy or completeness of any such information. Cyril Amarchand Mangaldas shall not be liable for any losses incurred by any person from any use of this publication or its contents. This handbook has been prepared for informational purposes only and nothing contained in this handbook constitutes legal or any other form of advice from Cyril Amarchand Mangaldas. Readers should consult their legal, tax and other advisors before making any investment or other decision with regard to any business in India.

A. ARBITRATION





01 Brief History of Arbitration in India and changes in the regime

Arbitration in an informal form has existed in India, from the days that village elders, subsequently ‘panchayats’, routinely settled disputes between disputing members of the village. The law was first codified under during the British regime, with the Indian Arbitration Act, 1899, being the first Indian statute on arbitration. This statute was however only applicable to the Presidency towns of Calcutta, Bombay and Madras, and it was only with the promulgation of the Code of Civil Procedure, 1908, where the law of arbitration was codified in Second Schedule, which extended to other States. The law on domestic arbitration was thereafter consolidated in the Arbitration Act, 1940, which was based on the (English) Arbitration Act, 1934. Foreign awards were dealt with by separate legislations, i.e. the Arbitration (Protocol and Convention) Act, 1937 (dealing with awards under the Geneva Protocol and Convention), and the Foreign Awards (Recognition and Enforcement) Act, 1961 (dealing with foreign awards under the New York Convention).

The Arbitration Act of 1940 ran its course and with the liberalisation of the Indian economy in the early nineties, it became apparent that the Indian Government needed to respond to the fast-changing nature of business in the country along with increased globalisation, including in relation to measures and processes for alternative dispute resolution.

Accordingly, the Arbitration & Conciliation Act, 1996 (the “Act”), was enacted to update the law of arbitration in India and make it more responsive to contemporary requirements. Modelled along the lines of the UNCITRAL Model Law on International Commercial Arbitration, while seeking to restrict the intervention of courts, it envisages co-operation between the judicial and arbitral process.

The Act is divided into four parts:

- Part I contains provisions relating to the commencement and conduct of arbitral proceedings held in India, as also challenge to and enforcement of awards.
- Part II deals with reference to (foreign) arbitration and enforcement of foreign awards.
- Part III deals with conciliation.
- Part IV contains supplementary provisions (such as the power of a High Court to make rules etc.).

In 1996, at the time it came into force, the Act was considered to be as a shot in the arm for a quick and cost effective form of alternative dispute resolution through arbitration. However, after almost two decades, it became apparent that further amendments were critically needed. Indian courts were seen to be particularly interventionist, exercising jurisdiction even



in arbitrations outside India and the Indian judicial system which was plagued with delays, resulting in a country which sought to be a global player, being shunned as an arbitral seat.

Two landmark Supreme Court decisions (*Bhatia International v Bulk Trading S.A & Anr.*¹ and *Bharat Aluminum & Company & Ors. v. Kaiser Aluminum Technical Service Inc. & Ors.*² (“**BALCO**”)), and two previous proposals for amendment of the Act,³ finally culminated in the 20th Law Commission’s Report No. 246 (issued in August 2014, with a Supplementary Report in February 2015), on amendments to the Act.

The Act was amended by the Arbitration & Conciliation (Amendment) Act, 2015, with effect from October 23, 2015, ushering in a set of much needed and long awaited amendments. New provisions were inserted and some old provisions were amended, largely with the aim of limiting judicial intervention while reinforcing the importance of party autonomy, and expeditious completion of arbitral proceedings. Critically, parties were permitted recourse to Indian courts for interim relief, and the scope of the public policy challenge to awards was clarified as being extremely narrow. The pro-arbitration nature of these amendments

signalled India’s intent to be and be seen as, an arbitration friendly jurisdiction.

The 2015 amendments were however not enough, perhaps not adequately thought through, and it became clear that ad hoc arbitration in India – which is the most common, was beleaguered with unnecessarily formal procedures which were introduced on occasion by arbitrators and by parties refusing to agree to streamlined procedures. This led to undue delays and also an increase in costs, reducing both the speed and efficiency of domestic arbitration – particularly when it was under an ad hoc procedure. It was noted that those arbitrations which were administered by robust arbitral institutions (usually international institutions such as the Singapore International Arbitration Centre (“**SIAC**”), International Chamber of Commerce (“**ICC**”), London Court of International Arbitration (“**LCIA**”) etc.), did not suffer from the same problems of formal or stodgy procedure or gross delay. There was therefore a realisation that if India were to be seen as a viable seat of arbitration, institutional arbitration should be given a push, with the formation of competent domestic Indian institutions for the purpose

To address this problem, the Indian Government, Ministry of Law and Justice, set up a High Level Committee under the

¹ (2002) 4 SCC 105

² (2012) 9 SCC 552

³ (i) The Arbitration & Conciliation (Amendment) Bill, 2003

(ii) The Consultation Paper on proposed amendments to the Arbitration & Conciliation Act, 1996, issued by the Ministry of Law & Justice on April 8, 2010.

Chairmanship of Justice (Retd.) B. N. Srikrishna (former Judge, Supreme Court of India), to “review the institutionalisation of arbitration mechanism in India”. The Committee in its Report submitted on July 30, 2017, identified the roadblocks to the development of institutional arbitration, examined specific issues affecting the Indian arbitration landscape and made various recommendations, including further proposed amendments to the Act, all with the intention of building India into a robust centre for international and domestic arbitration (the “**High Level Committee Report**”).

Based on the recommendations made by the High Level Committee, further amendments and new provisions were included through the Arbitration &

Conciliation (Amendment) Act, 2019 (the “**2019 Amendments**”). After introducing the Arbitration and Conciliation (Amendment) Bill, 2019, Law Minister Ravi Shankar Prasad noted that the Indian government intended to make India a hub of domestic and international arbitration by bringing in changes in law for faster resolution of commercial disputes. The focus on institutional arbitration and streamlining of the process is clear on even a brief review of the amendments. The 2019 Amendments will apply only to arbitral proceedings which commence after October 23, 2015 (the date of coming into effect of the 2015 Amendments), and to court proceedings arising from such arbitral proceedings.





02 Part I of the Act

Part I contains detailed provisions in relation to procedure, and applies compulsorily where the place of arbitration is in India.⁴ An arbitral award⁵ under Part I is considered to be a domestic award, although there are some provisions which deal with ‘international commercial arbitrations’, in a more permissive manner than with purely domestic arbitration (solely between Indian Parties), though both kinds of arbitrations may be seated in India.

An international commercial arbitration⁶ is one which relates to disputes arising out of legal relationships, considered to be commercial under the law in force in India and where at least one of the parties is a national of, or habitually resident in a foreign country; or a corporate body incorporated outside India; or association of individuals whose central management and control is exercised from abroad; or the government of a foreign country.

The applicability of Part I of the Act to foreign arbitrations should have been a non sequitur, but in fact has had a long history of controversy in India. The controversy and conflicting decisions arose inter alia from the fact that Section 2(2) provided that “*This Part shall apply where the place of*

arbitration is in India.”. Reading the provision generously, the Supreme Court in *Bhatia International v. Bulk Trading*,⁷ held that Part I would apply even to foreign seated arbitrations inter alia because Section 2(2) provides that Part I “*shall apply where the place of arbitration is in India*”. It does not use the words “*only in India*” and does not provide that Part I does not apply to arbitrations which take place outside India.

Accordingly, the Supreme Court permitted parties in foreign seated arbitrations, recourse to Indian courts for interim relief (a laudable and well intentioned ruling, no doubt), unless Part I were excluded by the parties. Subsequent decisions ruled that other provisions of Part I would similarly apply, the most notorious of these being *Venture Global Engineering v. Satyam Computer Services*,⁸ where the Supreme Court permitted a foreign award to be challenged before an Indian court under Part I of the Act.

The position was finally corrected by the decision of a five judge bench of the Supreme Court in *Bharat Aluminium v. Kaiser Aluminium Technical Services*,⁹ (“**BALCO**”), which held that Part I would not apply to and Indian courts would not have jurisdiction over foreign seated

⁴ For the definition of ‘Arbitration’, see End Notes

⁵ For the definition of ‘Arbitral Award’, see End Notes

⁶ For the definition of ‘International Commercial Arbitration’, see End Notes

⁷ Reported in 2002 (4) SCC 105

⁸ Reported in AIR 2008 SC 1061

⁹ Reported in 2012 (9) SCC 552

arbitrations. The ruling however was applied prospectively from the date of the decision. i.e. on and from September 6, 2012; prior thereto, the *Bhatia International* interpretation continued to apply. While BALCO correctly lay down the law, it resulted in parties not having recourse to Indian courts for protective measures in support of the arbitral process. The 2015 Amendments cured this lacuna by the welcome move of applying certain provisions (subject to an express agreement to the contrary), to foreign seated arbitrations, including the provisions for interim relief.

03 Part II of the Act

Part II with foreign awards under the 1958 New York Convention and the 1927 Geneva Protocol and Convention. A 'foreign award' is one that, (i) arises out of differences between persons arising out of commercial legal relationships (India having adopted the 'commercial' reservation); (ii) is in pursuance of an agreement under the New York Convention, or Geneva Protocol and Convention, and (iii) is in a territory notified by the Central Government as a reciprocating territory.





04 Minimisation of Judicial Intervention

The objectives of the Act include the intent to minimise the supervisory role of courts in the arbitral process. The Act seeks to minimise judicial intervention and interference, stating that no judicial authority may intervene, except where so provided (illustratively, to appoint an arbitrator, grant interim relief, provide assistance in taking evidence, and of course in relation to applications for setting aside and enforcement of awards).

05 Arbitration Agreement¹⁰

An arbitration agreement must be in writing (including through electronic means), but need not be signed. The form of the arbitration agreement is not critical – it may be in the form of a formal arbitration agreement, a clause in a contract, in exchange of correspondence, emails, or other electronic communication, or statements of claim and defence where its existence is alleged by one party and not denied by the other. Courts will look at the language of the document to determine if it expresses the intention of parties to enter into an arbitration agreement.

If a contract refers to a document which contains an arbitration clause, such reference would constitute an arbitration agreement if (i) the contract is in writing and (ii) the reference is such so as to make that arbitration clause part of the contract. The latter requirement has been interpreted by the Supreme Court to mean that: (i) the contract should contain a clear reference to the documents containing an arbitration clause; (ii) the reference to the other document should clearly indicate an intention to incorporate the arbitration clause into the contract, and (iii) the arbitration clause should be appropriate, that is, capable of application in respect of disputes under the contract and should not be repugnant to any term of the contract.

Where the arbitration agreement is an independent agreement, and is treated so even it is part of a composite agreement; the arbitration clause is severable from the rest of the agreement of which it forms a part. The concept of severability is important to ensure that the intention of the party to resolve the dispute by arbitration remains intact and can be given effect to. The arbitration clause survives the invalidity or termination of the main agreement.

¹⁰ For the definition of 'Arbitration Agreement', see End Notes

06 Court¹¹

As aforesaid, Part I applies to arbitrations seated in India, for which parties have access to Indian courts throughout the arbitration process and thereafter, in relation to challenge / enforcement of the award. Pursuant to the 2015 Amendments, parties have access to Indian courts for interim protection and court assistance in taking evidence, even in respect of foreign seated arbitrations.

i) In the case of a purely domestic arbitration, the principal Civil Court of original jurisdiction in a district (which would include the High Court if it possesses original jurisdiction), would

have jurisdiction. Where the dispute is a commercial dispute of a specified value, the relevant Commercial Court / Division in that jurisdiction, will be the competent court (*see more on that in the 'Commercial Courts' Section*).

ii) In the case of an international commercial arbitration, the relevant High Court will have jurisdiction. Where the dispute is a commercial dispute of a specified value, the relevant Commercial Division of the High Court, will have jurisdiction (*see more on that in the 'Commercial Courts' Section*).

07 Choice of Law

The substantive law chosen by the parties is the law that governs the underlying agreement. The parties may also provide separately for the law governing the arbitration agreement, failing which it is usually deemed to be the same as the law of the seat.

Where the parties are Indian nationals/resident in India and the arbitration is being held in India, Indian law would compulsorily apply. It is open to parties in an international commercial arbitration to choose a law other than

Indian law, to govern the agreement, notwithstanding the fact that the arbitration may be in India.

If the substantive law is not expressly chosen by parties, the arbitral tribunal/court will take various factors into account for determining applicable law, such as: (i) residence of the parties; (ii) place of execution of the agreement; (iii) place of performance of the agreement; (iv) place of accrual of the cause of action; (v) place where the assets/subject matter is located and reliefs sought.

¹¹ For the definition of 'Court', see End Notes



08 Seat of Arbitration

Parties are free to agree on the “place”, i.e. seat, of the arbitration. Failing any agreement between the parties, the venue and seat will be determined by the arbitral tribunal, having regard to circumstances of the case, and the convenience of the parties.

The seat of the arbitration is important inasmuch as, unless otherwise specified, it determines the curial law applicable to the arbitration. Where the arbitration agreement does not specifically specify a ‘seat’, Indian courts have looked at provisions relating to governing law of the underlying agreement, designation of arbitral institutions and other factors to determine the location of the seat.

Where the seat is outside India, Part I of the Act does not apply and Indian courts do not have jurisdiction over such arbitration. However, unless otherwise agreed, parties would have recourse to Indian courts to seek interim relief and court assistance in taking evidence (as also in relation to appeals from such orders).

There are conflicting High Court decisions over whether two Indian parties can choose a foreign seat. While there is no specific prohibition against such a choice in the Act, unless and until some clarification is brought into the Act or the Supreme Court decides the issue, there is a risk that such an award may be treated as being against public policy.

09 Commencement of Arbitration

Arbitral proceedings commence on the date on which a request for a dispute to be referred to arbitration is received by the respondent. Where a party has obtained interim relief from a court, such party must commence the arbitration within ninety days from the date of the order granting such relief, or within such further time as the Court may determine.



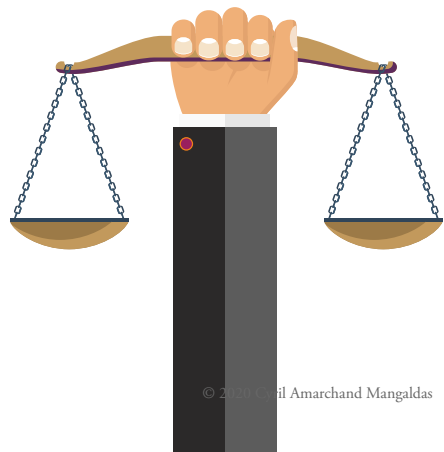
10 Appointment of Arbitrators

Parties are free to determine the number of arbitrators and the procedure for constituting the arbitral tribunal. The only condition is that the number of such arbitrators must not be an even number. In the event that the parties have not agreed on the number of arbitrators, the default position is that of a sole arbitrator.

In the absence of any agreement as regards the procedure, or if either party does not abide by the prescribed procedure for appointment, a party may approach a court for appointment of the arbitrator. Failing any agreement as to manner of appointment, if a party fails to appoint an arbitrator within 30 days from the receipt of a request to do so from the other party; or, the two appointed arbitrators fail to agree on the third arbitrator within 30 days from the date of their appointment, the appointment shall be made, upon application by a party, by the Supreme Court (in the case of international commercial arbitrations), or the High Court, or any person or institution designated by such Court. The application is required to be disposed of by the designated arbitral institution within 30 days from the date of service of notice on the opposite party.

When appointing an arbitrator, the court shall confine itself to examination of the existence of an arbitration agreement; the intention being to minimise judicial intervention.

A person of any nationality may be an arbitrator, unless otherwise agreed by the parties, and further that in the case of an international commercial arbitration, the Court may appoint an arbitrator of a nationality other than the nationalities of the parties concerned. However, the 2019 Amendments brought in a new Part IA, for the establishment on the Arbitration Council of India (“ACI”), which is empowered to *inter alia* recognise professional institutes providing accreditation of arbitrators and review the grading of arbitral institutions and arbitrators. The new Eighth Schedule sets out rather detailed qualifications, experience and norms for accreditation of arbitrators, which list appears to exclude foreign qualified lawyers therefrom. Part IA has not as yet been notified (as of September 20, 2019), and it remains to be seen whether the huge criticism of these proposed amendments, will lead to a re-think by the Indian Government.





11 Disclosure by Arbitrators

Every arbitrator approached in connection with possible appointment as an arbitrator (whether directly by the parties, or through an order of the Court), must disclose to the parties in writing, the existence of any direct or indirect relationship with the parties or the subject matter in dispute which is likely to create justifiable doubts as to their independence or impartiality, and the existence of any circumstances that are likely to affect their ability to devote sufficient time to the arbitration.

India is one of the only countries that has incorporated the IBA Guidelines on Conflict of Interest, 2014, into its

arbitration law. This is done by way of the 5th and 7th Schedules to the Act, which consist of items drawn from the Orange and Red Lists of the IBA Guidelines, and which are to 'guide' in determining whether circumstances exist which would give rise to such justifiable doubts as to the independence or impartiality of an arbitrator. Circumstances covered in the 7th Schedule, render a person ineligible for appointment, although parties may, subsequent to disputes having arisen between them, waive the ineligibility by an express agreement in writing.

12 Challenge to Arbitrators

An arbitrator can be challenged on two grounds: (i) the existence of circumstances that give rise to justifiable doubts as to the arbitrator's independence or impartiality; or (ii) that the arbitrator did not possess qualifications agreed by the parties.

Procedure for Challenge

A party may challenge the appointment of an arbitrator by a written challenge to the tribunal (unless some other procedure is agreed), within 15 days of the following: (i) the party becoming aware of the constitution of the arbitral tribunal, or (ii) the party becoming aware of any circumstances that give rise to justifiable

doubts as to his independence or impartiality, or that he does not possess the qualifications required.

The arbitral tribunal is competent to rule on such challenge, unless the concerned arbitrator withdraws from office or the other party agrees to such challenge. If the challenge is successful, then the mandate of the arbitrator terminates and the parties may appoint a new substitute arbitrator. If however the challenge is unsuccessful, the arbitral tribunal shall proceed with the arbitration and pass an award, which award may be challenged before the Court.

13 Fees of the Arbitrators:

Arbitrators are entitled to fees as agreed upon by the parties, or fixed by an administering arbitral institution. However, in cases where the appointment is made by the in a purely domestic arbitration (this provision does not apply to

international commercial arbitrations), the fees of the arbitral tribunal and the manner of their payment are to be determined by the appointing authority subject to the rates specified in the 4th Schedule.

14 Referring parties to Arbitration

A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement (or any person claiming through or under him), so applies not later than the date of submitting his first statement on the substance of the dispute, shall refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists. The scope of examination by the judicial authority in this case, is thus extremely narrow. A party may appeal against a decision refusing to refer the parties to arbitration.

If the application is made in respect of a foreign arbitration, that falls under Part II of the Act. In such a case, the judicial authority is required to refer parties to arbitration unless it prima facie finds that the said agreement is null and void, inoperative or incapable of being performed.

Whether a reference is made under Part I or II, there is no appeal from a decision referring parties to arbitration, although the award or its enforcement, may ultimately be challenged on the ground that the dispute could not have been arbitrated.





15 Competence of arbitral tribunal to rule on its jurisdiction

The Act recognises the “*kompetenz-kompetenz*” principle which means that the arbitral tribunal is empowered to rule on its own jurisdiction, including deciding on questions relating to the existence and validity of the arbitration agreement. Given that an arbitration agreement is treated as an agreement independent of and separable from the underlying contract, a decision by the arbitral tribunal that the contract is null and void will not of itself result in the arbitration clause being treated as null and void or invalid.

Time is of the essence and any objection as to the arbitral tribunal’s jurisdiction must be raised not later than the submission of the statement of defence. A party is not be precluded from raising such a plea merely

because that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

Where the arbitral tribunal rejects a plea that it does not have jurisdiction, it may proceed to pass an award and there is no provision to appeal such an order. However in such a case, parties have recourse to challenge such award. However, if the plea is successful and the tribunal declines to pass an award or dismisses the arbitration proceedings, the aggrieved party has an immediate remedy in the form of an appeal to the Court.

16 Interim Relief

By the Court:

- Parties may approach a court for interim reliefs before or during arbitral proceedings or at any time after making the arbitral award but before it is enforced. The court shall not entertain any application for interim relief after the tribunal has been constituted unless it finds that circumstances exist which may not render the remedy granted by the tribunal, efficacious.
- The recourse to Indian courts is now also available to parties to a foreign seated arbitration (unless otherwise agreed).
- Interim reliefs sought from the Court may include orders for:
 - i. the appointment of a guardian for a minor, or person of unsound mind, for the arbitration;

- ii. an interim measure, or protection in respect of any of the following matters:
 - a) preservation, interim custody, or sale of any goods which are the subject-matter of the arbitration agreement;
 - b) securing the amount in dispute in the arbitration;
 - c) detention, preservation, or inspection of any property, or thing which is the subject-matter of the dispute in arbitration;
 - d) interim injunction, or the appointment of a receiver;
 - e) such other interim measure of protection as may appear to the Court to be just and convenient.

By the arbitral tribunal:

- The arbitral tribunal also has the power to grant interim relief and has the same power for making orders as the court has for the purpose of and in relation to any proceedings before it, unless otherwise agreed by the parties. However, this power can be exercised only till the passing of the award, after which, the arbitral tribunal is *functus officio* and parties will need to approach a court for reliefs post award.

- An order of the arbitral tribunal shall be deemed to be an order of the Court for all purposes and shall be enforceable in the same manner as if it were an order of the Court (subject of course, to the results of any appeal).
- The arbitral tribunal may direct either party to take any interim measure of protection as it may deem necessary to protect the subject matter of the dispute, and such orders include:
 - i. the appointment of a guardian for a minor, or person of unsound mind, for the arbitration;
 - ii. an interim measure, or protection in respect of any of the following matters:
 - a) preservation, interim custody, or sale of any goods which are the subject-matter of the arbitration agreement;
 - b) securing the amount in dispute in the arbitration;
 - c) detention, preservation, or inspection of any property, or thing which is the subject-matter of the dispute in arbitration;
 - d) interim injunction, or the appointment of a receiver;
 - e) such other interim measure of protection as may appear to the Court to be just and convenient.



Emergency arbitrators and orders:

- Although the High Level Committee had suggested including provisions for emergency arbitrators, no provisions for the purpose have been included in the Act and orders passed by emergency arbitrators are not enforceable.
- Indeed, and to be noted, there is no provision under Indian law for enforcement of interim orders (whether of foreign courts, or arbitral tribunals). The practice is to apply to a court for interim relief in the same way as has been applied to an emergency arbitrator and courts have, if satisfied of the merits, passed orders similar if not identical to the emergency arbitrator's order.

17 Hearings and proceedings

The arbitral tribunal may, in consultation with the parties, decide whether to hold oral hearings, or whether a document only arbitration should be conducted.

18 Fast track procedure

The Act envisages a fast track procedure, which: (i) is before a sole arbitrator; (ii) is to be conducted on the basis of written pleadings, documents and submissions

without an oral hearing (although an oral hearing may be held if the parties so request, or the arbitral tribunal deems it necessary), and (iii) requires the award to be passed within a period of six months of the arbitral tribunal entering upon the reference.

19 Timelines

Strict timelines have been mandated for passing an arbitral award in the case of ad hoc, purely domestic arbitrations. Notably, these timelines are not mandatory, but only directory insofar as international commercial arbitrations are concerned (whether ad hoc or under institutional rules).

The award is required to be made within twelve months from the date of completion of pleadings, although parties may by consent extend this period for a further period not exceeding six months, i.e. eighteen months in the aggregate. If the award is not made within this extended period, the arbitral tribunal's mandate terminates, unless the parties have applied to the Court for extension and the period for passing the award is accordingly extended. Such extensions are given almost routinely, unless the delay is egregious, in which case, the Courts is empowered to impose actual or exemplary costs on parties for any delay caused by them. Additionally, the Court may also substitute arbitrators or reduce arbitrator fees if delays are attributable to

the tribunal, in which case an opportunity is to be given to the arbitrators to be heard before passing any such order.

If the award is made within a period of six

months from the date the arbitral tribunal enters into reference, the tribunal would be entitled to an additional fee as agreed between parties.

20 Appeal against orders

An appeal lies (under Section 37), from only following orders, namely:

Orders from the court:

- i. refusing to refer the parties to arbitration (as aforesaid, an order which refers parties to arbitration, is not open to appeal, although the final award may be challenged);
- ii. granting, or refusing to grant any interim measure or relief;
- iii. setting aside, or refusing to set aside an arbitral award.

Orders from the arbitral tribunal:

- i. accepting a challenge to its jurisdiction under Section 16 (pertains to competence of an arbitral tribunal to rule on its jurisdiction); or
- ii. granting, or refusing to grant an interim measure under Section 17 (pertains to interim measures ordered by an arbitral tribunal).

No second appeal lies from an order passed in appeal; but an aggrieved party may nevertheless approach the Supreme Court for special leave to appeal against any order.





21 Costs and Interest

Costs

The general rule is that the unsuccessful party shall be ordered to pay costs of the successful party, unless the court / tribunal makes a different order, for reasons to be recorded in writing.

The costs which may be awarded include reasonable costs relating to the fees and expenses of the arbitrators and witnesses, the legal fees and expenses; any administrative fees of any institute supervising the arbitration proceedings; and any other expenses which may have been incurred by the party in connection with the arbitral proceedings and award. In determining the costs, the court / tribunal shall take into account circumstances such as conduct of the parties, whether a party raised frivolous counter-claims which delayed disposal of the arbitration proceedings and whether any reasonable offer to settle the dispute made by a party was refused by the other party. An agreement which provides that one party shall bear whole or part of the costs in any event shall only be valid if the agreement was concluded after the dispute in question had arisen.

Pre-award interest

Unless otherwise agreed by parties, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. Where a rate of interest is agreed between parties in their contract, the arbitral tribunal will have no discretion and is bound to award interest at such contractually prescribed rate. Where the contract between parties is silent as to the grant of or rate of interest to be awarded, the arbitral tribunal has the discretion to award interest, as it deems reasonable.

Post-Award Interest

Unless otherwise directed by a court / tribunal, a sum directed to be paid under an award, shall carry interest @ 2% higher than the 'current rate of interest'¹² prevalent on the date of the award, from the date of the award till the date of payment. [In respect of arbitrations commencing prior to the 2015 Amendment (October 23, 2015), this rate was fixed at 18%, unless otherwise agreed by the parties.

¹² For the definition of 'current rate of interest', see End Notes.

22 Confidentiality of arbitral proceedings

The 2019 Amendments introduce provisions for maintaining confidentiality of arbitral proceedings, with an exception for the arbitral award where its disclosure is necessary for the purpose of implementation and enforcement. The exception is rather narrow, given that there may be cause to disclose and produce some parts of the pleadings, documents or

proceedings at various stages, say for instance in order to obtain interim protection pending the arbitration, or protect any other legal right; or even where disclosure is required on account of a court order or other legal duty. (Prior thereto, the Act mandated confidentiality only with regard to conciliation proceedings).

23 Immunity to arbitrators for acts done in good faith

Introduced by the 2019 Amendments, no suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

24 Arbitral Award¹³

The award must be in writing, dated and signed by the tribunal and must state the place of arbitration. The award must also state the reasons on which it was based unless the award is based on agreed terms, or the parties have waived the requirement of a speaking order.

Within thirty days from the receipt of the arbitral award, a party may request the arbitral tribunal to correct any computation, typographical errors or other similar errors occurring in the award. A party may also (if so agreed by all parties), request the arbitral

tribunal to give an interpretation of a specific point or part of the award.



¹³ For the definition of 'Arbitration Award', see End Notes.



25 Termination of Proceedings

The arbitral proceedings are terminated by the final arbitral award or by an order of the arbitral tribunal terminating the proceedings where (i) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(ii) the parties agree to terminate the proceedings, or, (iii) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible. The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings.

26 Challenge to and setting aside an award

A court may set aside an award on a challenge made by an aggrieved party:

- a) if the party making the application establishes on the basis of the record of the arbitral tribunal that:
 - i. a party was under some incapacity;
 - ii. the arbitration agreement is not valid under the law to which the parties have subjected it or, under the law for the time being in force;
 - iii. the party making the application was not given proper notice of the appointment of an arbitrator, or of the arbitral proceedings, or was otherwise unable to present their case; or
 - iv. the arbitral award deals with a dispute not contemplated by, or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration; or

b) if the Court finds that:

- i. the subject matter of the difference is not capable of settlement by arbitration under the law of India;
- ii. the enforcement of the award would be contrary to Indian public policy; or
- iii. In case of domestic awards alone, the award may also be set aside if the Court finds that it is vitiated by patent illegality appearing on the face of the award. Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

The party applying to set aside of the award must do so within three months of the date of receipt of the award with notice to the other party (the giving of notice being directory rather than mandatory). This period may be extended by a further thirty days, if sufficient cause for the delay is proved, but no further extension can be granted.

The Court may, where it is appropriate and

upon the request of a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

Note:

There is no provision for challenge to a foreign award in the Arbitration Act, and pursuant to the decision in *BALCO* and the 2015 Amendments, it is clear that Indian courts do not have jurisdiction to entertain any challenge to foreign awards.

Part II deals with enforcement of foreign awards.

27 The Public Policy Challenge

The scope of challenge to a domestic award before an Indian court on the ground that the award is in conflict with the public policy of India has been evolved through judicial precedents which culminated in amendments to the relevant sections by the 2015 Amendment. An award is in conflict with the public policy of India only if:

- i) the making of the award was induced or affected by fraud or corruption, or violated the provisions as to confidentiality in conciliation proceedings, or admissibility of

evidence during conciliation, in other proceedings;

- ii) the award is in conflict with the fundamental policy of Indian Law; or
- iii) the award is in conflict with basic notions of morality & justice.

The test as to whether there is contravention of the fundamental policy of Indian law shall not entail a review of the merits of the dispute, and must be understood in the narrow sense such as where the arbitrator completely ignores/rewrites the contract.

28 Enforcement of awards

Award passed under Part I of the Act (domestic award):

Where the time for making an application to set aside the arbitral award has expired, then, subject to the award not having been stayed, it shall be

enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the court.

The filing of an application to set aside an award does not of itself render that

¹³ For the definition of 'Arbitration Award', see End Notes.



award unenforceable, unless the Court grants an order staying the operation thereof on a separate application made for that purpose. The stay may be granted on such terms as the Court deems fit (including deposit of the award amount into court or furnishing of security), and the Court is required to record its reasons for grant of stay. Therefore a party can proceed with enforcement even in the face of an award that has been challenged where there is no stay on enforcement.

Foreign award enforcement under Part II of the Act:¹⁴

A foreign award is enforceable under Part II of the Act, if it meet certain conditions, viz. (i) the award is, (i) an arbitral award on differences relating to matters considered as commercial under the law in force in India (India having adopted the 'commercial' reservation under the New York Convention and Geneva Convention), (ii) in pursuance of an agreement for arbitration to which the New York Convention or Geneva Convention applies, and (iii) in relation to persons of whom one is subject to the jurisdiction of a territory notified by the Central Government in Official Gazette (as being a party to either of the aforesaid Conventions), and passed in one such notified territory; and (iv) the

award is final (an award is not deemed to be final if any proceedings contesting the validity of the award are pending in the country in which it was made).

For the purposes of enforcement, the enforcing party must produce before the executing court the original or authenticated copy of the award, the original or certified copy of the arbitration agreement, and evidence that it is a foreign award.

Enforcement of a foreign award may be refused on the same grounds as in the case of a domestic award (subject to a narrower interpretation of what would be in conflict with the public policy of India), and additionally if (i) the award has been set aside, or suspended by a competent authority of the country in which it was made, and / or (ii) the subject matter of dispute cannot be settled by arbitration under Indian law.

The application for enforcement of a foreign award may be filed in any High Court which has jurisdiction over the territory in which award debtor's assets are located or where a suit for recovery of money can be filed.

¹⁴ For the definition of 'Foreign Award', see End Notes.

29 Part 1A - Arbitration Council of India (“ACI”):

Though these provisions were not notified with the 2019 Amendments (brought into effect from August 30, 2019), the ACI is intended to be established as an independent statutory body whose goal would be the promotion of arbitration, mediation, conciliation and other alternative dispute redressal mechanisms in India. Its functions include the following:

- i) to frame policies for grading arbitral institutions and accrediting arbitrators,
- ii) to formulate policies for the establishment, operation and maintenance of uniform professional standards for all alternate dispute redressal matters, and
- iii) to establish and maintain a depository of arbitral awards (judgments) made in India and abroad
- iv) to recognise professional institutes providing accreditation of arbitrators;
- v) to hold training, workshops and courses in the area of arbitration in collaboration of law firms, law universities and arbitral institutes;
- vi) to frame, review and update norms to ensure satisfactory level of arbitration and conciliation;
- vii) to act as a forum for exchange of views and techniques to be adopted for
- viii) to conduct examinations and training

on various subjects relating to arbitration and conciliation and award certificates thereof;

In terms of composition, the ACI will consist of a Chairperson who is either: (i) a Judge of the Supreme Court; or (ii) a Judge of a High Court; or (iii) Chief Justice of a High Court; or (iv) an eminent person with expert knowledge in conduct of arbitration. Other members will include an eminent arbitration practitioner, an academician with experience in arbitration, and government appointees.

The Supreme Court and the High Courts have been conferred with the power to designate (for the purpose of appointment of arbitrators), arbitral institutions which have been graded by the ACI, thereby attempting to highlight the practical significance of the ACI and its grading system.





30 Applicability of the Amendments:

There has been some confusion over the applicability of the 2015 Amendments (which came into force on October 23, 2015).

In 2018, the Supreme Court ruled (interpreting Section 26 of the 2015 Amendment Act¹⁵), in the case of *BCCI v. Kochi*,¹⁶ that the 2015 Amendments as a whole would apply prospectively (i.e. to arbitral proceedings commencing after October 23, 2015), but that in relation to court proceedings challenging an award, the 2015 Amendments would apply even to pending proceedings (the rationale for which can be seen from the ruling). The result of the *BCCI* judgment was that a purported automatic stay of an award which appeared to fall in place the moment an award was challenged under the old regime, would fall away (in line with the intent of the 2015 Amendments). A party would then have to file a separate stay application for the purpose, which may be granted on such conditions as the Court deemed fit, including by depositing the award amount

in court or furnishing appropriate security.

The 2019 Amendments clarified the position under the 2015 Amendments and in a sense overruled *BCCI*, by deleting Section 26 altogether and introducing a new Section 87,¹⁷ which provided that (unless the parties agreed otherwise) the 2015 Amendments would apply prospectively to all arbitral and court proceedings commenced after October 23, 2015, and not otherwise.

Section 87 was struck down as being unconstitutional and arbitrary, by the Supreme Court in *Hindustan Construction Company v. Union of India*.¹⁸ The position then today, is that *BCCI* will continue to apply so as to make the 2015 Amendments applicable to all court proceedings initiated after October 23, 2015 (whether or not the arbitration itself commenced prior thereto).

¹⁵ For the text of Section 26, see End Notes

¹⁶ (2018) 6 SCC 287

¹⁷ For the text of Section 87, see End Notes

¹⁸ (2019) SCC Online SC 1520 [Judgment dated November 27, 2019]

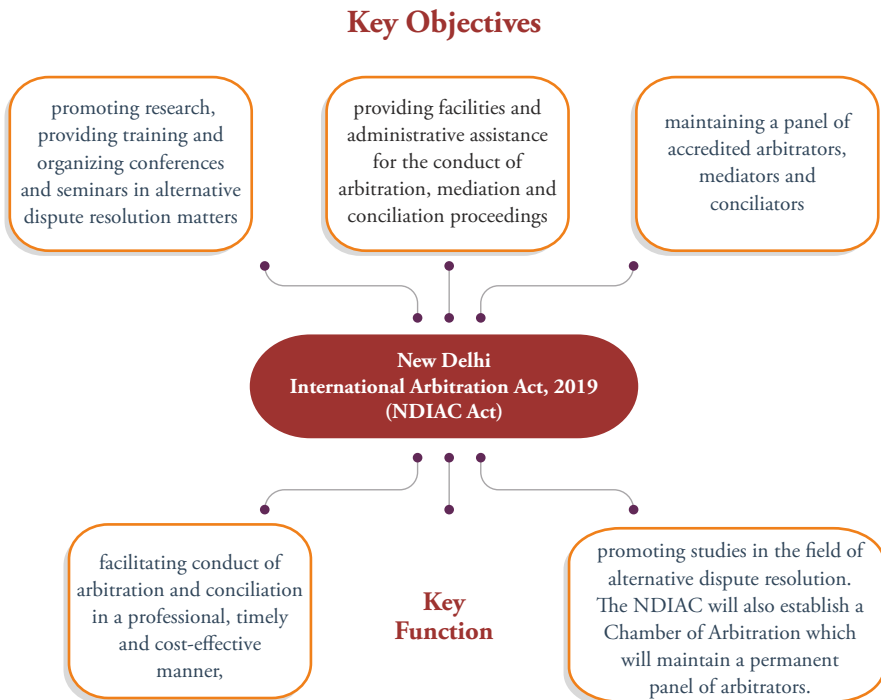
31 New Delhi International Arbitration Act, 2019 (“NDIAC Act”)

The NDIAC Act, 2019 came into force on the March 2, 2019, and provides for the establishment of the New Delhi International Arbitration Centre (“NDIAC”) to conduct arbitration, mediation, and conciliation proceedings.

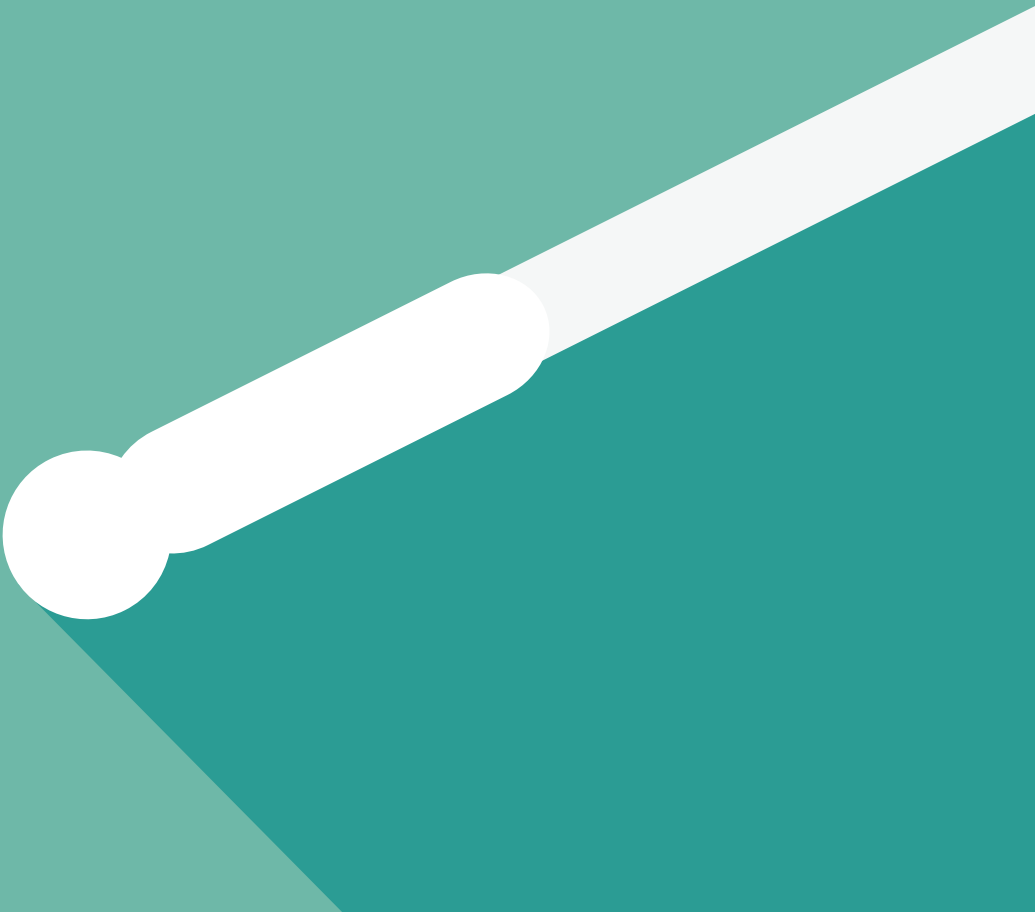
The key objectives of the NDIAC include, (i) promoting research, providing training and organizing conferences and seminars in alternative dispute resolution matters, (ii) providing facilities and administrative assistance for the conduct of arbitration,

mediation and conciliation proceedings, and (iii) maintaining a panel of accredited arbitrators, mediators and conciliators.

The key functions of the NDIAC include, (i) facilitating conduct of arbitration and conciliation in a professional, timely and cost-effective manner, and (ii) promoting studies in the field of alternative dispute resolution. The NDIAC will also establish a Chamber of Arbitration which will maintain a permanent panel of arbitrators.



B. OTHER FORMS OF ALTERNATE DISPUTE RESOLUTION







01 Introduction

Mediation and conciliation are recognized and separate forms of ‘alternate dispute resolution’ (“ADR”) and are in contrast to the adversarial approach used in court and arbitration proceedings.

Even during the course of the arbitral proceedings, the arbitral tribunal is empowered to “*encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time*

during the arbitral proceedings to encourage settlement”.

Part III of the Arbitration Act, deals with ‘conciliation’. Though the term ‘Conciliation’ is not formally defined in the Act, it refers to assistance rendered to disputing parties by the conciliator, “*in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute”.*

02 Difference between Conciliation and Mediation

In India, although the words mediation and conciliation are sometimes used interchangeably, there is a recognized difference between the two. For example:

- i) The CPC provides that where it appears to the court (in already instituted legal proceedings), that there exist elements of a settlement which may be acceptable to the parties, the court may formulate possible terms of settlement and/or refer the dispute (subject to the consent of the parties), to:
 - arbitration;
 - conciliation;
 - judicial settlement including settlement through Lok Adalat;¹⁵ or
 - mediation.

Disputes referred to conciliation by a court under the CPC, are governed by Part III.

- ii) The ‘Civil Procedure Alternative Dispute Resolution & Mediation Rules, 2006, (the “**CP - ADR & Mediation Rules**”), *inter alia* explain the difference between the different modes of settlement,¹⁶ including:

- ‘Settlement by Conciliation’, as being “*the process by which a conciliator who is appointed by parties, or by the Court, as the case may be, conciliates the disputes between the parties to the suit by the application of the provisions of (the Act)”.*
- ‘Settlement by Mediation’, as being, “*the process by which a mediator*

¹⁵ ‘Lok Adalat’ – see End Notes

¹⁶ See End Notes for ‘the difference between the different modes of settlement’ in the CP – ADR & Mediation Rules.

appointed by parties, or by the Court, as the case may be, mediates the dispute between the parties to the suit ...”.

iii) Additionally, under the Commercial Courts, Commercial Appellate Courts Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (which came into force on October 23, 2015, i.e. the same day as the 2015 Amendments) (the “**Commercial Courts Act**”), mediation and an attempt at settlement has been a

mandatory prerequisite to the filing of any commercial suit which does not contemplate any urgent relief. This is however restricted to commercial disputes of a specified value, falling within the jurisdiction of the relevant Commercial Court / Division.

Mediation is defined under the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 (“**PIMS Rules**”), as a process undertaken to “*resolve, reconcile and settle a commercial dispute between the parties*”.

03 Role of Conciliator and Mediator

A conciliator may be more pro-active in persuading the parties to settle and the manner of settlement, rather than a mediator. To that intent, the Act provides that the conciliator “*may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute*”. Similarly, CP - ADR & Mediation Rules, note that a conciliator may make “*proposals for a settlement of the dispute and by formulating, or reformulating the terms of a possible settlement; and has a greater role than a mediator.*”

The CP - ADR & Mediation Rules note that while the mediator assists parties towards a settlement by inter alia facilitating, identifying issues, exploring

areas of compromise, etc., the mediator also emphasises that “*it is the parties’ own responsibility for making decisions which affect them*”.

Nevertheless, no matter which method is chosen, the neither a mediator or conciliator or any other authority, has the right to impose his will, or opinion on the parties, and they must reach an agreement mutually as to resolution of the dispute.

The conciliator/mediator is not bound by the CPC, or the Evidence Act, but must be guided by the principles of objectivity, fairness and justice, rights and obligations of parties, usages of trade, surrounding circumstances, and previous business practices.



04 Interim Relief

Parties are prohibited from initiating any arbitral or judicial proceedings during the pendency of conciliation proceedings under the Act, except when a party considers the same necessary for the purpose of protecting/preserving its rights.

05 Confidentiality

If a conciliator/mediator receives information from one party; he is bound to disclose the same to the other party, unless such information is provided to the conciliator subject to a specific condition that it be kept confidential, in which case the conciliator shall not disclose it to the other party.

All matters relating to the conciliation (under the Arbitration Act)/mediation



(under the PIMS Rules and the CP - ADR & Mediation Rules), proceedings, including the settlement agreement are to be kept confidential and the parties thereto are not entitled to rely on statements made or what transpires during the proceedings. The settlement agreement may however be disclosed to the extent such disclosure is necessary for its implementation and enforcement.

06 Settlement and Termination

The conciliation is successfully terminated if a settlement is arrived at and a settlement agreement is signed by the parties. Under the Act, a settlement agreement has the same status and effect as an arbitral award on agreed terms and would be enforceable as if it were a decree of the court.

Under the PIMS Rules, any settlement agreement arrived at is to be reduced to writing and forwarded by the mediator to the mediation authority set up under the PIMS Rules.

If parties chose to mediate as a form of ADR without there being any pending legal proceedings, the benefits of confidentiality and legal sanctity of the settlement agreement would not be available, and a mediated settlement, if not honoured, would have to be enforced as a separate contract by way of a civil suit. However, where the mediation is conducted under supervision of a court in respect of pending legal proceedings, a settlement agreement arrived at between the parties must be submitted to the court by the mediator. The

court then records the settlement and passes a decree in accordance therewith, disposing of the legal proceedings accordingly. Under the Commercial Courts 2015 Amendment, Section 12A provides that the settlement

agreement arrived at through (pre-litigation) mediation has the same effect as an award on the agreed terms under Section 30 (4) of the Arbitration Act.

07 Costs

Costs of the proceedings are fixed by the conciliator/mediator upon termination of conciliation proceedings and are borne by parties equally unless otherwise provided in the settlement agreement.

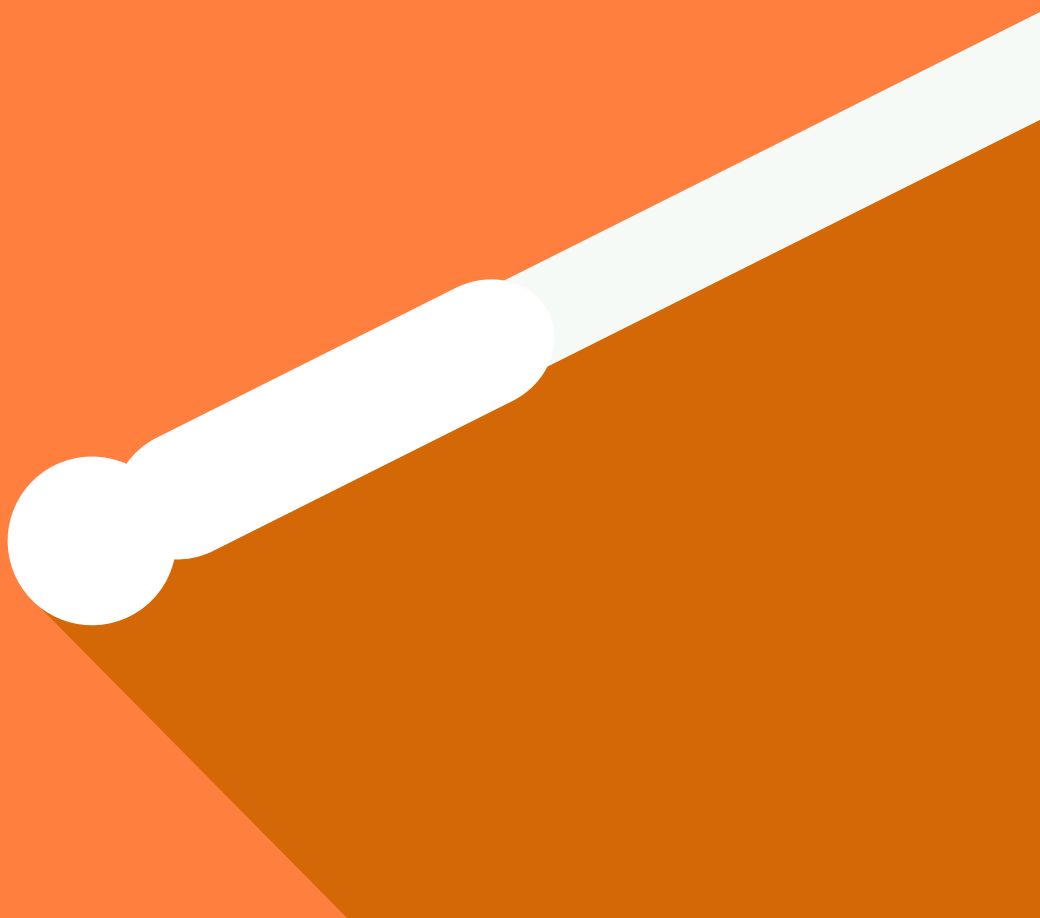
08 The Singapore Convention on Mediation

India has signed (but is yet to ratify), the United Nations Convention on International Settlement Agreements Resulting from Mediation (the “**Singapore Convention**”), which was opened for signature on August 7, 2019.

Note that though the term used is ‘mediation’, the condition to be met is that of a settlement of disputes through “*a process, irrespective of the expression used, or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their disputes with the assistance of a third person(s) lacking the authority to impose a solution on the parties.*”

The Singapore Convention facilitates the recognition and enforcement of settlement agreements that meet the conditions mandated therein, in a manner similar to the New York Convention. As a result, once ratified by India a settlement agreement will be enforced directly by an Indian court instead of it being treated only as a contract, with a civil suit having to be filed for its enforcement.

End Notes / Important Terms







	Term	Meaning
1.	Arbitration: Section 2(1)(a)	"Arbitration" means any arbitration whether or not administered by permanent arbitral institution;
2.	Arbitration Agreement Section 2(1)(b)	"Arbitration Agreement" means an agreement referred to in section 7;
3.	Arbitration Award Section 2(1)(c)	"Arbitral Award" includes an interim award;
4.	Arbitral Tribunal: Section 2(1)(d)	"Arbitral Tribunal" means a sole arbitrator or a panel of arbitrators;
5.	Court: Section 2(1)(e)	<p>"Court" means–</p> <ul style="list-style-type: none"> (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes; (ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;

	Term	Meaning
6.	Current Rate of Interest Explanation to Section 31(7)(b)	The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978) [see below]
7.	Current Rate of Interest Interest Act, 1978 Section 2(b)	"Current Rate of Interest" means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949 (10 of 1949). Explanation. - In this clause, "scheduled bank" means a bank, not being a co-operative bank, transacting any business authorised by the Banking Regulation Act, 1949 (10 of 1949)
8.	Foreign Award (under the New York Convention) Section 45	<p>"Foreign Award" means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960—</p> <p>(a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies (<i>i.e. the New York Convention</i>), and</p> <p>(b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.</p>
9.	Foreign Award (under the Geneva Protocol and Geneva Convention) Section 53	<p>"Foreign Award" means an arbitral award on differences relating to matters considered as commercial under the law in force in India made after the 28th day of July, 1924,—</p> <p>(a) in pursuance of an agreement for arbitration to which the Protocol set forth in the Second Schedule applies (<i>i.e. the Geneva Protocol</i>), and</p> <p>(b) between persons of whom one is subject to the jurisdiction of some one of such Powers as the Central Government, being satisfied that reciprocal provisions have been made, may, by notification in the Official Gazette, declare to be parties to the Convention set forth in the Third Schedule (<i>i.e. the Geneva</i></p>



	Term	Meaning
		<p><i>Convention</i>), and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid, and</p> <p>(c) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made, may, by like notification, declare to be territories to which the said Convention applies (<i>i.e. the Geneva Convention</i>), and for the purposes of this Chapter an award shall not be deemed to be final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.</p>
10.	International Commercial Arbitration: Section 2(1)(f)	<p>"International Commercial Arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—</p> <p>(i) an individual who is a national of, or habitually resident in, any country other than India; or</p> <p>(ii) a body corporate which is incorporated in any country other than India; or</p> <p>(iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or</p> <p>(iv) the Government of a foreign country;</p>
11.	Lok Adalat	<p>Lok Adalat, is loosely translated as 'peoples' court'. It is set up under the Legal Services Authority Act, 1987, and may be may organised at such intervals and places and for exercising such jurisdiction and for such areas as deemed fit.</p> <p>The procedure is consensual – and is a form of ADR used in India and litigating parties may be referred by a court to the Lok Adalat where the court believe that there is some chance of settlement. Lok Adalat is mandated to act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of Justice, equity, fair play and other legal principles. A compromise or settlement recorded by the Lok Adalat is deemed to be a decree of a civil court. Failing settlement, the parties continue to litigate.</p>
12.	Settlement through different modes Civil Procedure Alternative	<p>The difference between the different modes of settlement as explained below:-</p> <ul style="list-style-type: none"> - Settlement by 'Arbitration' means the process by which an arbitrator appointed by parties or by the Court, as the case may

Term	Meaning
<p>Dispute Resolution & Mediation Rules, 2006 <i>(of The Bombay High Court)</i> Rule 4(a)(v)</p>	<p>be, adjudicates the disputes between the parties to the suit and passes an award by the application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) in so far as they refer to arbitration.</p> <ul style="list-style-type: none"> - Settlement by ‘Conciliation’ means the process by which a conciliator who is appointed by parties or by the Court, as the case may be, conciliates the disputes between the parties to the suit by the application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) in so far as they relate to conciliation and in particular, in exercise of his powers under section 67 and 72 of that Act, by making proposals for a settlement of the dispute and by formulating or reformulating the terms of a possible settlement; and has a greater role than a mediator. - Settlement by ‘Mediation’ means the process by which a mediator appointed by parties or by the Court, as the case may be, mediates the dispute between the parties to the suit by the application of the provisions of the mediation Rules, 2006 in Part II, and in particular, by facilitating discussion between the parties directly or by communicating with each other through the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasizing that it is the parties own responsibility for making decisions which affect them Settlement in ‘Lok Adalat’ means settlement by Lok Adalat as contemplated by the Legal Services Authority Act, 1987. - “Judicial settlement” means a final settlement by way of compromise entered into before a suitable institution or person to which the Court has referred the dispute and which institution or person are deemed to be the Lok Adalats under the provisions of the Legal Service Authority Act, 1987 (39 of 1987) and where after such reference, the provisions of the said Act apply as if the dispute was referred to a Lok Adalat under the Provisions of that Act.



	Term	Meaning
13.	Section 26: Act not to apply to pending arbitral proceedings	Section 26. Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this
14.	Section 87: Effect of arbitral and related court proceedings commenced prior to 23rd October, 2015.	Section 87: Unless the parties otherwise agree, the amendments made to this Act by the Arbitration and Conciliation (Amendment) Act, 2015 shall - (a) not apply to - (i) arbitral proceedings commenced before the commencement of the Arbitration and Conciliation (Amendment) Act, 2015; (ii) court proceedings arising out of or in relation to such arbitral proceedings irrespective of whether such court proceedings are commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015; (b) apply only to arbitral proceedings commenced on or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 and to court proceedings arising out of or in relation to such arbitral proceedings.

notes



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