

Arbitration procedures and practice in India: overview

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USE OF ARBITRATION AND RECENT TRENDS

1. How is commercial arbitration used in your jurisdiction and what are the recent trends?

Use of commercial arbitration

Arbitration is seen as the most efficient method of resolving commercial disputes in India. In January 1996, India enacted arbitration legislation, the Arbitration and Conciliation Act 1996 (Act). The Act is considered a vast improvement on the earlier Act of 1940 (which allowed multiple opportunities for court intervention). A majority of the large commercial disputes are settled through arbitration.

Recent trends

A large number of international arbitrations are getting seated in Singapore. It is expected that arbitrations will also start getting seated in Hong Kong and Malaysia (and start shifting out from Europe).

Advantages/disadvantages

The advantages of arbitration over court litigation relate to:

- **The backlog in the court system.** Arbitrations have become necessary in India as the ordinary court system has become overburdened by backlogs and delays. There are about 3.4 million cases pending before the 24 High Courts of India, of which about 650,000 have been pending for over ten years. More than 23 million cases are pending in other courts. There are only 10.5 judges for every one million people (the corresponding figures in the UK and the US are 50.9 and 107, respectively).
- **Speed and efficiency.** Arbitrations are relatively quick and efficient, allowing only a limited right to appeal.
- **Costs.** Another advantage of arbitration is that it saves court fees, which are regulated by the states. Some courts (such as the High Court of Bombay) have a ceiling of about GBP200 on court fees, but fees are usually charged in proportion to the claim amount (*ad valorem*) and without any cap. For example, in the High Court of Delhi, court fees are uncapped and usually equal about 0.1% of the amount claimed. No court fees are charged in arbitration.

Arbitration has no disadvantages as compared with court litigation.

LEGISLATIVE FRAMEWORK

Applicable legislation

2. What legislation applies to arbitration? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)?

The Act applies to arbitrations in India (it can be viewed online at <http://lawmin.nic.in/legislative/textofcentralacts/1996.pdf>). The Act has two main parts:

- Part I provides a complete framework for any arbitration in India (whether between Indian or foreign parties).
- Part II contains provisions that essentially concern enforcement of foreign awards.

The Act is largely based on the UNCITRAL Model Law and the UNCITRAL Arbitration Rules 1976.

Mandatory legislative provisions

3. Are there any mandatory legislative provisions? What is their effect?

Some of the significant mandatory provisions of the Act are:

- **Section 8.** If an action is brought before a court relating to a matter that is the subject of an arbitration agreement, the court must (at the request of the respondent) refer the parties to arbitration. This provision corresponds to Article 8 of the UNCITRAL Model Law. However, unlike the UNCITRAL Model Law, in relation to domestic arbitrations (but not international arbitrations (*section 45, the Act*) (*see Question 17*)), the Act is silent on whether matters are to be referred to arbitration even if the arbitration agreement is "null and void, inoperative or incapable of being performed".
- **Section 14.** The court can terminate the arbitrator's mandate, if the arbitrator is unable to perform his functions or acts with undue delay.
- **Section 28.** This relates to the determination of the governing law. An arbitration in India between two Indian parties can only be subject to Indian substantive law. However, if the arbitration is an "international commercial arbitration" (that is, where one of the parties is not Indian (*section 2(1)(f), the Act*)), the tribunal must decide the dispute in accordance with the rules of law designated by the parties. In the absence of any designation, the tribunal applies the rules it considers appropriate in the circumstances of the case.

- **Section 31.** This prescribes the form and content of the arbitral award. Among other things, it provides that the award must state the reasons on which it is based, unless the parties have agreed that no reasons must be given. In addition, unless the award otherwise directs, interest at 18% a year applies from the date of the award to the date of payment.
- **Section 34.** This sets out the grounds on which an arbitral award can be set aside. It broadly corresponds to Article 34 of the UNCITRAL Model Law.
- **Sections 35 and 36.** Subject to the provisions of the Act, an award is final and binding on the parties and persons claiming under them. Unlike the UNCITRAL Model Law, a separate application for recognition and enforcement of the award need not be filed and, subject to the outcome of an application under section 34, it is enforceable as if it were a decree of the court.
- **Section 37.** This relates to appeals (*see Question 25*).
- **Section 43.** This relates to the applicability of the Limitation Act 1963 (*see Question 4*).

Limitation

4. Does the law of limitation apply to arbitration proceedings?

The law of limitation (Limitation Act 1963) applies to arbitrations as it does to proceedings in court (*section 43, Act*). For these purposes, arbitration proceedings are deemed to have commenced (unless the parties have agreed otherwise) on the date a request for the dispute to be referred to arbitration is received by the respondent (*section 21, Act*).

The usual limitation period is three years from the date of the commencement of the cause of action. Once time has started to run, no subsequent inability to bring the action stops the time running. However, exemptions apply if:

- In good faith, proceedings are started in a court without jurisdiction.
- Time is taken to obtain the prior consent or approval of the government to bring the action (where such consent or approval is required by any law).
- The case is based on subsequently discovered fraud or mistake.
- Any document necessary to establish the claimant's right has been fraudulently concealed from him.
- There is written acknowledgment of liability.
- There is a part payment of the debt.

For the limitation period in relation to the enforcement of a foreign award, see *Question 30*.

ARBITRATION ORGANISATIONS

5. Which arbitration organisations are commonly used to resolve large commercial disputes in your jurisdiction?

The vast majority of cases are resolved through ad hoc arbitration.

The Indian Council of Arbitration (ICA), headquartered in New Delhi, is the leading domestic arbitral organisation and has a very good reputation. The ICA's rules can be viewed at www.icaindia.co.in/htm/clouse.htm. Recently launched Delhi International Arbitration Centre has gained immensely in popularity (*dacdelhi.org*).

Most other domestic arbitral bodies are not yet fully developed (*see box, Main arbitration organisations*).

Among the foreign institutions, the International Chamber of Commerce (ICC) is popular and is frequently used by both the public and private sectors. Lately, the Singapore International Arbitration Centre (SIAC) has gained considerable popularity.

See box, *Main arbitration organisations*.

ARBITRATION AGREEMENTS

Validity requirements

6. What are the requirements for an arbitration agreement to be enforceable?

Substantive/formal requirements

An arbitration agreement must be in writing, and may be contained in correspondence or in any means of communication that provides a record of the agreement. The agreement need not be signed. An unsigned agreement affirmed by the parties' conduct is valid. An arbitration agreement is considered to be in writing if there is an exchange of a statement of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

Separate arbitration agreement

A separate arbitration agreement is not required and a clause in the main contract is sufficient.

Unilateral or optional clauses

7. Are unilateral or optional clauses, where one party has the right to choose arbitration, enforceable?

A unilateral right of one party to elect whether to commence an arbitration or a civil suit (should a dispute arise) has been upheld by Indian courts. It may, however, be stated that there is not much case law on the subject and the issue has not been squarely dealt with so far.

Separability

8. Does the applicable legislation recognise the separability of arbitration agreements?

An arbitration clause is to be treated as independent of the underlying contract and a decision that the contract is void does not *ipso jure* (that is, by operation of law) result in invalidity of the arbitration clause.

Breach of an arbitration agreement

9. What remedies are available where a party starts court proceedings in breach of an arbitration agreement or initiates arbitration in breach of a valid jurisdiction clause?

Court proceedings in breach of an arbitration agreement

In the context of domestic arbitrations, if an action is brought before a judicial authority in breach of an arbitration agreement, that authority must refer the parties to arbitration (*section 8, Act*). The party objecting to the court proceedings must do so no later than submitting its first statement on the substance of the dispute. In the meantime, the arbitration proceedings can begin and continue, and an award can be made.

This provision is based on the UNCITRAL Model Law, with one difference. The corresponding provision in the UNCITRAL Model Law allows the court to consider an objection that the arbitration agreement is "null and void, inoperative or incapable of being performed" (*Article 8*). These words have been omitted in section 8 of the Act. However, pursuant to the decision in *SBP & Co. v Patel*

Engineering Ltd., (2005) 8 SCC 678, the Supreme Court has diluted the mandatory effect of the section by allowing the court to examine if there is an arbitrable or live claim which is capable of being referred to arbitration.

In relation to foreign (offshore) arbitrations, the wording of the UNCITRAL Model Law has been retained in the Act in this respect (*section 45*). As a result, courts have jurisdiction to examine if the arbitration agreement is null and void, inoperative or incapable of being performed.

Arbitration in breach of a valid jurisdiction clause

If a party initiates arbitration in breach of a valid jurisdiction clause, the validity of arbitration can be challenged under section 16 of the Act (corresponding to Article 16 of the Model Law). The challenge would be before the arbitral tribunal in the first instance.

10. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

The courts may grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement provided it has jurisdiction in relation to such proceedings in the international sense.

Joinder of third parties

11. Under the applicable legislation, in what circumstances can a third party be joined to an arbitration or otherwise be bound by an arbitration award?

The normal rule is that non-parties cannot be joined in an arbitration or otherwise be bound by an arbitration award. However an exception has been carved in relation to this in a recent Supreme Court judgment' *Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc.* - (2013) 1 SCC 641. Here, the court was faced with a situation where parties to a joint venture had entered into several related agreements – some with different entities from amongst their group. These agreements had diverse dispute resolution clauses – some with ICC arbitration in London; some with no arbitration clause and one agreement with an AAA arbitration clause with Pennsylvania (United States) as its seat. The Supreme Court held that the legislative intent is in favour of arbitration and the Arbitration Act 'would have to be construed liberally to achieve that object'. The Court held that non-signatory parties could be subjected to arbitration provided the transactions were within the group of companies and there was a clear intention of the parties to bind non-signatories as well. It held that subjecting non-signatories to arbitration would be in exceptional cases. This would be examined on the touchstone of direct relation of the non-signatory to the signatories; commonality of the subject matter and whether multiple agreements presented a composite transaction or not. The situation should be so composite that performance of the 'mother agreement' would not be feasible without the aid, execution and performance of the supplemental or ancillary agreements.

ARBITRATORS

Number and qualifications/characteristics

12. Are there any requirements in the legislation relating to the number and qualifications/characteristics of arbitrators?

If the parties have not determined the number of arbitrators, the tribunal consists of a sole arbitrator (*section 10, Act*). There are no restrictions on number, qualification or characteristics of arbitrators. However, the tribunal must comprise an uneven

number of arbitrators. Where the court is called on to make an appointment of a sole arbitrator or a third arbitrator in an international commercial arbitration, it can appoint an arbitrator of a nationality other than the nationalities of the parties (where the parties belong to different nationalities). This provision is interpreted to be recommendatory and not mandatory.

Independence/impartiality

13. Are there any requirements in the legislation relating to arbitrators' independence and/or impartiality?

An arbitrator must disclose any circumstance which gives rise to justifiable doubts as to his independence or impartiality (*section 12, Act*). This is in line with Article 12 of the UNCITRAL Model Law and Article 10 of the UNCITRAL Rules.

Appointment/removal

14. Does the legislation contain default provisions relating to the appointment and/or removal of arbitrators?

Appointment of arbitrators

The Act's default provisions regulating the appointment of arbitrators are triggered if:

- The parties cannot agree on the appointment of an arbitrator within 30 days of receiving a request to do so.
- Two appointed arbitrators fail to agree on the third arbitrator within 30 days of the date of their appointment.
- The arbitration must be heard by one arbitrator and the parties fail to agree on that arbitrator within 30 days of receiving a request to agree on the appointment.
- The parties' mechanism for the appointment of an arbitrator fails.

If the default provisions are triggered:

- In an international commercial arbitration, the arbitrator's appointment is made by the Chief Justice of the Supreme Court of India.
- In a domestic arbitration, the appointment is made by the Chief Justice of the High Court in the state where either:
 - the cause of action arises;
 - the respondent resides or carries on its business.

Removal of arbitrators

An arbitrator can be removed only in the following circumstances:

- A challenge is made on the ground that there are justifiable doubts as to his independence or impartiality or that he does not possess the qualification agreed by the parties (*section 13, Act*). A challenge must be made to the arbitral tribunal. If the challenge is not successful, the arbitral tribunal must continue with the arbitral proceedings and render its award (which can be challenged).
- The other provision for removing an arbitrator is if he becomes *de jure* or *de facto* unable to perform his functions or fails to act without undue delay. In these circumstances, a party can (unless otherwise agreed) apply to the court to decide on the termination of the mandate (*section 14, Act*).

PROCEDURE

Commencement of arbitral proceedings

15. Does the applicable legislation provide default rules governing the commencement of arbitral proceedings?

Unless the parties agree otherwise, arbitral proceedings are deemed to begin on the date on which a request for the dispute to be referred to arbitration is received by the respondent (*section 27, Act*).

Applicable rules

16. What procedural rules are arbitrators likely to follow? Can the parties determine the procedural rules that apply? Does the legislation provide any default rules governing procedure?

Applicable procedural rules

Subject to the parties' agreement, arbitrators can conduct the proceedings "in the manner they consider appropriate" (*section 19(3), Act*). This includes the power to determine the admissibility, relevance, materiality and weight of any evidence. The only restraints applicable are that:

- Arbitrators must treat the parties equally.
- Each party must be given a full opportunity to present its case, which includes sufficient advance notice of any hearing or meeting (*sections 18 and 24(2), Act*).

The CPC and the Indian Evidence Act do not apply to arbitrations. Unless the parties agree otherwise, the tribunal decides whether to hold oral hearings for the presentation of evidence or for arguments, or whether the proceedings are to be conducted on the basis of documents or other material alone. However, the arbitral tribunal must hold oral hearings if a party requests this (unless the parties have agreed that no oral hearing is to be held) (*section 24, Act*).

The arbitrators can proceed *ex parte* if the respondent, without sufficient cause, fails to either:

- Communicate its statement of defence.
- Appear for an oral hearing.
- Produce evidence.

However, the tribunal must not treat the respondent's failure as an admission by the respondent of the allegations against it. The tribunal must decide the matter on the evidence, if any, before it.

If the claimant fails to provide his statement of claim, the arbitral tribunal can terminate the proceedings (*section 25, Act*).

Default rules

The Act does not provide any default rules regulating procedure.

Arbitrator's powers

17. What procedural powers does the arbitrator have under the applicable legislation? If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

For procedural powers of arbitrators, see *Question 16*.

Arbitrators cannot force unwilling witnesses to appear before them. In this situation, the arbitral tribunal or a party, with the tribunal's approval, can apply to the court seeking its assistance in taking evidence (*section 27, Act*). This corresponds to a provision in

the UNCITRAL Model Law, although Indian law goes beyond the UNCITRAL Model Law, as it states that any person failing to attend in accordance with any order of the court (and certain other situations), is subject to the same penalties and punishment as he may have incurred for similar offences committed during court proceedings. A court can also appoint a commissioner to take evidence or order that the evidence be provided directly to the arbitral tribunal (*section 27, Act*). These provisions extend to any documents to be produced or property to be inspected.

An arbitral tribunal can also appoint experts in relation to any specific issue (*section 26, Act*). In this situation, a party may have to give the expert any relevant information or produce any relevant document, goods or property for inspection, as required. It is open to a party (or to the arbitral tribunal) to require the expert, after delivery of his report, to appear at an oral hearing so that the parties can put questions to him.

EVIDENCE

18. What documents must the parties disclose to the other parties and/or the arbitrator? How, in practice, does the scope of disclosure compare with disclosure in litigation? Can the parties determine the rules on disclosure?

Scope of disclosure

It is up to the parties to agree on the rules of disclosure (*see below, Parties' choice*). In the absence of any agreement, the CPC principles provide guidance to the arbitrator (even though the CPC is not strictly applicable to arbitrations). In accordance with these principles, discovery is ordered only if the court is satisfied of the necessity, relevance and expediency of the request. Discovery is not ordered as a matter of course or to satisfy a speculative enquiry.

Parties' choice

The parties can determine the rules on disclosure. See above, *Scope of disclosure*.

CONFIDENTIALITY

19. Is arbitration confidential?

There is no express or implied obligation to treat an arbitration agreement, or proceedings arising from it, as confidential. If confidentiality is required, the parties' agreement must provide for it. However, it is doubtful that this agreement would be effective or binding in most disputes between large corporate entities or governments, which must act transparently.

COURTS AND ARBITRATION

20. Will the local courts intervene to assist arbitration proceedings?

The courts can intervene to assist arbitration proceedings in three circumstances:

- Appointing arbitrators (*see Question 14, Appointment of arbitrators*).
- Determining whether to terminate the arbitrator's mandate because he is unable to perform his functions or because he fails to proceed without undue delay (*section 14(2), Act*) (*see Question 14, Removal of arbitrators*).
- Providing assistance in taking evidence (*see Question 17*).

21. What is the risk of a local court intervening to frustrate the arbitration? Can a party delay proceedings by frequent court applications?

Risk of court intervention

One of the stated objectives of the Act is "to minimise the supervisory role of courts in the arbitral process" (*Statement of Objects and Reasons*). While courts can grant anti-arbitration injunctions, there have been few instances of them doing so. One high profile example of an anti-arbitration injunction being granted concerned an Enron subsidiary, Dabhol Power Company, which brought arbitration proceedings against the Union of India for breach of the Power Purchase Agreement (PPA) entered into by the parties. The High Court of Bombay and the High Court of Delhi granted interim anti-arbitration injunctions relating to arbitrations commenced in London on the ground that the Indian courts were seized of the issue as to whether the arbitration agreement was overridden by subsequent legislation that introduced a regulator in the power sector (*2006 (199) ELT 782 (Bom) & MANU/ DE/ 0379/ 2004*).

Delaying proceedings

It is generally unlikely that a party could delay proceedings by frequent court applications.

22. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction recognise the concept of kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?

The Act follows Article 16 of the UNCITRAL Model Law incorporating the *kompetenz-kompetenz* principle (*section 16, the Act*). Therefore, the arbitral tribunal can rule on its own jurisdiction, including in relation to the existence or validity of the arbitration agreement. If an arbitral tribunal rejects an objection to its jurisdiction, it must continue with the arbitral proceedings and make an award.

There is one significant difference between the UNCITRAL Model Law and the Act. Under the UNCITRAL Model Law, an order of the arbitral tribunal accepting or rejecting any challenge to its jurisdiction can be appealed in court. However, under Indian law, an appeal to a court is only allowed if the tribunal accepts the challenge to its jurisdiction. Therefore, if the tribunal rejects a challenge, there is no appeal and the tribunal continues with the arbitral proceedings and makes its award. If a party is unsatisfied with the award, it can make an application to set aside the award.

However, the principle of *kompetenz-kompetenz* has been somewhat diluted by a Supreme Court decision in *SBP & Co v Patel Engineering (2005) 8 SCC 618*. The Supreme Court held that if an application is made to the court to appoint an arbitrator, the court may consider any objection regarding the existence or validity of the arbitration agreement.

REMEDIES

23. What interim remedies are available from the tribunal under the applicable legislation?

Security for costs

The arbitral tribunal can order security for costs that it expects to be incurred in relation to the claim or counterclaim (*section 38, Act*).

Security or other interim measures

Unless otherwise agreed by the parties, the arbitral tribunal can order a party to take any interim measure of protection, or order appropriate security in connection with an interim measure (*section 17, Act*). In practice, this provision is seen to be ineffective and is not frequently used because:

- The applicant must wait for the arbitral tribunal to be constituted (ruling out this option in urgent cases).
- There are no penalties if the order is disobeyed.
- The order cannot affect third parties.
- Any interim measure comes to an end with the making of an award (unlike a court order which can continue until enforcement).

Other

The tribunal can, among others, award interim measures such as:

- Prevention, interim custody or sale of any goods which are the subject matter of arbitration agreement.
- Securing the amount in dispute in the arbitration.
- Interim injunction or the appointment of a receiver.
- Such other interim measure as may appear to be just and convenient.

24. What final remedies are available from the tribunal under the applicable legislation?

The tribunal can award damages, specific performance, injunctions, declarations, costs and interest.

APPEALS

25. Can arbitration proceedings and awards be appealed or challenged in the local courts? What are the grounds and procedure? Can the parties effectively exclude any rights of appeal?

Rights of appeal/challenge

An appeal can be made relating to an order of the arbitral tribunal either:

- Accepting any challenge to its jurisdiction (*section 16, Act*).
- Granting or refusing to grant an interim measure of protection under section 17 (*section 37, Act*) (*see Question 23, Interim measures*).

While there is no provision for further appeal in the Act, an appeal to the Supreme Court may be allowed on a discretionary basis (this is a constitutional remedy available under Article 136 of the Constitution of India (Constitution)). However, this appeal is rarely entertained except where an issue of substantive law of public importance is involved.

In relation to domestic arbitrations, an appeal can be made against an order setting aside or refusing to set aside an arbitral award (*section 34, Act*). No further right of appeal exists, apart from a discretionary appeal to the Supreme Court under Article 136 of the Constitution.

In relation to a foreign award, only an order refusing to enforce an award can be appealed. Therefore, if the foreign award is enforced, there is no statutory right of appeal (although the discretionary appeal to the Supreme Court under Article 136 of the Constitution may still be available).

Grounds and procedure

The grounds for setting aside a domestic award are as per the Model law (Article 34). The grounds for refusing to enforce an award are as per the New York Convention.

Excluding rights of appeal

Parties cannot exclude any right of appeal and any such agreement is void.

COSTS

26. What legal fee structures can be used? Are fees fixed by law?

There are no statutory provisions or restrictions in relation to fees (either for counsel or for the arbitral tribunal), and the parties can freely make their own arrangements. Typically, an arbitrator charges between US\$1,000 to US\$2,000 for a sitting of two hours and an hourly rate of US\$500 after that. However, when the court appoints an arbitrator (*see Question 14, Appointment of arbitrators*), it can also set the arbitrator's fees.

27. Does the unsuccessful party have to pay the successful party's costs? How does the tribunal usually calculate any costs award and what factors does it consider?

Cost allocation

The general rule is that costs follow the event.

Cost calculation

Unless otherwise agreed by the parties, the costs of an arbitration are fixed by the tribunal which, among other things, also determines the amount of costs and the manner in which they must be paid (*section 31(8), Act*). Costs comprise (*section 31(8), Act*):

- Reasonable costs relating to the fees and expense of the arbitrators and witnesses.
- Legal fees and expenses.
- Any administrative fees of the institution supervising the arbitration.
- Other expenses incurred in connection with the arbitral proceedings and the arbitral award.

Factors considered

The tribunal may not award the actual cost but what according to it is reasonable. It will also look at the conduct of the party that is, as to whether it is guilty of deliberately delaying the proceedings or filing trivial applications, seeking adjournment without sufficient reason and so on.

ENFORCEMENT OF AN AWARD

Domestic awards

28. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts?

One of the objectives of the Arbitration Act is "to provide that every final arbitral award is enforced in the same manner as if it were a decree of the court" (*Statement of Objects and Reasons*). Unlike the UNCITRAL Model Law, the Act does not require any recognition or enforcement proceedings to be started by the successful party.

If an application to set aside an arbitral award (under section 34 of the Act) is rejected (or if the time for making such an objection has

expired), the award is immediately capable of execution as a court decree (*section 36, Act*). The grounds for setting aside an award are virtually the same as in Article 34 of the UNCITRAL Model Law.

An application to set aside an award must be made within three months of its receipt. This period can be extended, at the discretion of the court, by another 30 days, but no further (*section 34(3)*).

An application to set aside an award can be made in the principal civil court of the original jurisdiction that would have heard the matter if it had been a court action. Therefore, an application can be made in the court in the territory where:

- The arbitration award was made.
- The cause of action in whole or in part arose.
- The respondent resides or carries on business.

Foreign awards

29. Is your jurisdiction party to international treaties relating to recognition and enforcement of foreign arbitration awards, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?

India is party to the New York Convention. Enforceability of an award made in India in a foreign jurisdiction largely depends on the reservations, if any, made by that jurisdiction when acceding to the New York Convention.

India is also a signatory to the Geneva Convention on the Execution of Foreign Arbitral Awards 1927. However, it is not party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (ICSID Convention) or any other convention or treaty relating to enforcement of foreign arbitral awards.

30. To what extent is a foreign arbitration award enforceable in your jurisdiction?

For a foreign award to be enforceable in India, the jurisdiction where the award has been issued must be notified by the Indian government that the latter has accepted the former as a jurisdiction to which the New York Convention applies (*section 44, Act*). Currently, India has notified 47 countries plus countries which were earlier part of the USSR. Amongst those notified are:

- Australia.
- Austria.
- Belgium.
- Canada.
- China.
- France.
- Germany.
- Hong Kong.
- Japan.
- Switzerland.
- Sweden
- Singapore
- Malaysia
- UK.

- US.

To enforce a foreign award the applicant must produce to a court of first instance:

- The original award or an authenticated copy of it.
- The original arbitration agreement or a certified copy of it.
- Such evidence as may be necessary to prove that the award is a foreign award.

Enforcement of a foreign award can be refused only on the grounds specified by the Act (*section 48*), which are the grounds set by the New York Convention. If the court is satisfied that the foreign award is enforceable, that award is deemed to be a decree of the court and enforceable as such (*for appeals, see Question 25*).

The Act does not set a limitation period in relation to the enforcement of a foreign award, but under the general law of limitation, an application for enforcement must be made within three years of receiving the award (*2001 (1) RAJ 339 Bombay*).

If the court has ordered that an arbitral award be set aside, the period between the start of the arbitration and the date of the court's order is excluded from the limitation period (*section 43(4), Act*).

Length of enforcement proceedings

31. How long do enforcement proceedings in the local court take, from the date of filing the application to the date when the court makes its final order? Is there an expedited procedure?

Enforcement proceedings can (depending on the facts) be brought in any of India's 24 High Courts or over 600 District Courts. There are no special courts that deal with arbitration matters and there is no expedited procedure.

The length of enforcement proceedings is difficult to estimate as it depends on various factors including the court chosen (the courts have differing case backlogs). Another factor is the type of objections taken and their merits. Broadly, enforcement proceedings take at least six months in the court of first instance if objections are raised.

REFORM

32. Are any changes to the applicable legislation or the legal framework currently under consideration or being proposed?

According to a press report dated 17 May 2013, the Prime Minister has asked the Planning Commission of India to draft a new legislation to establish an institutional mechanism to resolve disputes in public contracts. This is specifically in relation to infrastructure disputes where foreign investment is getting hampered due to lack of proper dispute resolution mechanism.

MAIN ARBITRATION ORGANISATIONS

Delhi International Arbitration Centre, New Delhi

Main activities. Arbitration.

W www.dacdelhi.org

London Court of International Arbitration, (LCIA) India

Main activities. Arbitration and mediation.

W www.lcia-india.org

Indian Council of Arbitration

Main activities. Arbitration of commercial disputes.

W www.icaindia.co.in

The SIAC and ICC are also frequently used in India.

ONLINE RESOURCES

The Arbitration and Conciliation Act 1996

W <http://lawmin.nic.in/legislative/textofcentralacts/1996.pdf>

Description. The Arbitration and Conciliation Act, 1996 has been made available by the Ministry of Law And Justice on its website. It is an official website. The information contained is up to date.

The Indian Council of Arbitration (ICA)

W www.icaindia.co.in/htm/clouse.htm

The Indian Council of Arbitration, headquartered in New Delhi, is the leading domestic arbitral organisation. This is the official website containing the Rules (which are up to date).

Supreme Court cases

W <http://supremecourtindia.nic.in>

Delhi High Court cases

W www.delhihighcourt.nic.in

Bombay High Court cases

W www.bombayhighcourt.nic.in

Madras High Court cases

W www.hcmadras.tn.nic.in

Gujarat High Court cases

W www.gujarathighcourt.nic.in

Calcutta High Court cases

W www.calcuttahighcourt.nic.in

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