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International Arbitration 2025

22nd Edition

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India


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1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your jurisdiction?

No particular form is prescribed. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. An arbitration agreement need not necessarily use the word "*arbitration*", "*arbitral tribunal*" or "*arbitrator*". The agreement, however, must be in writing. The arbitration agreement shall be deemed to be in writing if it is contained in an exchange of letters or other means of communication that provide a record of the agreement. An arbitration agreement would also be 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.

All agreements are required to be stamped under a federal statute called the Indian Stamp Act ("the Act"). They must be transcribed on stamp paper of the prescribed value. The stamp duty for an "*agreement*" is nominal and varies from State to State. The consequences of non-stamping witnessed a see-saw judicial approach. The arbitration community was taken by surprise in 2023 when a five-judge decision of the Supreme Court held that if an arbitration agreement is not stamped (or inadequately stamped), the agreement has no legal existence. The Supreme Court *suo moto* quickly intervened and constituted a larger bench of seven judges (*In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*). The court straightened out the law, holding that non-stamping, or insufficient stamping of an arbitration agreement, is a curable defect and does not render an agreement void or unenforceable. The agreement would be admissible in evidence upon payment of the deficient stamp duty.

1.2 What other elements ought to be incorporated in an arbitration agreement?

From an Indian point of view, the most significant element would be the seat of arbitration, as that would determine the court that would have jurisdiction in relation thereto. India being a large jurisdiction, not all courts are equally steeped in commercial jurisprudence and it is advisable to specify Delhi or Mumbai as the seat. India-seated arbitrations are governed by Part I of the Act, while offshore arbitrations are governed by Part II thereof. While Part I contains a comprehensive scheme for the conduct of arbitration (based on the Model Law), Part II is essentially confined to the enforcement of foreign awards (on the basis of the New York Convention ("NYC")).

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

A judicial authority is "*statutorily mandated*" to not entertain an action and refer the same to arbitration, unless it finds *prima facie* that no valid arbitration agreement exists (Section 8). Section 5 supplements this and provides, through a *non-obstante* clause, that in matters governed by the Act, no judicial authority shall interfere except where so provided for. This stands further affirmed by the 2015 amendment nullifying certain judgments that had created inroads into Section 8.

However, Section 8 applies only to arbitrations where the seat is in India. Agreements for offshore arbitrations are governed by Section 45 of the Act, which is worded in line with the Model Law, i.e., a judicial authority, when seized of any matter where there is an arbitration agreement, shall refer the parties to arbitration – "*unless it finds that the said agreement is null and void, inoperative or incapable of being performed*". Thus, the Act has wider room for court intervention (to the extent permitted by the Model Law) in relation to foreign arbitrations.

An issue arose in *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.* (2005) as to whether a ruling by court (in relation to offshore arbitrations) on the validity or otherwise of an arbitration agreement is to be assessed on a *prima facie* basis or requires a final determination. If it were to be a final determination, it would involve a full-dress trial consuming years of judicial proceedings, which would frustrate the arbitration agreement. Keeping this in mind, the Supreme Court held that a challenge to the arbitration agreement under Section 45 (on the ground that it is "*null and void, inoperative or incapable of being performed*") is to be determined on a *prima facie* basis.

A case of seminal importance with regard to non-signatories is *Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc.* (2013). Here, the court was faced with a situation where the 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 an International Chamber of Commerce ("ICC") clause seated in London; some with no arbitration clause; and one agreement with an American Arbitration Association ("AAA") arbitration clause with Pennsylvania (USA) as its seat. The Supreme Court came out with a strong pro-arbitration leaning, stating that the legislative intent is in favour of arbitration and the Act "*would have*

to be construed liberally to achieve that object". The court held that non-signatory parties could also be subjected to arbitration provided that the transactions were within the group of companies and there was a clear intention of the parties to also bind non-signatories. It held that subjecting non-signatories to arbitration would be in exceptional cases and 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.

The issue of non-signatories was later referred to a larger five-judge bench in *Cox & Kings Ltd. v. Sap India Pvt. Ltd.* "*to expound on the intricacies of the Group of Companies doctrine*" and formalise the scope, ambit and validity of the *Chloro Controls* judgment. The Supreme Court held that the Act does not prohibit the joinder of non-signatories, provided there is a defined legal relationship between the non-signatory and the parties to the arbitration agreement, and that the non-signatory has consented to be bound by the arbitration agreement, either expressly or impliedly. The court specified certain factors that must be satisfied before binding a non-signatory to an arbitration agreement, including: mutual intent of the parties; relationship of the non-signatory to the signatory; commonality of the subject-matter; composite nature of the transaction; and performance of the contract.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in your jurisdiction?

The Arbitration and Conciliation Act, 1996 (last amended in 2021) governs the enforcement of arbitration proceedings relating to domestic and international commercial arbitration seated in India, as well as enforcement of foreign awards.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

India has a composite legislation governing both domestic and international arbitration. The Act has two main parts. Part I deals with any arbitration (domestic or international), so long as the seat of arbitration is in India. Part II deals mostly with enforcement of foreign awards.

The Supreme Court of India in *TDM Infrastructure Private Limited v. UE Development India Private Limited* (2008) held that if the parties are incorporated in India, then (even if the control and management is from outside of India) the arbitration would be "*domestic*" and not "*international*". Two Indian parties can, however, select a foreign seat.

See also question 2.3 below.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

The differences between "*domestic*" and "*international*" arbitration (conducted in India) are discussed below.

The first difference is that if there is a failure of the parties' envisaged mechanism for the constitution of the arbitral tribunal, the appointment shall be made: in the case of a domestic arbitration, by the High Court; and in the case of international arbitration, by the Supreme Court of India (see also question 5.2).

The second difference is in relation to the governing law. In international commercial arbitration, the arbitral tribunal shall decide on the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute and, failing any such designation, the rules of law the tribunal considers appropriate given all circumstances. In domestic arbitration (arbitration between Indian parties), however, the tribunal can only apply the substantive law for the time being in force in India.

The third difference is that in domestic arbitrations, an additional ground for setting aside the award on "*patent illegality*" was inserted by the 2015 amendment to the Act. This ground is not available in international arbitrations seated in India.

The fourth difference is that the time limit of one year from completion of pleadings prescribed under Section 29A for making an award does not apply to international commercial arbitrations.

See also question 2.2 above.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in your jurisdiction?

See questions 2.2 and 2.3.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your jurisdiction? What is the general approach used in determining whether or not a dispute is "arbitrable"?

The Act states that the relationship between the parties need not be contractual. Hence, disputes in tort (relating to the contract) can also be referred to arbitration. "*Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals.*" Another (court-sanctioned) approach to determine arbitrability is to determine whether the parties can make a settlement regarding their dispute a subject matter of a private contract. Examples of non-arbitrable disputes are: disputes relating to a criminal offence; matrimonial disputes; child custody; guardianship; insolvency; winding up; and testamentary matters. Proceedings under the Consumer Protection Act are special remedy proceedings and recourse to arbitration would normally be barred.

Whether an allegation of "*serious fraud*" is arbitrable has been subject to a see-saw approach, leading to some confusion. The law was recently settled in *N.N. Global Mercantile Pvt. Ltd. v. M/s. Indo Unique Flame Ltd. & Others* (2021), where a three-judge bench held that: "*The civil aspect of fraud is considered to be arbitrable … the only exception being … that the arbitration agreement itself is vitiated by fraud … or the fraud goes to the validity of the underlying contract, and impeaches the arbitration clause itself.*"

The Supreme Court in *Vidya Drolia v. Durga Trading Corpn.* (2021) propounded a four-fold test for determining when the subject matter of a dispute is not arbitrable. It is not arbitrable when cause of action and subject matter of the dispute: (1) relate to actions *in rem* (that do not pertain to subordinate

rights *in personam* that arise from rights *in rem*); (2) affect third-party rights (where mutual adjudication would not be appropriate and enforceable); (3) relate to inalienable sovereign and public interest functions of the State; and (4) are expressly or by necessary implication non-arbitrable as per mandatory statute(s).

High Court decisions pending confirmation by the Supreme Court on the issue of arbitrability include judgments holding copyright disputes as arbitrable, while shareholders' "*oppression and mismanagement*" disputes are not (again, on the ground of a specific statutory remedy being provided for).

3.2 Is an arbitral tribunal permitted to rule on the question of its own jurisdiction?

Yes, it is.

3.3 What is the approach of the national courts in your jurisdiction towards a party who commences court proceedings in apparent breach of an arbitration agreement?

See question 1.3.

3.4 Under what circumstances can a national court address the issue of the jurisdiction and competence of an arbitral tribunal? What is the standard of review in respect of a tribunal's decision as to its own jurisdiction?

The national courts address the issue of jurisdiction only once the award is rendered or the tribunal issues an order accepting that it does not have jurisdiction. The review will be on facts as well as law.

3.5 Under what, if any, circumstances does the national law of your jurisdiction allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

See question 1.3 above.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in your jurisdiction and what is the typical length of such periods? Do the national courts of your jurisdiction consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

The Limitation Act, 1963 applies to arbitrations in the same way as it does to proceedings in court. Arbitration proceedings are deemed to have commenced (unless the parties have agreed otherwise) on the date on which a request for the dispute to be referred to arbitration is received by the respondent.

Once time has started to run, no subsequent inability to bring the action stops the time from running. The mere issuance of letters or reminders by the claimant does not extend the limitation period. However, well-known exemptions apply if:

- Good-faith proceedings were started in a court that lacked jurisdiction.
- The case is based on subsequently discovered fraud or mistake.
- Any document necessary to establish the claimant's right has been fraudulently concealed.
- There is written acknowledgment of liability (as defined under Section 18 of the Limitation Act).
- There is a part payment of the debt.

3.7 What is the effect in your jurisdiction of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

The Insolvency and Bankruptcy Code, 2016 ("Code") has established an Insolvency and Bankruptcy Board of India ("Board").

Where a liquidation order has been made or a provisional liquidator or an official liquidator appointed, no suit or other legal proceeding shall be commenced or proceeded with or against the corporate debtor (subject to prior approval on behalf of the company by the adjudicating authority).

However, the Delhi High Court in *Power Grid Corporation of India Ltd. v. Jyoti Structures* (2017) held that the Code only prohibits initiation of debt recovery proceedings against a corporate debtor, and other proceedings that may benefit or enhance the financial position of the debtor may still be initiated during the moratorium period. The Supreme Court has held that award challenge proceedings would be covered by the moratorium.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

In case of domestic arbitrations, Indian parties can only apply Indian law to the substance of the dispute. In other cases, the parties may either make an express choice of law or the proper law may be inferred from the terms of the contract and surrounding circumstances.

The proper law of the arbitration agreement is normally the same as the proper law of the contract. There is a rebuttable presumption that the proper law of the arbitration agreement is that of the seat of the arbitration.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

The court may, invoking the principle of comity of nations, apply the mandatory laws of another jurisdiction if the contract is in breach of that law.

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

The proper law of the arbitration (i.e., the substantive law governing arbitration) determines the formation and legality of arbitration agreements. (See question 4.1.)

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

An arbitrator need not have any special qualification or training. The courts would respect party autonomy. However, the principles of fairness and impartiality can prevail over party autonomy, as seen in *Perkins Eastman Architects DPC & Another v. HSCC (India) Limited* (2019), where the Supreme Court held that a sole arbitrator cannot be appointed unilaterally by one party. Equally, requesting a party to select an arbitrator from a panel of five names "*tantamounts to unilateral appointment of arbitrator*", which may create doubt about independence or impartiality of the arbitrator.

See also question 5.4.

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

Yes. The default provisions are triggered if:

- The parties cannot agree on the appointment of an arbitrator within 30 days of receipt of 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 is to be heard by one arbitrator and the parties fail to agree on that arbitrator within 30 days of receipt of a request to agree on the appointment.
- The parties' mechanism for the appointment of an arbitrator fails.

If the default is in relation to an international commercial arbitration, the appointment will be made by the Supreme Court of India. In domestic arbitrations, the appointment shall be made by the High Court of the seat of arbitration.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

See question 5.2.

5.4 What are the requirements (if any) imposed by law or issued by arbitration institutions within your jurisdiction as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators?

Like Article 12 of the Model Law and Article 10 of the UNCITRAL Rules 1976, the Act also requires the arbitrators (including party-appointed arbitrators) to be independent and impartial and make full disclosure in writing of any circumstance likely to give rise to justifiable doubts on the same.

Schedule V to the Act lists the kind of relations between an arbitrator and a party/advocate/subject matter of the dispute that give rise to justifiable doubts regarding an arbitrator's independence.

Schedule VII to the Act lists the kind of relations that would, notwithstanding any prior agreement between the parties, disentitle a person from acting as an arbitrator – unless, post the dispute arising, parties expressly waive such conflict.

Schedules V and VII can be said to be along the lines of the IBA Guidelines on Conflicts of Interest.

Subject to any agreement between the parties, any challenge must be made within 15 days of the party becoming aware of the circumstances leading to the challenge. In the absence of any agreement, the arbitral tribunal shall decide on the challenge. The court has no role at that stage and if a challenge is rejected, the arbitral tribunal shall continue with the proceedings and render its award. It would be open to the party challenging the arbitrator to reagitate its challenge as a ground for setting aside the award.

Generally, Indian courts follow the English common law of apparent bias.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in your jurisdiction? If so, do those laws or rules apply to all arbitral proceedings sited in your jurisdiction?

An arbitrator is the master of its own procedure and, subject to the parties' agreement, may conduct the proceedings "*in the manner it considers appropriate*" (Section 19). This includes "*the power to determine the admissibility, relevance, materiality and weight of any evidence*". The only restraint is that it shall treat the parties with equality and each party shall be given a full opportunity to present its case, which includes sufficient advance notice of any hearing or meeting. Neither the Code of Civil Procedure ("CPC") nor the Indian Evidence Act ("Evidence Act") applies to arbitrations. The arbitral tribunal shall hold an oral hearing if a party so requests (unless the parties have agreed that no oral hearing shall be held).

The arbitrators have the power to proceed *ex parte,* where the respondent, without sufficient cause, fails to communicate his statement of defence, appear for an oral hearing or produce evidence. However, such failure shall not be treated as an admission of the allegations and the tribunal shall determine the matter on the evidence before it. If the claimant fails to communicate his statement of claim, the tribunal shall be entitled to terminate the proceedings.

6.2 In arbitration proceedings conducted in your jurisdiction, are there any particular procedural steps that are required by law?

See question 6.1.

6.3 Are there any particular rules that govern the conduct of counsel from your jurisdiction in arbitral proceedings sited in your jurisdiction? If so: (i) do those same rules also govern the conduct of counsel from your jurisdiction in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than your jurisdiction in arbitral proceedings sited in your jurisdiction?

The conduct of Indian-registered advocates is governed by the Bar Council of India Rules and the Advocates Act. These also govern the conduct of Indian advocates in arbitral proceedings seated elsewhere.

6.4 What powers and duties does the national law of your jurisdiction impose upon arbitrators?

Apart from the provisions envisaged under the Act, arbitrators are bound by the fundamental principles of natural justice and public policy in conducting arbitration proceedings.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in your jurisdiction and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in your jurisdiction?

Foreign lawyers have no right of audience before Indian courts, save with special permission. However, they can appear and represent clients in arbitration proceedings on a "*fly-in, fly-out basis*".

Under the Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022 regime, foreign lawyers and law firms are allowed to set up offices in India and practise international arbitration. Once registered, foreign lawyers/law firms can represent Indian clients in foreign-seated arbitrations (irrespective of whether Indian or foreign law is involved) or in an India-seated arbitration under certain circumstances. These offices can represent Indian clients in India-seated arbitrations if non-Indian law is involved and the Indian client has an address in a foreign country. (There are no restrictions in partnering such matters with Indian lawyers where Indian law is involved.)

6.6 To what extent are there laws or rules in your jurisdiction providing for arbitrator immunity?

Section 42-B of the Act provides that no suit or other legal proceeding shall lie against an arbitrator for anything done in good faith or intended to be done under the Act or law made thereunder. This provision came into effect on 30 August 2019.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

No, the courts have no such jurisdiction. In relation to both India-seated and foreign-seated arbitrations, parties can, with the approval of the arbitral tribunal, seek the court's assistance in taking evidence. The court may issue summons to witnesses or order that evidence be provided directly to the arbitral tribunal.

7 Preliminary Relief and Interim Measures

7.1 Is an arbitral tribunal in your jurisdiction permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitral tribunal seek the assistance of a court to do so?

This is provided for under Section 17 of the Act. Prior to the 2015 amendment, interim orders of the tribunal were not enforceable without recourse to fresh court proceedings. However, now the tribunal has the same power as available to a court for grant of interim relief, and an interim order by the tribunal is enforceable in the same manner as if it were a court order.

The Supreme Court in *Amazon.com NV Investment Holdings LLC v. Future Retail Limited & Ors.* (2022) liberally interpreted the provisions of the Act and Section 17 thereof to conclude that interim orders passed by an emergency arbitrator under the rules of an arbitral institution would fall within the purview of Section 17 and be enforceable in the same manner as a court order.

However, unlike an order passed by the tribunal, an order passed by an emergency arbitrator is not an appealable order to the court. (Recourse against such orders would lie with the arbitral tribunal, under the applicable institute rules.)

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

Section 9 of the Act enables a party to approach a competent court for any interim relief before or during the arbitral proceedings, or even after the award is pronounced, but before it is enforced.

Following the 2015 amendment, the court is restrained from entertaining an application for interim relief once the tribunal stands constituted, except where recourse to the tribunal is inefficacious.

The court's jurisdiction can be invoked even in relation to foreign-seated arbitrations if a party or a relevant asset is situated in India, or the cause of action has arisen in India. However, parties can contract out of this provision if they so wish.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

Usually a three-fold approach is followed: (i) a *prima facie* case in favour of the applicant; (ii) irreparable hardship, i.e., which cannot be compensated in terms of money; and (iii) balance of convenience.

Indian courts are somewhat liberal in granting interim relief and rarely hold an applicant to terms such as security or costs.

7.4 Under what circumstances will a national court of your jurisdiction issue an anti-suit injunction in aid of an arbitration?

Interlocutory relief is granted on the principles highlighted in question 7.3 above. The same principles would apply to an anti-suit injunction. The Supreme Court in *Modi Entertainment Network v. W.S.G. Cricket Pte Ltd.* (2003) crystalised these principles. The court must be satisfied that the party against whom the injunction is sought is amenable to the personal jurisdiction of the court. The court will also take into account the principles of comity of courts.

7.5 Does the law of your jurisdiction allow for the national court and/or arbitral tribunal to order security for costs?

The arbitral tribunal can order security for costs (by way of deposit) that it expects to be incurred in relation to the claim or counterclaim (Section 38 of the Act). In practice, however, the provision is hardly ever invoked.

7.6 What is the approach of national courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in your jurisdiction and in other jurisdictions?

The tribunal has the same powers as available to a court under Section 9 of the Act, and so interim orders passed by an arbitral tribunal are enforceable in the same manner as if they were an order of the court.

Such orders are, however, appealable to the designated court.

There is no parallel provision for enforcement of interim measures ordered by a foreign-seated tribunal.

As for emergency arbitrators, please see question 7.1.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in your jurisdiction?

Section 19 of the Act states that the arbitral tribunal shall not be bound by the provisions of the Evidence Act (i.e., the Bharatiya Sakshya Adhiniyam, 2023). However, decided cases have held that provisions of the Act, which are founded on fundamental principles of justice and fair play, can be applied/adopted.

8.2 What powers does an arbitral tribunal have to order disclosure/discovery and to require the attendance of witnesses?

Section 27 of the Act provides that the arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the court for assistance in taking evidence, including any disclosure, discovery or attendance of witnesses. Hence (unless the parties voluntarily comply), disclosure/discovery/attendance of witnesses can be ordered through the court.

Indian courts do not encourage wide requests for discovery. A request for discovery must satisfy the test of relevance, materiality and proportionality.

8.3 Under what circumstances, if any, can a national court assist arbitral proceedings by ordering disclosure/discovery or requiring the attendance of witnesses?

See question 8.2 above.

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal and is cross-examination allowed?

The Indian Oaths Act, 1969 extends to persons who may be authorised by consent of the parties to receive evidence. This also encompasses arbitral proceedings. Section 8 of the Oaths Act states that every person giving evidence before any person authorised to administer an oath "*shall be bound to state the truth on such subject*". Thus, witnesses appearing before an arbitral tribunal can be duly sworn by the tribunal and be required to state the truth on oath, and, upon failure to do so, are liable for penal offences. However, a mere irregularity in the administration of an oath or affirmation does not invalidate the deposition. Witnesses are generally required to give evidence by sworn affidavits (witness statements).

8.5 What is the scope of the privilege rules under the law of your jurisdiction? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

The arbitral proceedings or record is confidential but not privileged. Indian law recognises the following as privileged: (i) lawyer-client communications; (ii) unpublished official records relating to affairs of the State if detrimental to public interest; (iii) communications between husband and wife (during or after the marriage is dissolved); and (iv) communications made to a public officer in official confidence when he considers that disclosure would be detrimental to public interest. All of the above are capable of waiver by the party affected.

There are some exceptions to the lawyer-client privilege rule. There is no privilege if the communication is made in furtherance of an illegal purpose or if the attorney observes that some crime or fraud has occurred after commencement of his employment.

Privilege cannot be extended to in-house counsel, as a lawyer is required to suspend his certificate of practice once employed.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of your jurisdiction that the award contains reasons or that the arbitrators sign every page?

An arbitral award must be stamped under the provisions of the Act. It needs to be signed by the arbitrators (or a majority of them) and state the date and place of arbitration. It shall state the reasons upon which it is based, unless the parties have agreed otherwise (Section 31). A signed copy is required to be delivered to each party.

9.2 What powers (if any) do arbitral tribunals have to clarify, correct or amend an arbitral award?

The arbitral tribunal's powers to clarify, correct or amend an arbitral award are limited. The tribunal may, on its own initiative or on application of a party, correct any computation, clerical, typographical or any other errors of a similar nature occurring in the award. A time limit of 30 days is prescribed for making the application.

Parties may by agreement request that the tribunal give an interpretation of a specific point or part of the award, or request for an additional award as to claims presented in the proceedings but omitted from the award. The time limit for such an application is also 30 days.

When a court is seized of an application to set aside an award, it may adjourn the proceedings for a specified period to give the arbitral tribunal an opportunity to take such action as may eliminate the ground for setting aside the arbitral award.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in your jurisdiction?

A challenge to an arbitration award would lie under Section 34 of the Act, corresponding to Article 34 of the Model Law. To paraphrase, an award can be set aside if:

(a) the party making the application was under incapacity;
(b) the arbitration agreement was not valid under the law agreed to by the parties (or the applicable law);
(c) the party making the application was not given proper notice of the appointment of the arbitrator or of the

arbitral proceedings, or was otherwise unable to present his case;

(d) the award deals with a dispute not contemplated by or falling within the terms of submissions to arbitration, or it contains decisions beyond the scope of the submissions to arbitration;

(e) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties;

(f) the subject matter of the dispute was not capable of settlement by arbitration; or

(g) the arbitral award is in conflict with the public policy of India.

The 2015 amendment has clarified that an award is said to be 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 was in violation of Sections 75 and 81 (pertaining to breach of confidentiality of conciliation or settlement proceedings);

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

The 2015 amendment has clarified that the ground of "*patent illegality*" is not available in relation to an international commercial arbitration award (seated in India). It is available for arbitration between domestic parties. However, an award can be set aside for being patently illegal only if the illegality is apparent on the face of the award. Moreover, a challenge on the ground of public policy and whether an award contravenes the "*fundamental policy of Indian Law*" will not entail a review on the merits of the dispute. Lastly, an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

Prior to the 2015 amendment, the mere filing of a Section 34 application to set aside the award would result in an automatic stay of enforcement of an award. An application is now required to be made to stay the enforcement of the award during the pendency of the set aside proceedings, which normally entails securitising or deposit of the awarded sums or part thereof in court.

The Act was further amended in 2019 and 2021. The 2019 amendment added a rider stating that an application for setting aside the award must be on the basis of the record of the tribunal. The 2021 amendment, provided that where the court is satisfied that a *prima facie* case has been made, and either the arbitration agreement or the making of the award was induced by fraud or corruption, the court shall stay the award unconditionally pending disposal of the challenge to the award under Section 34 of the Act.

Recently, in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* (2025), the Supreme Court clarified that the court has power to modify an arbitral award, but limited to the following circumstances:

- when the award is severable, by separating the "invalid" portion from the "valid" portion;
- correcting any clerical, computational, or typographical errors that are apparent on the face of the record; and
- modifying the post-award interest in certain circumstances.

10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

Judicial review cannot be excluded as it would be contrary to the public policy of India, and it would also be considered a restraint on legal proceedings (which is prohibited by law).

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

No, the courts cannot assume a new jurisdiction (that it otherwise does not have) on the basis of the parties' agreement. The court reinforced this principle in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* (2025), wherein it held that judicial interference is strictly limited to the grounds available under Section 34.

10.4 What is the procedure for appealing an arbitral award in your jurisdiction?

An application for setting aside a domestic award can be filed under Section 34 of the Act. Such application must be made within three months from the date of receiving the award. The court may condone a delay of 30 days, but not beyond. The Supreme Court has clarified that the period of limitation for challenging the award under Section 34 commences from the date on which the party making the application has "*received*" a signed copy of the arbitral award. There is no provision to set aside a foreign award (the only provision being to enforce or refuse to enforce the same on the NYC grounds).

11 Enforcement of an Award

11.1 Has your jurisdiction signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Yes. India is amongst the original signatories to the NYC. India has made "*reciprocity*" and "*commercial*" reservations under Article I of the NYC. As a result, the Central Government of India must further notify the foreign territory as a territory to which the NYC applies in order for the foreign award to be enforced. Most major jurisdictions stand notified.

11.2 Has your jurisdiction signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

No, India has not signed or ratified any such Convention.

11.3 What is the approach of the national courts in your jurisdiction towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

The general approach is to support the arbitral award.

An India-seated award does not need to undergo enforcement proceedings. Once a challenge to the award is rejected, it is immediately enforceable as a decree of the court. A foreign award, on the other hand, would need to undergo enforcement proceedings. Enforcement may be refused on the NYC grounds.

The Supreme Court in *Sundaram Finance Ltd. v. Abdul Samad* (2018) held that enforcement of an award can be sought in any

court of the country where such a decree can be executed, i.e., where the defendant resides or has assets.

See also question 11.5.

11.4 What is the effect of an arbitration award in terms of *res judicata* in your jurisdiction? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

Subject to any challenge to the arbitral award, the same is enforceable as a decree and, accordingly, the principles of *res judicata* would apply.

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

Public policy is narrowly defined (both in relation to domestic awards and enforcement of foreign awards). Briefly, an award will be in conflict with the public policy of India if:

- the making of the award was induced by fraud or corruption;
- it is in contravention with the fundamental policy and Indian law; or
- it is in conflict with the most basic notions of morality or justice.

The test as to whether there is a contravention with the fundamental policy of the Indian law shall not entail a review on the merits of the dispute.

The Supreme Court in *Ssangyong* (2019) clarified the scope of "*fundamental policy of Indian law*" and "*most basic notions of morality or justice*":

- "*fundamental policy of Indian law*" – contravention of a law protecting national interest, or disregarding orders of superior courts in India or principles of natural justice, such as *audi alteram partem*; and
- "*most basic notions of morality or justice*" – an award would be against justice and morality if it shocks the conscience of the court; morality, however, would be determined on the basis of "*prevailing mores of the day*".

12 Confidentiality

12.1 Are arbitral proceedings sited in your jurisdiction confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

The 2019 Amendment introduced Section 42A, which provides that notwithstanding anything contained in any other law, the arbitrator, the arbitral institution and the parties to an arbitration agreement must maintain confidentiality as regards all arbitral proceedings. The only exception carved out is where disclosure of the award is necessary for enforcement procedures. The Section is too widely worded. The consequences of violation of the obligation have also not been spelt out. It remains to be seen how the Section is interpreted and enforced.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

See question 12.1.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

Arbitrators can grant declaratory relief and order specific performance. Damages can only be compensatory in nature. Liquidated damages must also fulfil the test of reasonableness. Punitive damages are not permitted.

13.2 What, if any, interest is available, and how is the rate of interest determined?

Subject to the parties' agreement, the arbitral tribunal may award interest as it deems reasonable. Prior to the 2015 amendment, the default rate of post-*pendente lite* interest was 18%. However, now, unless otherwise directed by the tribunal, the award shall carry interest at 2% higher than the current rate of bank interest (prevalent on the date of award) from the date of the award until the date of payment. (Section 31(7)(b) of the Act.)

In *Hyder Consulting (UK) Limited v. Governor, State of Orissa through Chief Engineer* (2015), the Supreme Court held that post-award interest can be granted on a compound basis. If the rate of interest awarded is not in consonance with the prevailing economic conditions or found unreasonable, the enforcing court can reduce the same. (*Vedanta v. Shenzen Shandong Nuclear Power Construction Co.* (2018).)

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

Yes. Reasonable legal and administrative costs and out of pocket expenses can be awarded.

Normally, the tribunal will follow the general rule that costs follow the event. Any departure from this rule requires reasons in writing.

Factors to be considered are:

- the conduct of the parties;
- whether a party has succeeded partly in the case;
- whether the party had made a frivolous counterclaim leading to a delay in the disposal of the arbitral proceedings; and
- whether any reasonable offer to settle the dispute was made.

The court or tribunal can order that a party shall pay:

- a proportion of another party's costs;
- a stated amount in respect of another party's costs;
- costs from or until a certain date only;
- costs incurred before proceedings began;
- costs relating to particular steps taken in the proceedings;
- costs relating only to a distinct part of the proceeding; or
- interest on costs from or until a certain date.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

A domestic award is required to be stamped. The stamp duty may be fixed or depend on the amount involved in the award, and varies from State to State. An award relating to immovable

property must be registered under the Registration Act, 1908 within four months of its date. Registration fees also vary from State to State and are *ad valorem*.

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of your jurisdiction? Are contingency fees legal under the law of your jurisdiction? Are there any "professional" funders active in the market, either for litigation or arbitration?

There is no bar to third-party funding in India. However, the Bar Council of India Rules prohibits lawyers from charging contingency fees or any fees dependent on the outcome of a matter.

The Supreme Court in *Bar Council of India v. A.K. Balaji* (2018) clarified that there is no restriction on third parties (non-lawyers) funding the litigation and getting repaid after the outcome of the litigation. However, funding of litigation by advocates on behalf of their clients is not permissible.

Professional funders are not yet active, largely due to the nascent stage of the market and grey areas on permissible boundaries.

14 Investor-State Arbitrations

14.1 Has your jurisdiction signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?

No, it has not.

14.2 How many Bilateral Investment Treaties ("BITs") or other multi-party investment treaties (such as the Energy Charter Treaty) is your jurisdiction party to?

India had BITs with 83 countries. However, of late there has been a fundamental shift in its policy. In 2015, India declared a new Model BIT as a template (available at https://dea.gov.in/sites/default/files/ModelBIT_Annex_0.pdf) for future treaties. Accordingly, from 2016 onwards 77 BITs stand terminated (due to efflux of time or otherwise). India signed new BITs with UAE and Uzbekistan in 2024. BITs with the UK, Saudi Arabia, Qatar and EU are in the pipeline. Further, based on its 2016 Model BIT, India has signed or agreed upon "*Joint Interpretative Statements*" with four countries to clarify contentious issues. Attempts are underway to sign similar statements with other countries. (See also http://dea.gov.in/bipa)

India is not a party to the Energy Charter Treaty.

14.3 Does your jurisdiction have any noteworthy language that it uses in its investment treaties (for example, in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

The Indian Model BIT has done away with the "*most favoured nation*" clause. Rather, it has introduced a provision that a breach of a separate international agreement would not constitute the breach of the standard of treatment that India is obligated to provide to its investors.

Further, the Model BIT includes a clause for "*exhaustion of local remedies*". Broadly stated, the investor must first diligently pursue all judicial or domestic legal remedies for a period of five years before submitting a notice of dispute for initiation of arbitration against India. In the India-UAE BIT signed in 2024, the exhaustion period has been reduced to three years.

14.4 What is the approach of the national courts in your jurisdiction towards the defence of state immunity regarding jurisdiction and execution?

The doctrine of sovereign immunity has had a bumpy ride in India, chiefly due to a 1965 decision of the Supreme Court which gave it recognition (*Kasturi lal Ralia Ram Jain v. State of Uttar Pradesh*). The case dealt with an act of negligence and subsequent misappropriation committed by police officers relating to property seized in exercise of their statutory powers. The Supreme Court held that if a tortious act is committed by a public servant in discharge of statutory functions based on a delegation of the sovereign powers of the State, then the State is not vicariously liable. It invoked the maxim "*the King can do no wrong*", thereby embracing an absolute view of sovereign immunity. However, the doctrine has not been applied since, and courts have continuously held the State liable in a variety of circumstances. The doctrine is for all purposes dead where the State is involved in commercial or private undertakings.

15 General

15.1 Are there noteworthy trends or current issues affecting the use of arbitration in your jurisdiction (such as pending or proposed legislation)? Are there any trends regarding the types of dispute commonly being referred to arbitration?

The Arbitration Act underwent amendments in 2015, 2019 and 2021. The dust has not settled, and another amendment is in the pipeline. The draft bill, 2024 proposes several significant changes to India's arbitration landscape. Notably, it introduces the concept of an appellate arbitral tribunal to hear a challenge to an award. The bill empowers arbitral institutes to constitute appellate tribunals. The proposal has met with criticism as it is thin on details and poorly conceived.

15.2 What, if any, recent steps have institutions in your jurisdiction taken to address current issues in arbitration (such as time and costs)?

The leading arbitral Institutes in India are: the Delhi International Arbitration Centre ("DIAC"), backed by the High Court of Delhi; the Indian Council of Arbitration ("ICA"), backed by the Federation of Indian Chamber of Commerce and Industry; and the Mumbai Centre for International Arbitration ("MCIA"), backed by the government of Maharashtra. All three have been proactive in providing for summary procedures and time bound disposal of arbitrations, and are efficient in terms of time and costs.

15.3 What is the approach of the national courts in your jurisdiction towards the conduct of remote or virtual arbitration hearings as an effective substitute to in-person arbitration hearings? How (if at all) has that approach evolved since the onset of the COVID-19 pandemic?

The national courts have recognised the difficulties faced by

litigants due to the COVID pandemic. The Supreme Court *suo moto* extended the period of limitation under all ongoing proceedings as well as for the filing of fresh proceedings, thus abating the statutory timelines imposed under the Limitation Act. The extension of the limitation order has since lapsed (with effect from 28 February 2022). On 6 April 2020, in the matter titled *Re: Guidelines For Court Functioning Through Video Conferencing During COVID-19 Pandemic*, *Suo Moto*, the Supreme Court directed that all national courts should use modern technology to ensure smooth functioning of the judiciary through the use of video-conferencing technologies and e-filing. The courts have since resumed physical hearings, with an option for hybrid hearings.

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