INTERNATIONAL ARBITRATION IN INDIA

REPORT ON STEPS TO MAKE INDIA THE HUB FOR INTERNATIONAL ARBITRATION

(Alongwith suggested amendments to the Arbitration & Conciliation Act, 1996)

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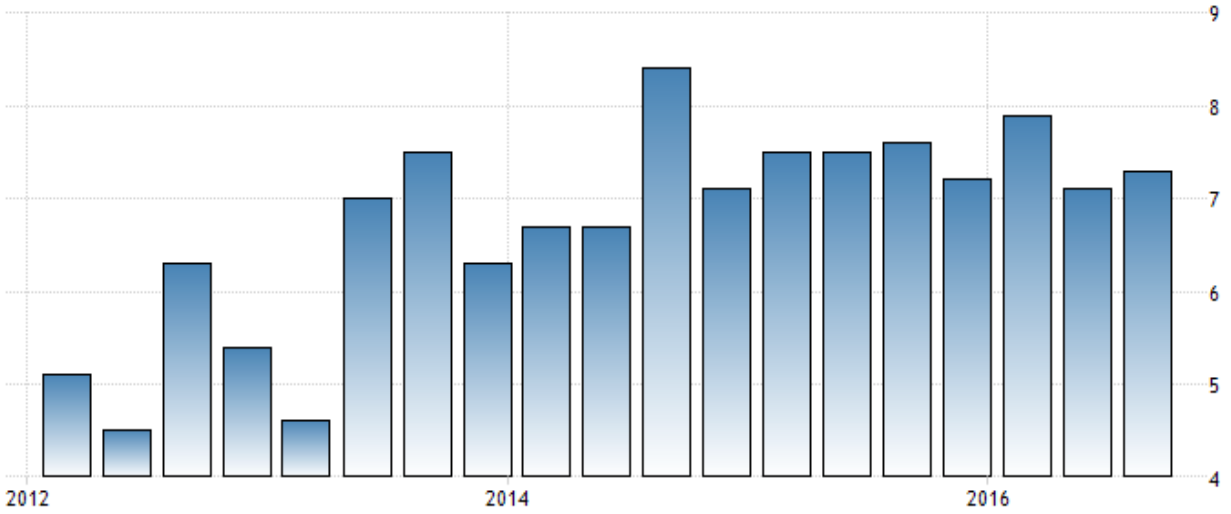
NOTE ON THE NEED AND BENEFITS OF LIBERALIZATION OF THE ARBITRATION SECTOR

Over the past couple of years, India has registered rapid economic growth, with the GDP growing 7.6% in the last fiscal year. The country's economic profile has also witnessed a dramatic shift over a long period from rural –based agricultural production to urban economic activities, and from low-value manufacturing to high-value services. Indeed, the economy is on track to maintain its current growth rate for the rest of this year too. Though economic activity is buoyant, the country still has a long way to go. The Modi government must capitalize on the current economic momentum and use it to accelerate its reform agenda.



One way to bolster economic development is through the establishment of a robust indigenous alternative dispute resolution (ADR) regime through the liberalization of the arbitration sector in India. The entry of foreign lawyers in this field will encourage economic growth by catalyzing investments, fostering the growth of the Indian legal regime by raising standards and increasing employment opportunities and granting businesses the access they need to global legal services. The move will also help India fulfill its obligations under the General Agreement on Trade in Services, of which it is a member.

In today's interconnected global economy, efforts to liberalize legal policies will help drive the expansion of world trade and help countries to integrate into an increasingly globalized production system, rather than being left on the margins of world trade. Commerce in a country thrives with the support of a legal framework that provides for the swift resolution of commercial disputes. Experts have stated that one of the key ingredients in any recipe for successful international trade and investment is the legal security of commercial transactions. Stakeholders across the spectrum of international trade and business are demanding an open, responsive and receptive dispensation

mechanism for legal services in India. The growth of international services has become increasingly relevant to the development of the Indian legal sector and the national economy.

While arbitration is firmly established in countries or territories with highly developed and effective legal systems and may co-exist happily with litigation and other forms of dispute resolution, litigation before local courts in developing countries like India does not always provide a sufficient assurance of legal security for investors, whether they are local or foreign. Investors may face a number of issues such as unfamiliarity with local procedures, corruption in the judiciary, risk of partiality, and a threat of delays and appeals.

If India wishes to be an economic heavyweight in the global arena, it must have a robust framework in place to ensure the growth of international arbitration within its borders. As the global economic power shifts towards India, liberalization of the legal services sector is essential for attracting Foreign Direct Investment (FDI) and promoting the growth of the knowledge economy. The expansion of borderless markets and cross-border trade has changed the scope and character of legal services to an international scale. Institutional connectivity, of which services liberalization is a key driver, is necessary to facilitate any successful development and execution of transactions by the private sector.

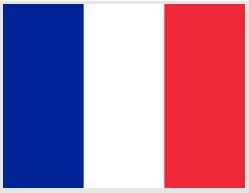
The entry of foreign players will enable indigenous arbitration institutions to offer better quality services, give investors a feeling of seat neutrality and increase employment opportunities for Indian lawyers and students.

The Course of research on the subject, the study group has extensively reviewed the international Arbitration eco-system existing in the following jurisdictions:-

China

Singapore

Australia



France

Case Study: China

China adopted a progressive approach to liberalize its legal market over a period of 20 years. Though foreign law firms are not allowed to practice local law, but have been licensed to practice in specific areas which facilitates the flow of investments and transactions by MNCs into China. Domestic firms are allowed to form collaborations, strategic alliances and other arrangements with leading international firms to facilitate knowledge sharing and best practices.

Through its liberalization efforts, China has managed to attract leading international firms to expand and provide value add services to MNCs and Chinese corporations. In 2011, liberalization of its legal services led to 208 licensed foreign firms establishing representative offices in China and became part of the US$116 billion FDI that flowed into the country. As the Chinese corporations embark on expansion globally, the local firms have also expanded their footprint and are exporting their services. Liberalization brought in a wave of foreign competition, but also strengthened trade and investment flows which have benefitted local law firms.

Case Study: Singapore

Singapore's phenomenal success in establishing itself as an international commercial arbitration hub is the direct result of a concerted collaborative effort by all stakeholders in the legal system. The Government committed significant resources to building up the arbitration infrastructure in Singapore, with institutions such as the Singapore International Arbitration Centre ("SIAC") and Maxwell Chambers now enjoying international acclaim. The Singaporean Bench is extremely attuned to the needs of the arbitration sector, and this is reflected by the fact that Singaporean Courts are reticent about intervening in arbitration proceedings. They also have a very responsive Legislature which is not averse to introduce statutory amendments in order to ensure that our laws remain progressive and aligned with international best practices; at times, even legislatively overruling court decisions which may have been correct on the law but inconsistent with broader policy goals. The entire "ecosystem", as it were, is geared towards the promotion of arbitration, and the picture has been completed by the local and international Bar's enthusiastic embrace of arbitration in Singapore.

It is easy to fall into the trap of seeing liberalisation as a struggle between the Government imposing its will and domestic law firms protecting their turf. That, however is a grave error in judgement. Singapore succeeded precisely because of the trust and co-operation between the Government and Singapore law firms, and this trust was earned because at each successive stage, the Government made its case for liberalization whilst assuring the local Bar that the viability and standing of Singapore law firms would never be sacrificed. It was in Singapore's interest to ensure that they continue to have a strong and vibrant local Bar. Thus, they have continued to make sure always that local law firms have the time and space to grow and mature with the market before any further steps are taken. The decision toward QFLPs to foreign firms was only made in 2008 after the Government had assessed that Singapore law firms were ready to "level up" to the next stage of the competition.

Case Study: Australia

Arbitration is an emergent aspect of the Australian legal regime. Arbitration has grown in Australia primarily due to the efficiency, flexibility, certainty and cost advantages of its arbitral process which is bolstered by its robust regulatory framework. The Australian International Arbitration Act, 1974 gives effect to the 2006 UNCITRAL Model Law on International Commercial Arbitration. It underwent significant amendments in 2010 and now contains important provisions for enforcing interim measures, confidentiality of information and consolidation of two or more arbitrations.

The Australians also have a stellar track record when it comes to the enforcement of awards. Notable examples include: *TCL Air Conditioner (Zhongshan) Co Ltd -v- The Judges of the Federal Court of Australia* where the High Court upheld the constitutional validity of Articles 35 and 36 of the UNCITRAL Model law, and *Cape Lambert Resources Ltd -v- MCC Australia Sanjin Mining Pty Ltd* which upheld the decision to stay proceedings in favour of the parties' agreement to submit disputes to arbitration.

The features that have led to the growth of Arbitration in Australia are as follows:

1. **Emergency Arbitration**: ACICA's Arbitration Rules allow a party to apply to ACICA for emergency interim measures of protection (e.g. orders preventing dissipation of assets) prior to the constitution of the arbitral tribunal. The application for emergency arbitration may be made at the same time, or following

the filing of the notice of arbitration. ACICA will use its best endeavours to appoint an emergency arbitrator within one business day. Once appointed, the emergency arbitrator is required to decide the application within five business days. The emergency interim measure is binding on the parties.

2. **Confidentiality**: Parties and arbitrators are required to keep confidential all matters relating to the arbitration, the award, the materials created for the purposes of the arbitration, and the documents produced by parties to the arbitration. To the extent that a witness is given access to evidence or other information produced in the arbitration, the party calling the witness is responsible for the maintenance of confidentiality by the witness.

3. **Interim measures**: Parties may apply to the arbitral tribunal for interim measures, including any temporary measure ordering a party to preserve evidence that may be relevant to the dispute, or provide security for legal costs. An interim measure ordered by the tribunal is enforceable under the IAA.

4. **Rules of evidence**: The arbitral tribunal is required to have regard to, although it is not bound to apply, the International Bar Association Rules on the Taking of Evidence in International Arbitration.

5. **Expedited procedure**: Separate from the Arbitration Rules, ACICA also has Expedited Arbitration Rules, which provide a simplified arbitration procedure whereby a sole arbitrator determines the dispute based on documents, without the need for a hearing unless exceptional circumstances exist, and renders a final award within four or five months.

Case Study: France

France ticks all of the boxes as a jurisdiction favorable to arbitration proceedings. Its substantive and procedural laws are pro-arbitration; the judiciary is accustomed to dealing with issues arising out of arbitrations at all stages of the proceedings from requests for provisional measures before an arbitration has started, through assistance in the constitution of an arbitral tribunal, to enforcement of arbitral awards. There is a significant body of culturally diverse counsel experienced in handling international arbitrations and practitioners who sit as arbitrators all resident in Paris and who are capable of working in English, French and other languages. Likewise, there is a corpus of other specialists whose expertise is often called on in the course of international arbitration proceedings. On a more

materialistic front, there is a wide range of facilities for the holding of hearings available and if care is taken these facilities need not be expensive. In addition, the ICC Court of International Arbitration has its headquarters in Paris which inevitably means that local counsel experienced in international arbitration have ready access to the ICC.

Three principal advantages of Paris as an arbitration seat merit emphasis. First, France has a legal framework that is highly supportive of arbitration as a method of dispute resolution, which has recently undergone a thorough review process, with publication of a new arbitration Decree in January 2011. Second, there exists considerable expertise in the arbitration field at all levels in France, including among counsel, arbitrators and in the courts. With regard to arbitrations seated in Paris, a specialized chamber of the Paris Court of Appeal decides all applications to set aside arbitral awards and appeals from enforcement decisions. The new legislation reinforces the supporting role of the courts, through the juged'appui, and, in the case of international arbitrations, gives those powers to the Presiding Judge of the Paris Court of First Instance, unless the parties agree otherwise. Finally, Paris offers a central location in Europe with infrastructure that is well-adapted to conducting international arbitration proceedings, including hearing facilities, competent translators, interpreters and court reporters.

OUR SUGGESTION

Our suggestion to the Government is to consider implementing the best practices from these and other jurisdictions to ensure that the Indian arbitration regime is at the forefront of global alternative dispute resolution services from the get-go.

As per the recent news report, as positive step in this regard, the Government, on December 29, 2016 set up a High Level Committee to recommend ways to make arbitration more efficient. The committee will be headed by retired Supreme Court Justice B. N. Srikrishna. It will submit its report in 90 days. The mandate of the panel will be to analyze and review effectiveness of present arbitration mechanism, the facilities, resources, funding and manpower of existing ADR (Alternate Dispute Resolution) institutions. It will also examine the institutions funded by the Centre for arbitration purposes and assess skill gaps in ADR and allied institutions for both national and international arbitration. The committee will also evaluate information outreach and efficacy of existing legal framework for arbitration. Further, it will focus on the role of arbitrations in matters involving the Union of India, including bilateral investment treaties (BIT) arbitrations and make recommendations where necessary. The high level panel will suggest measures for institutionalization of arbitration mechanism so as to make India a hub of international commercial arbitration and

identify amendments in other laws that are needed to encourage International Commercial Arbitration (ICA). The committee will also devise an action plan for implementation of the law to ensure speedier arbitrations, recommend revision in institutional rules and regulations and advice empanelment of national and international arbitrators for time bound arbitral proceedings. It will also recommend measures to make arbitration more widely available in curricula and study materials.

B. PREAMBLE

An Act to make provision for the allowance of foreign lawyers to participate in and carry out the business of arbitration in India and for the conduct of international commercial arbitrations based on the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law and conciliation proceedings and to give effect to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and for matters connected therewith.

WHEREAS efforts to liberalize legal policies will help drive the expansion of India's foreign trade and help our country integrate into an increasingly globalized production system, rather than being left on the margins of world trade.

AND WHEREAS one of the key ingredients in any recipe for successful international trade and investment is the legal security of commercial transactions.

AND WHEREAS arbitration is currently the most favored dispute resolution mechanism amongst the global business community today. More than 80% of private international contracts contain clauses providing that disputes shall be settled through arbitration.

AND WHEREAS the Hon'ble Madras High Court and The Hon'ble Supreme Court have, through their judgment and orders respectively, sanctioned and allowed foreign legal consultants/foreign lawyers to conduct and participate in arbitration proceedings in India.

AND WHEREAS India is a signatory to the General Agreement on Trade in Services and this move shall help it fulfill its obligations under that agreement to other members of the World Trade Organization.

AND WHEREAS allowing foreign lawyers to practice arbitration in India will encourage an influx of foreign investment and a boost in trade, thereby help the country come closer to achieving its economic goals.

AND WHEREAS an influx of foreign lawyers will raise the standard of legal services in India today and provide an abundance of growth opportunities for the indigenous legal sector.

AND WHEREAS enforcement of contracts is an important indicator of the ease of doing business in a country and robust arbitration regime will provide the security necessary to encourage enterprise in India.

C. SUGGESTED DRAFT OF ARBITRATION AND CONCILIATION (INTERNATIONAL COMMERCIAL ARBITRATION) AMENDMENT ACT, 2016 (VERSION WITH REFERENCES & FOOTNOTES)

Statement of Objects and Reasons

The Indian economy registered rapid growth over the last couple of years. This was largely due to the deployment of policies that streamlined and simplified governance of commerce in the country. These policies also encourage a massive influx of foreign direct investment into the country. In an effort to liberalize the economy further, the Government of India decided to open up the current legal services sector to foreign players. The move is slated to bolster current economic momentum by catalyzing investments, fostering the growth of the indigenous legal regime by raising standards and increasing employment opportunities and granting businesses the access they need to global legal services.

In today's interconnected global economy, efforts to liberalize legal policies will help drive the expansion of world trade and help countries to integrate into an increasingly globalized production system, rather than being left on the margins of world trade. Commerce in a country thrives with the support of a legal framework that provides for the swift resolution of commercial disputes. Stakeholders across the spectrum of international trade and business are demanding an open, responsive and receptive dispensation mechanism for legal services in India. The growth of international services is becoming increasingly relevant to the development of the Indian legal sector and the national economy. Arbitration is the most favored dispute resolution mechanism amongst the global business community today. More than 80% of private international contracts contain clauses providing that disputes shall be settled through arbitration. Any country that wishes to be an economic heavyweight in the global arena must have a robust framework in place to ensure the growth of international arbitration within its borders.

In view of such inexorable economic realities and the recent decisions of the Madras High Court and the Supreme court in the AK Balaji case, the Ministry of Law and Justice, with the sanction of the Central Government has decided to amend the extant Arbitration act to allow foreign lawyers to practice arbitration in India with the hope that it will help India become a global hub for international arbitration.

Short Summary

An Act to make provision for the conduct of international commercial arbitrations based on the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law and conciliation proceedings and to give effect to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and for matters connected therewith.

CHAPTER I

PRELIMINARY

1. Short title, extent and Commencement
This Act may be cited as the Arbitration and Conciliation (International Commercial Arbitration) Amendment Act 2016 and shall come into operation on _____.

2. Amendment of Section 2.—In the Arbitration and Conciliation Act, 1996 (26 of 1996) (hereinafter referred to as the principal Act) in section 2,—
(I) in sub-section (1), the following clauses shall be added—

"(cc)"Arbitration Council" means the body appointed for the oversight of institutional arbitration in India;
(i) "Business entity" means any sole-proprietorship, partnership or body corporate, with or without limited liability, which engages in any business;
(j) "Chairperson" means the Chairperson of the Governing Council;
(k) "Governing Council" means the Governing Council of the ICADR;
(l) "Foreign Law Firm" or an "FLF" includes, but is not limited to, a professional legal corporation, a limited liability company or partnership, the legal department of a corporation or other organization and a qualified legal assistance organization, engaged in the practice of law in a foreign country;
(m) "Professional legal corporation" or a "PLC" means a corporation, or an association treated as a corporation, authorized by law to practice law for profit in a foreign country;
(n) "Foreign Legal Consultant" or an "FLC" means a person who, including a foreign law firm and Professional legal corporation as defined under this Act, by whatever name called or described, who/which is entitled to practice law in a foreign country;
(o)"ICADR" means the International Centre for Alternative Dispute Resolution, New Delhi or, as the case may be, any of its Regional Offices;"

2A. Insertion of new sections 6A, 6B, 6C, 6D and 6E – The following sections shall be inserted into the new Act, namely —

"6A. *Arbitration Council*: An Arbitration Council shall be constituted under this Act to oversee all matters pertaining to International Commercial Arbitration in India. The Council shall comprise of five members. The Minister of Law and Justice, in consultation with the Chief Justice of India shall nominate members to this Council.

6B. *Composition of the Council*: The Council will comprise of the following:

(a) Four eminent jurists with at least 15 years' experience in the Arbitration domain.

(b) An ex-judge of the Supreme Court of India.

(c) A member of the Council cannot be younger than 40 years of age and cannot be older than 60 years of age.

(d) The term of appointment for each member shall be a period of 3 years. No member shall serve for more than two consecutive terms on the Council.

6C. *Powers of the Arbitration Council*: The Arbitration Council shall have the following powers under this Act:

(i) It will nominate the members of the Governing Council of the ICADR

(ii) It will, from time to time, make rules for international arbitration in India.

(iii) It will select the panel of arbitrators who will be allowed to practice arbitration in India and set out the selection criteria for persons wishing to be listed on this panel.

(iv) It will host events, such as seminars and conferences etc, to ensure the promotion of arbitration in India. The Arbitration Council shall take suitable measures for the promotion of arbitration advocacy, creating awareness and imparting training about arbitration issues.

(v) It will decide the curriculum for an accreditation course for arbitration in India which shall be offered by select legal universities and institutions within the country. The Arbitration Council has the discretion to determine which Universities may offer this course.

6C. *Governing Council*: The Governing Council is to oversee the functioning and administration of the ICADR on a day to day basis. The Governing Council is also responsible for appointing the disciplinary committee for any allegations that may be brought to it regarding the conduct of an arbitrator. It will comprise of a President and three secretaries.

6D. *Registrar of the ICADR*: The Registrar of the ICADR shall be responsible for handling all procedural formalities pertaining to arbitrations held in the ICADR."

3. Substitution of new section for Section 10— For Section 10 of the principal Act, the following section shall be substituted, namely: -

"10. *Number of Arbitrators*. — (1) A sole arbitrator shall be appointed in any arbitration under this Act unless the parties have otherwise agreed or it appears to the Registrar, giving due regard to any proposals by the parties, that the complexity, the quantum involved or other relevant circumstances of the dispute, warrants the appointment of three arbitrators.

(2) If the parties have agreed that any arbitrator is to be appointed by one or more of the parties, or by any third person including by the arbitrators already appointed, that agreement shall be deemed an agreement to nominate an arbitrator under this Act.[1]"

4. Amendment of section 11 — (I) Under sub-section (1) of section 11 of the principal Act, the following clauses shall be added, namely –

"(a) Where the parties are of different nationalities, a sole arbitrator or the presiding arbitrator shall not have the same nationality as any party unless the parties who are not of the same nationality as the arbitral candidate all agree in writing otherwise.

(b) The nationality of a party shall be understood to include those of its controlling shareholders or interests.

(c) A person who is a citizen of two or more States shall be treated as a national of each State; citizens of the European Union shall be treated as nationals of its different Member States and shall not be treated as having the same nationality; a citizen of a State's overseas territory shall be treated as a national of that territory and not of that State; and a legal person incorporated in a State's overseas territory shall be treated as such and not (by such fact alone) as a national of or a legal person incorporated in that State.[2]"

(II) In section 11 of the principal Act, the following sub-sections shall be added, namely.—

"(2A) In all cases, the arbitrators nominated by the parties, or by any third person including by the arbitrators already appointed, shall be subject to appointment by the Registrar in its discretion.

(2B) The Governing Council shall appoint an arbitrator as soon as practicable. Any decision by the ICADR to appoint an arbitrator under this Act shall be final and not subject to appeal.

(2C) The ICADR may appoint any nominee whose appointment has already been suggested or proposed by any party.

(2D) The terms of appointment of each arbitrator shall be fixed by the ICADR in accordance with this Act, or in accordance with the agreement of the parties.[3]"

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[1] SIAC Rules, 2016

[2] LCIA Rules, 2014

[3] SIAC Rules, 2016

5. Insertion of new Sections 11B, 11C and 11D — The following sections shall be inserted into the principal Act, namely—

"11B. *Sole Arbitrator* – (1) If a sole arbitrator is to be appointed, either party may propose to the other party the names of one or more persons to serve as the sole arbitrator. Where the parties have reached an agreement on the nomination of a sole arbitrator, Section 15(3) shall apply.

(2) If within 15 days after the date of commencement of the arbitration, or within the period otherwise agreed by the parties, the parties have not reached an agreement on the nomination of a sole arbitrator, or if at any time either party so requests, the Registrar shall appoint the sole arbitrator.[4]

11C. *Three Arbitrators* – (1) If three arbitrators are to be appointed, each party shall nominate one arbitrator.

(2) If a party fails to make a nomination of an arbitrator within 15 days after receipt of a party's nomination of an arbitrator, or within the period otherwise agreed by the parties or set by the Governing Council, the Governing Council shall proceed to appoint an arbitrator on its behalf.

(3) Unless the parties have agreed upon another procedure for appointing the third arbitrator, or if such agreed procedure does not result in a nomination within the period agreed by the parties or set by the Governing Council, the Governing Council shall appoint the third arbitrator, who shall be the presiding arbitrator. [5]

11D. *Multi-Party Appointment of Arbitrator(s)* -- (1) Where there are more than two parties to the arbitration, and a sole arbitrator is to be appointed, the parties may agree to jointly nominate the sole arbitrator. In the absence of such joint nomination having been made within 30 days of the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the Registrar, the President shall appoint the sole arbitrator.

(2) Where there are more than two parties to the arbitration, and three arbitrators are to be appointed, the Claimant(s) shall jointly nominate one arbitrator and the Respondent(s) shall jointly nominate one arbitrator. The third arbitrator, who shall be the presiding arbitrator, shall be appointed in accordance with Section 11C(3). If both such joint nominations have not been made within 15 days of the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the

[4] Ibid

[5] Ibid

Governing Council, the Governing Council shall appoint all three arbitrators and shall designate one of them to be the presiding arbitrator.[6]"

6. Insertion of new section 11E — The following sections shall be inserted into the principal Act, namely—

"11E. *Qualifications of Arbitrators and Formation of the Arbitral Tribunal* – (1) Any arbitrator appointed in an arbitration under this Act, whether or not nominated by the parties, shall be and remain at all times independent and impartial.

(2) In appointing an arbitrator under this Act, the Governing Council shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations that are relevant to the impartiality or independence of the arbitrator.

(3) The Governing Council shall also consider whether the arbitrator has sufficient availability to determine the case in a prompt and efficient manner that is appropriate given the nature of the arbitration.

(5) No party or person acting on behalf of a party shall have any ex-parte communication relating to the case with any arbitrator or with any candidate for appointment as party-nominated arbitrator, except to advise the candidate of the general nature of the controversy and of the anticipated proceedings; to discuss the candidate's qualifications, availability or independence in relation to the parties; or to discuss the suitability of candidates for selection as the presiding arbitrator where the parties or party-nominated arbitrators are to participate in that selection. No party or person acting on behalf of a party shall have any ex parte communication relating to the case with any candidate for presiding arbitrator.[7]

(6) The formation of the Arbitral Tribunal by the ICADR Court shall not be impeded by any controversy between the parties relating to the sufficiency of the Request or the Response. The ICADR Court may also proceed with the arbitration notwithstanding that the Request is incomplete or the Response is missing, late or incomplete.

(7) Before appointment by the Governing Council, each arbitral candidate shall furnish to the Registrar (upon the latter's request) a brief written summary of his or her qualifications and professional positions (past and present); the candidate shall also agree in writing fee-rates conforming to the Schedule of Costs; the candidate shall sign a written declaration stating:

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[6] Ibid

[7] SIAC Rules, 2016

(i) whether there are any circumstances currently known to the candidate which are likely to give rise in the mind of any party to any justifiable doubts as to his or her impartiality or independence and, if so, specifying in full such circumstances in the declaration; and

(ii) whether the candidate is ready, willing and able to devote sufficient time, diligence and industry to ensure the expeditious and efficient conduct of the arbitration. The candidate shall furnish promptly such agreement and declaration to the Registrar.[8]

Explanation: The candidate must, in his written summary, disclose any misconduct that he was previously accused off. He must include all details and particulars. Any discrepancy in information will be met with punitive action.

(8) If appointed, each arbitral candidate shall thereby assume a continuing duty as an arbitrator, until the arbitration is finally concluded, forthwith to disclose in writing any circumstances becoming known to that arbitrator after the date of his or her written declaration (under subsection 7) which are likely to give rise in the mind of any party to any justifiable doubts as to his or her impartiality or independence, to be delivered to the Governing Council, any other members of the Arbitral Tribunal and all parties in the arbitration.[9]

(9) The expression the "Arbitral Tribunal" includes a sole arbitrator or all the arbitrators where more than one."

7. Substitution of new section for Section 13 – For Section 13 of the principal Act, a new section shall be substituted, namely –

"13. *Challenge procedure* — (1) Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess any requisite qualification on which the parties have agreed.

(2) A party may challenge the arbitrator nominated by it only for reasons of which it becomes aware after the appointment has been made.

(3) A party that intends to challenge an arbitrator shall file a notice of challenge with the Registrar in accordance with the requirements of Section 13(4) within 15 days after receipt of the notice of appointment of the arbitrator who is being challenged or within 15 days after the circumstances specified in Section 13 (1) or Section 13 (2) became known or should have reasonably been known to that party.

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[8] LCIA Rules, 2014

[9] Ibid

(4) The notice of challenge shall state the reasons for the challenge. The date of receipt of the notice of challenge by the Registrar shall be deemed to be the date the notice of challenge is filed. The party challenging an arbitrator shall, at the same time as it files a notice of challenge with the Registrar, send the notice of challenge to the other party, the arbitrator who is being challenged and the other members of the Tribunal (or if the Tribunal has not yet been constituted, any appointed arbitrator), and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

(5) The party making the challenge shall pay the requisite challenge fee under this Act, in accordance with the applicable Schedule of Fees. If the party making the challenge fails to pay the challenge fee within the time limit set by the Registrar, the challenge shall be considered as withdrawn.

(6) After receipt of a notice of challenge under Section 13(4), the Registrar may order a suspension of the arbitral proceedings until the challenge is resolved. Unless the Registrar orders the suspension of the arbitral proceedings pursuant to this subsection, the challenged arbitrator shall be entitled to continue to participate in the arbitration pending the determination of the challenge by the Court in accordance with Section 13A.

(7) Where an arbitrator is challenged by a party, the other party may agree to the challenge, and the Court shall remove the arbitrator if all parties agree to the challenge. The challenged arbitrator may also voluntarily withdraw from office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

(8) If an arbitrator is removed or withdraws from office in accordance with Section 13(7), a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced. This procedure shall apply even if, during the process of appointing the challenged arbitrator, a party failed to exercise its right to nominate an arbitrator. The time limits applicable to the nomination and appointment of the substitute arbitrator shall commence from the date of receipt of the agreement of the other party to the challenge or the challenged arbitrator's withdrawal from office.[10]"

8. Insertion of new sections 13A — The following section shall be inserted into the principal Act, namely –

"13A. *Decision on challenge* **–** (1) If, within seven days of receipt of the notice of challenge under Section 13, the other party does not agree to the challenge and the

[10] SIAC Rules, 2016

arbitrator who is being challenged does not withdraw voluntarily from office, the Governing Council shall decide the challenge. The Court may request comments on the challenge from the parties, the challenged arbitrator and the other members of the Tribunal (or if the Tribunal has not yet been constituted, any appointed arbitrator), and set a schedule for such comments to be made.

(2) If the Court accepts the challenge to an arbitrator, the Court shall remove the arbitrator, and a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced. The time limits applicable to the nomination and appointment of the substitute arbitrator shall commence from the date of the Registrar's notification to the parties of the decision by the Court.

(3) If the Court rejects the challenge to an arbitrator, the challenged arbitrator shall continue with the arbitration.

(4) The Court's decision on any challenge to an arbitrator under this section shall be reasoned, unless otherwise agreed by the parties, and shall be issued to the parties by the Registrar. Any such decision on any challenge by the Court shall be final and not subject to appeal.

Explanation: For the purposes of this Section, "Court" means the particular High Court in whose jurisdiction the arbitration is being conducted.[11]"

9. Substitution of new section for sections 14 and 15 — For section 14 of the principal Act, a new section shall be substituted, namely —

"14. *Replacement of an Arbitrator* – (1) Except as otherwise provided in this Act, in the event of the death, resignation, withdrawal or removal of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced.

(2) In the event that an arbitrator refuses or fails to act or perform his functions in accordance with this Act or within prescribed time limits, or in the event of any de jure or de facto impossibility by an arbitrator to act or perform his functions, the procedure for challenge and replacement of an arbitrator provided in Sections 13, 13A and 14(1) shall apply.

(3) The Governing Council may, on its own initiative and in its discretion, remove an arbitrator who refuses or fails to act or to perform his functions in accordance with this

[11] SIAC Rules, 2016

Act or within prescribed time limits, or in the event of a de jure or de facto impossibility of an arbitrator to act or perform his functions, or if the arbitrator does not conduct or participate in the arbitration with due diligence and/or in a manner that ensures the fair, expeditious, economical and final resolution of the dispute. The Governing Council shall consult the parties and the members of the Tribunal, including the arbitrator to be removed (or if the Tribunal has not yet been constituted, any appointed arbitrator) prior to the removal of an arbitrator under this Section.

(4) If the sole or presiding arbitrator is replaced in accordance with the procedure in Sections 13, 13A and 14, any hearings held previously shall be repeated unless otherwise agreed by the parties.

(5) If any other arbitrator is replaced, any hearings held previously may be repeated at the discretion of the Tribunal after consulting with the parties.

(6) If the Tribunal has issued an interim or partial Award, any hearings relating solely to that Award shall not be repeated, and the Award shall remain in effect.

(7) The Governing Council may revoke any arbitrator's appointment upon its own initiative, at the written request of all other members of the Arbitral Tribunal or upon a written challenge by any party if:

(i) that arbitrator gives written notice to the Governing Council of his or her intent to resign as arbitrator, to be copied to all parties and all other members of the Arbitral Tribunal (if any);

(ii) that arbitrator falls seriously ill, refuses or becomes unable or unfit to act; or

(iii) circumstances exist that give rise to justifiable doubts as to that arbitrator's impartiality or independence.

(8) The Governing Council may determine that an arbitrator is unfit to act under subsection 1 of this Section if that arbitrator:

(i) acts in deliberate violation of the Arbitration Agreement;

(ii) does not act fairly or impartially as between the parties; or

(iii) does not conduct or participate in the arbitration with reasonable efficiency, diligence and industry.

(9) A party challenging an arbitrator under subsection 1 of this section shall, within 15 days of the formation of the Arbitral Tribunal or (if later) within 15 days of becoming aware of any grounds described in subsection 1 or subsection 2 of this section, deliver a written statement of the reasons for its challenge to the Governing Council, the Arbitral

Tribunal and all other parties. A party may challenge an arbitrator whom it has nominated, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made by the Governing Council.

(10) The Governing Council shall provide to those other parties and the challenged arbitrator a reasonable opportunity to comment on the challenging party's written statement. The Governing Council may require at any time further information and materials from the challenging party, the challenged arbitrator, other parties and other members of the Arbitral Tribunal (if any).

(11) If all other parties agree in writing to the challenge within 14 days of receipt of the written statement, the Governing Council shall revoke that arbitrator's appointment (without reasons).

(12) Unless the parties so agree or the challenged arbitrator resigns in writing within 15 days of receipt of the written statement, the Governing Council shall decide the challenge and, if upheld, shall revoke that arbitrator's appointment. The Governing Council's decision shall be made in writing, with reasons; and a copy shall be transmitted by the Registrar to the parties, the challenged arbitrator and other members of the Arbitral Tribunal (if any). A challenged arbitrator who resigns in writing prior to the Governing Council's decision shall not be considered as having admitted any part of the written statement.

(13) The Governing Council shall determine the amount of fees and expenses (if any) to be paid for the former arbitrator's services, as it may consider appropriate in the circumstances. The Governing Council may also determine whether, in what amount and to whom any party should pay forthwith the costs of the challenge; and the Governing Council may also refer all or any part of such costs to the later decision of the Arbitral Tribunal and/or the Governing Council under (Arbitration and Legal costs).

(14) In the event that the Governing Council determines that justifiable doubts exist as to any arbitral candidate's suitability, independence or impartiality, or if a nominee declines appointment as arbitrator, or if an arbitrator is to be replaced for any reason, the Governing Council may determine whether or not to follow the original nominating process for such arbitral appointment.

(15) The Governing Council may determine that any opportunity given to a party to make any renomination (under the Arbitration Agreement or otherwise) shall be waived if not exercised within 15 days (or such lesser or greater time as the Governing Council may determine), after which the Governing Council shall appoint the replacement arbitrator without such re-nomination.[12]"

[12] SIAC Rules, 2016

10. Insertion of new sections 14A, 14B, 14C, 14D – The following sections shall be inserted into the principal Act, namely –

"14A. *Expedited Formation of Arbitral Tribunal* — (1) In the case of exceptional urgency, any party may apply to the Governing Council for the expedited formation of the Arbitral Tribunal.

(2) Such an application shall be made to the Registrar in writing (preferably by electronic means), together with a copy of the Request (if made by a Claimant) or a copy of the Response (if made by a Respondent), delivered or notified to all other parties to the arbitration. The application shall set out the specific grounds for exceptional urgency requiring the expedited formation of the Arbitral Tribunal.

(3) The Governing Council shall determine the application as expeditiously as possible in the circumstances. If the application is granted, for the purpose of forming the Arbitral Tribunal the Governing Council may abridge any period of time under the Arbitration Agreement or other agreement of the parties.[13]

14B. *Expedited appointment of Replacement Arbitrator* — (1) Any party may apply to the Governing Council for the expedited appointment of a replacement arbitrator under Section 14B.

(2) Such an application shall be made in writing to the Registrar (preferably by electronic means), delivered (or notified) to all other parties to the arbitration; and it shall set out the specific grounds requiring the expedited appointment of the replacement arbitrator.

(3) The Governing Council shall determine the application as expeditiously as possible in the circumstances. If the application is granted, for the purpose of expediting the appointment of the replacement arbitrator the Governing Council may abridge any period of time in the Arbitration Agreement or any other agreement of the parties.[14]

14C. *Emergency Arbitrator* – (1) A party that wishes to seek emergency interim relief may, concurrent with or following the filing of a Notice of Arbitration but prior to the constitution of the Tribunal, file an application for emergency interim relief with the Registrar. The party shall, at the same time as it files the application for emergency interim relief, send a copy of the application to all other parties. The application for emergency interim relief shall include:

[13] LCIA Rules, 2014

[14] Ibid

a. the nature of the relief sought;

b. the reasons why the party is entitled to such relief; and

c. a statement certifying that all other parties have been provided with a copy of the application or, if not, an explanation of the steps taken in good faith to provide a copy or notification to all other parties.

(2) Any application for emergency interim relief shall be accompanied by payment of the non-refundable administration fee and the requisite deposits under this towards the Emergency Arbitrator's fees and expenses for proceedings pursuant to this Schedule I. In appropriate cases, the Registrar may increase the amount of the deposits requested from the party making the application. If the additional deposits are not paid within the time limit set by the Registrar, the application shall be considered as withdrawn.

(3) The President shall, if he determines that the Registrar should accept the application for emergency interim relief, seek to appoint an Emergency Arbitrator within one day of receipt by the Registrar of such application and payment of the administration fee and deposits.

(4) If the parties have agreed on the seat of the arbitration, such seat shall be the seat of the proceedings for emergency interim relief. Failing such an agreement, the seat of the proceedings for emergency interim relief shall be ICADR or any of its regional offices, without prejudice to the Tribunal's determination of the seat of the arbitration under this Act.

(5) Prior to accepting appointment, a prospective Emergency Arbitrator shall disclose to the Registrar any circumstances that may give rise to justifiable doubts as to his impartiality or independence. Any challenge to the appointment of the Emergency Arbitrator must be made within two days of the communication by the Registrar to the parties of the appointment of the Emergency Arbitrator and the circumstances disclosed.

(6) An Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless otherwise agreed by the parties.

(7) The Emergency Arbitrator shall, as soon as possible but, in any event, within two days of his appointment, establish a schedule for consideration of the application for emergency interim relief. Such schedule shall provide a reasonable opportunity for the parties to be heard, but may provide for proceedings by telephone or video conference or on written submissions as alternatives to a hearing in person. The Emergency Arbitrator shall have the powers vested in the Tribunal pursuant to this Act, including the authority to rule on his own jurisdiction, without prejudice to the Tribunal's determination.

(8) The Emergency Arbitrator shall have the power to order or award any interim relief that he deems necessary, including preliminary orders that may be made pending any hearing, telephone or video conference or written submissions by the parties. The Emergency Arbitrator shall give summary reasons for his decision in writing. The Emergency Arbitrator may modify or vacate the preliminary order, the interim order or Award for good cause.

(9) The Emergency Arbitrator shall make his interim order or Award within 15 days from the date of his appointment unless, in exceptional circumstances, the Registrar extends the time. No interim order or Award shall be made by the Emergency Arbitrator until it has been approved by the Registrar as to its form.

(10) The Emergency Arbitrator shall have no power to act after the Tribunal is constituted. The Tribunal may reconsider, modify or vacate any interim order or Award issued by the Emergency Arbitrator, including a ruling on his own jurisdiction. The Tribunal is not bound by the reasons given by the Emergency Arbitrator. Any interim order or Award issued by the Emergency Arbitrator shall, in any event, cease to be binding if the Tribunal is not constituted within 30 days of such order or Award or when the Tribunal makes a final Award or if the claim is withdrawn.

(11) Any interim order or Award by the Emergency Arbitrator may be conditioned on provision by the party seeking such relief of appropriate security.

(12) The parties agree that an order or Award by an Emergency Arbitrator pursuant to this Schedule 1 shall be binding on the parties from the date it is made, and undertake to carry out the interim order or Award immediately and without delay. The parties also irrevocably waive their rights to any form of appeal, review or recourse to any High court or other judicial authority with respect to such Award insofar as such waiver may be validly made.

(13) The costs associated with any application pursuant to this Schedule 1 may initially be apportioned by the Emergency Arbitrator, subject to the power of the Tribunal to determine finally the apportionment of such costs.

(14) This Act shall apply as appropriate to any proceeding pursuant to this Schedule I, taking into account the urgency of such a proceeding. The Emergency Arbitrator may decide in what manner this Act shall apply as appropriate, and his decision as to such matters is final and not subject to appeal, review or recourse. The Governing may abbreviate any time limits under this Section in applications made pursuant to proceedings commenced.[15]

[15] LCIA Rules, 2014

14D. *Majority Power to Continue Deliberations* – (1) In exceptional circumstances, where an arbitrator without good cause refuses or persistently fails to participate in the deliberations of an Arbitral Tribunal, the remaining arbitrators jointly may decide (after their written notice of such refusal or failure to the Governing Council, the parties and the absent arbitrator) to continue the arbitration (including the making of any award) notwithstanding the absence of that other arbitrator, subject to the written approval of the Governing Council.

(2) In deciding whether to continue the arbitration, the remaining arbitrators shall take into account the stage of the arbitration, any explanation made by or on behalf of the absent arbitrator for his or her refusal or non-participation, the likely effect upon the legal recognition or enforceability of any award at the seat of the arbitration and such other matters as they consider appropriate in the circumstances. The reasons for such decision shall be stated in any award made by the remaining arbitrators without the participation of the absent arbitrator.

(3) In the event that the remaining arbitrators decide at any time thereafter not to continue the arbitration without the participation of the absent arbitrator, the remaining arbitrators shall notify in writing the parties and the Governing Council of such decision; and, in that event, the remaining arbitrators or any party may refer the matter to the Governing Council for the revocation of the absent arbitrator's appointment and the appointment of a replacement arbitrator under Sections 30 and 31.

(4) In the event that an arbitrator and/or arbitrators decide not to continue with the proceedings or are unable to continue or are forcefully recused and are substituted by new arbitrators, the proceedings are to be carried out from the point where the original arbitrators left and shall not be resumed afresh.[16]"

11. Insertion of new section 15 – The following section shall be inserted into the principal Act, namely –

"15. Communications between Parties and Arbitral Tribunal – (1) Following the formation of the Arbitral Tribunal, all communications shall take place directly between the Arbitral Tribunal and the parties (to be copied to the Registrar), unless the Arbitral Tribunal decides that communications should continue to be made through the Registrar.

(2) Where the Registrar sends any written communication to one party on behalf of the Arbitral Tribunal or the Governing Council, he or she shall send a copy to each of the other parties.

[16] LCIA Rules, 2014

(3) Where any party delivers to the Arbitral Tribunal any communication (including statements and documents under Section 35), whether by electronic means or otherwise, it shall deliver a copy to each arbitrator, all other parties and the Registrar; and it shall confirm to the Arbitral Tribunal in writing that it has done or is doing so.

(4) During the arbitration from the Arbitral Tribunal's formation onwards, no party shall deliberately initiate or attempt to initiate any unilateral contact relating to the arbitration or the parties' dispute with any member of the Arbitral Tribunal or any member of the Governing Council exercising any function in regard to the arbitration (but not including the Registrar), which has not been disclosed in writing prior to or shortly after the time of such contact to all other parties, all members of the Arbitral Tribunal (if comprised of more than one arbitrator) and the Registrar.

(5) Prior to the Arbitral Tribunal's formation, unless the parties agree otherwise in writing, any arbitrator, candidate or nominee who is required to participate in the selection of a presiding arbitrator may consult any party in order to obtain the views of that party as to the suitability of any candidate or nominee as presiding arbitrator, provided that such arbitrator, candidate or nominee informs the Registrar of such consultation.[17]"

12. Amendment of Section 19 – In sub-section (1) of section 19 the words "and shall be bound by the procedure laid out in the 8th Schedule" shall be inserted after the words "…the Indian Evidence Act, 1872 (1 of 1872)".

13. Amendment of Section 29B – The following sub-section shall be added to section 29B of the principal Act, namely –

"(7) The parties, arbitrators and arbitral institution are bound to follow the procedural guidelines laid down in the Tenth Schedule of this Act."

14. Insertion of new part – After Part IV of the principal Act, the following part shall be inserted, namely –

PART V
PROVISIONS PERTAINING TO FLCS
CHAPTER I

[17] Ibid

REGISTRATION OF FLCs AND THE EXTENT TO WHICH THEY CAN PRACTICE LAW IN INDIA

87. Practice of Arbitration by FLCs: nature and extent of:- (1) FLCs may come to India on for a temporary period of five years and conduct arbitration proceedings in respect of disputes arising out of a contract relating to international commercial arbitration.

88. Licensing required by FLCs to open a liaison office:- (1) In its discretion the ICADR, pursuant to the notification of this Act in the official Gazette, may grant a license to practice arbitration and other alternative dispute resolution mechanisms in India as an FLC, without examination, an FLC who:

(a) is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;

(b) for at least three of the five years immediately preceding his or her application, has been a member in good standing of such legal profession and has actually been engaged in the practice of arbitration in such foreign country or elsewhere substantially involving or relating to the rendering of advice or the provision of alternative dispute resolution services concerning the law of such foreign country;

(c) possesses the good moral character and general fitness requisite for a member of the global legal fraternity;

(d) is over 28 years of age; and

(e) intends to practice arbitration as a legal consultant in India and to maintain an office in this country for that purpose.

Explanation: For the purpose of this section a person of good standing is any individual who does not meet any of the following criteria:

(a) the individual is of unsound mind and stands so declared by a competent court;

(b) the individual is an undischarged insolvent;

(c) the individual has applied to be adjudicated as an insolvent and his application is pending;

(d) the individual has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

(e) an order disqualifying the individual as a lawyer has been passed by a court or Tribunal and the order is in force;

(f) has not filed financial statements or annual returns for any continuous period of three financial years; or

(g) has failed to repay the deposits accepted by him/her or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more.

(2) In considering whether to license an applicant to practice as a legal consultant, the ICADR may in its discretion take into account whether a legal consultant from India would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission.

(3) A license issued under this Section shall be valid for a period of five years provided that the licensed Foreign Legal Consultant is not found guilty of contravening any stipulation under this Act.

(4) The fee for obtaining a license under this Section shall be decided by the Central Government.[18]

89. Permitted areas of legal practice:- (1) The FLC must have relevant legal expertise and experience in arbitration and other ADR proceedings pertaining to any of the following areas of legal practice:

(i) Banking Law;
(ii) Finance Law;
(iii) Corporate Law;
(iv) Intellectual property Law;
(v) Maritime law;
(vi) Trade Law;

[18] RULES OF THE COURT OF APPEALS FOR THE LICENSING OF LEGAL CONSULTANTS, Court of Appeals, State of New York, USA

(vii) Property Law;
(viii) Insurance Law;
(ix) any matter pertaining to trade treaties concerning business or industry to which India is a signatory
(x) any other areas of legal practice that facilitate or assist in the growth and development of the Indian economy; [19]

CHAPTER II

DISCIPLINARY ISSUES AND PENALTIES FOR SECURING REGISTRATION BY MISREPRESENTATION

90. Disciplinary Issues: (1) An FLC practicing arbitration in India shall be subject to the ethical and practice standards stipulated under this Act under Schedule IA.

(2) Disciplinary Committee: The Arbitration Council shall appoint a Disciplinary Committee under this Act to look into the disciplinary issues regarding FLCs.

(3) Where on receipt of a complaint or otherwise the Disciplinary Committee has reason to believe that any FLC practicing arbitration in India under this Act is guilty of contravening the ethical code of conduct set out under the UNCITRAL rules or any provisions of any law of the land prevailing within the Union of India, it shall issue a show cause notice to the FLC so accused.

(4) If the FLCs' response to the Disciplinary Committee's show-cause notice is deemed dissatisfactory by the Disciplinary Committee, the Disciplinary Committee may initiate proceedings with regard to the complaint against the FLC.

(5) While disposing of the proceedings under this Section, the disciplinary committee may take any of the following actions: -

(a) dismiss the complaint or drop the proceedings;

(b) reprimand the foreign legal consultant;

(c) bar the foreign legal consultant from practicing arbitration in India for such time as it may deem fit;

[19] LPIS Rules, 2008 (Singapore)

(d) Bar the foreign legal consultant from practicing arbitration in India temporarily and/or permanently;

(e) Impose a penalty on the FLC of an amount it may deem fit;

(f) impose the costs of proceedings;

91. Consequences of securing a license for a foreign liaison office by misrepresentation, fraud etc :- The Disciplinary Committee, if satisfied, either on a complaint made to it or otherwise that any FLC has secured a license for opening a liaison office under this Act by misrepresenting an essential fact or through fraud or undue influence, it may, after granting the FLC the opportunity of a hearing, cancel the registration/renewal of License of that particular FLC with or without penalty of such an amount as it may deem fit.

However, if an inessential fact is misrepresented, the Disciplinary Committee may pass any of the following orders:-

(a) Dismiss the complaint or drop the proceedings;
(b) Reprimand the FLC;
(c) Impose a penalty as it may deem fit.

15. Insertion of the new Eighth schedule, Ninth Schedule, Tenth Schedule and Eleventh Schedule – After the Seventh Schedule to the principal Act, the following new schedules shall be inserted, namely—

"THE EIGHTH SCHEDULE
(See Section 19(1))

1. Conduct of Proceedings – (1) The parties and the Arbitral Tribunal are encouraged to make contact (whether by a hearing in person, telephone conference-call, video conference or exchange of correspondence) as soon as practicable but no later than 15 days from receipt of the Registrar's written notification of the formation of the Arbitral Tribunal.

(2) The parties may agree on joint proposals for the conduct of their arbitration for consideration by the Arbitral Tribunal. They are encouraged to do so in consultation with the Arbitral Tribunal and consistent with the Arbitral Tribunal's general duties under the Arbitration Agreement.

(3) Such agreed proposals shall be made by the parties in writing or recorded in writing by the Arbitral Tribunal at the parties' request and with their authority.

(4) Under the Arbitration Agreement, the Arbitral Tribunal's general duties at all times during the arbitration shall include:

(i) a duty to act fairly and impartially as between all parties, giving each a reasonable opportunity of putting its case and dealing with that of its opponent(s); and

(ii) a duty to adopt procedures suitable to the circumstances of the arbitration, avoiding unnecessary delay and expense, so as to provide a fair, efficient and expeditious means for the final resolution of the parties' dispute.[20]

2. Written Statements – (1) Unless the parties have agreed or jointly proposed in writing otherwise or the Arbitral Tribunal should decide differently, the written stage of the arbitration and its procedural time-table shall be as set out in this section.

(2) Within 30 days of receipt of the Registrar's written notification of the Arbitral Tribunal's formation, the Claimant shall deliver to the Arbitral Tribunal and all other parties either:

(i) its written election to have its Request treated as its Statement of Case complying with this subsection; or

(ii) its written Statement of Case setting out in sufficient detail the relevant facts and legal submissions on which it relies, together with the relief claimed against all other parties, and all essential documents.

(3) Within 30 days of receipt of the Claimant's Statement of Case or the Claimant's election to treat the Request as its Statement of Case, the Respondent shall deliver to the Arbitral Tribunal and all other parties either:

(i) its written election to have its Response treated as its Statement of Defence and (if applicable) Cross-claim complying with this subsection; or

(ii) its written Statement of Defence and (if applicable) Statement of Cross-claim setting out in sufficient detail the relevant facts and legal submissions on which it relies, together with the relief claimed against all other parties, and all essential documents.

[20] LCIA Rules, 2014

(4) Within 15 days of receipt of the Respondent's Statement of Defence and (if applicable) Statement of Cross-claim or the Respondent's election to treat the Response as its Statement of Defence and (if applicable) Cross-claim, the Claimant shall deliver to the Arbitral Tribunal and all other parties a written Statement of Reply which, where there are any cross-claims, shall also include a Statement of Defence to Cross-claim in the same manner required for a Statement of Defence, together with all essential documents.

(5) If the Statement of Reply contains a Statement of Defence to Cross-claim, within 30 days of its receipt the Respondent shall deliver to the Arbitral Tribunal and all other parties its written Statement of Reply to the Defence to Cross-claim, together with all essential documents.

(6) The Arbitral Tribunal may provide additional directions as to any part of the written stage of the arbitration (including witness statements, submissions and evidence), particularly where there are multiple claimants, multiple respondents or any cross-claim between two or more respondents or between two or more claimants.

(7) No party may submit any further written statement following the last of these Statements, unless otherwise ordered by the Arbitral Tribunal.

(8) If the Respondent fails to submit a Statement of Defence or the Claimant a Statement of Defence to Cross-claim, or if at any time any party fails to avail itself of the opportunity to present its written case in the manner required under this Section or otherwise by order of the Arbitral Tribunal, the Arbitral Tribunal may nevertheless proceed with the arbitration (with or without a hearing) and make one or more awards.

(9) As soon as practicable following this written stage of the arbitration, the Arbitral Tribunal shall proceed in such manner as has been agreed in writing by the parties or pursuant to its authority under the Arbitration Agreement.

(10) In any event, the Arbitral Tribunal shall seek to make its final award within 30 days after the last submission from the parties (whether made orally or in writing), in accordance with a timetable notified to the parties and the Registrar as soon as practicable (if necessary, as revised and re-notified from time to time). When the Arbitral Tribunal (not being a sole arbitrator) establishes a time for what it contemplates shall be the last submission from the parties (whether written or oral), it shall set aside adequate

time for deliberations as soon as possible after that last submission and notify the parties of the time it has set aside.[21]

3. Seat(s) of Arbitration and Place(s) of Hearing – (1) The parties may agree in writing the seat (or legal place) of their arbitration at any time before the formation of the Arbitral Tribunal and, after such formation, with the prior written consent of the Arbitral Tribunal.

(2) In default of any such agreement, the seat of the arbitration shall be the ICADR (Delhi) India, unless and until the Arbitral Tribunal orders, in view of the circumstances and after having given the parties a reasonable opportunity to make written comments to the Arbitral Tribunal, that another arbitral seat is more appropriate. Such default seat shall not be considered as a relevant circumstance by the Governing Council in appointing any arbitrators under this Act.

(3) The Arbitral Tribunal may hold any hearing at any convenient geographical place in consultation with the parties and hold its deliberations at any geographical place of its own choice; and if such place(s) should be elsewhere than the seat of the arbitration, the arbitration shall nonetheless be treated for all purposes as an arbitration conducted at the arbitral seat and any order or award as having been made at that seat.

(4) The law applicable to the Arbitration Agreement and the arbitration shall be the law applicable at the seat of the arbitration, unless and to the extent that the parties have agreed in writing on the application of other laws or rules of law and such agreement is not prohibited by the law applicable at the arbitral seat.[22]

4. Language(s) of Arbitration – (1) The initial language of the arbitration (until the formation of the Arbitral Tribunal) shall be the English language, unless the parties have agreed in writing otherwise.

(2) A non-participating or defaulting party shall have no cause for complaint if communications to and from the Governing Council and Registrar are conducted in the initial language(s) of the arbitration or of the arbitral seat.

(3) Following the formation of the Arbitral Tribunal, unless the parties have agreed upon the language or languages of the arbitration, the Arbitral Tribunal shall decide upon the language(s) of the arbitration after giving the parties a reasonable opportunity to make written comments and taking into account the initial language(s) of the arbitration and any other matter it may consider appropriate in the circumstances.

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[21] LCIA Rules, 2014

[22] Ibid

(4) If any document is expressed in a language other than the language(s) of the arbitration and no translation of such document is submitted by the party relying upon the document, the Arbitral Tribunal may order a panel of independent experts to assist with the translation of that particular document.

(5) The ICADR will make a provision for translators to assist with the arbitration proceedings at the request of any party. The translators shall be appointed by the ICADR itself.[23]

5. Legal Representatives – (1) Any party may be represented in the arbitration by one or more authorized legal representatives appearing by name before the Arbitral Tribunal.

(2) Until the Arbitral Tribunal's formation, the Registrar may request from any party:

(i) written proof of the authority granted by that party to any legal representative designated in its Request or Response; and

(ii) written confirmation of the names and addresses of all such party's legal representatives in the arbitration. After its formation, at any time, the Arbitral Tribunal may order any party to provide similar proof or confirmation in any form it considers appropriate.

(3) Following the Arbitral Tribunal's formation, any intended change or addition by a party to its legal representatives shall be notified promptly in writing to all other parties, the Arbitral Tribunal and the Registrar; and any such intended change or addition shall only take effect in the arbitration subject to the approval of the Arbitral Tribunal.

(4) The Arbitral Tribunal may withhold approval of any intended change or addition to a party's legal representatives where such change or addition could compromise the composition of the Arbitral Tribunal or the finality of any award (on the grounds of possible conflict or other like impediment). In deciding whether to grant or withhold such approval, the Arbitral Tribunal shall have regard to the circumstances, including: the general principle that a party may be represented by a legal representative chosen by that party, the stage which the arbitration has reached, the efficiency resulting from maintaining the composition of the Arbitral Tribunal (as constituted throughout the arbitration) and any likely wasted costs or loss of time resulting from such change or addition.

[23] LCIA Rules, 2014

(5) Each party shall ensure that all its legal representatives appearing by name before the Arbitral Tribunal have agreed to comply with the ethical guidelines annexed to this Act under Schedule IA. In permitting any legal representative so to appear, a party shall thereby represent that the legal representative has agreed to such compliance.

(6) In the event of a complaint by one party against another party's legal representative appearing by name before the Arbitral Tribunal (or of such complaint by the Arbitral Tribunal upon its own initiative), the Arbitral Tribunal may decide, after consulting the parties and granting that legal representative a reasonable opportunity to answer the complaint, whether or not the legal representative has violated the general guidelines. If such violation is found by the Arbitral Tribunal, the Arbitral Tribunal may order any or all of the following sanctions against the legal representative:

(i) a written reprimand;

(ii) a written caution as to future conduct in the arbitration; and

(iii) any other measure necessary to fulfil within the arbitration the general duties required of the Arbitral Tribunal under Section 34(4)(i) and (ii).[24]

6. Oral Hearing(s) – (1) Any party has the right to a hearing before the Arbitral Tribunal on the parties' dispute at any appropriate stage of the arbitration (as decided by the Arbitral Tribunal), unless the parties have agreed in writing upon a documents-only arbitration. For this purpose, a hearing may consist of several part-hearings (as decided by the Arbitral Tribunal).

(2) The Arbitral Tribunal shall organise the conduct of any hearing in advance, in consultation with the parties. The Arbitral Tribunal shall have the fullest authority under the Arbitration Agreement to establish the conduct of a hearing, including its date, form, content, procedure, time limits and geographical place. As to form, a hearing may take place by video or telephone conference or in person (or a combination of all three). As to content, the Arbitral Tribunal may require the parties to address a list of specific questions or issues arising from the parties' dispute.

(3) The Arbitral Tribunal shall give to the parties reasonable notice in writing of any hearing.

(4) All hearings shall be held in private, unless the parties agree otherwise in writing.[25]

[24] LCIA Rules, 2014
[25] Ibid

7. Witness(es) – (1) Before any hearing, the Arbitral Tribunal may order any party to give written notice of the identity of each witness that party wishes to call (including rebuttal witnesses), as well as the subject-matter of that witness's testimony, its content and its relevance to the issues in the arbitration.

(2) Subject to any order otherwise by the Arbitral Tribunal, the testimony of a witness may be presented by a party in written form, either as a signed statement or like document.

(3) The Arbitral Tribunal may decide the time, manner and form in which these written materials shall be exchanged between the parties and presented to the Arbitral Tribunal; and it may allow, refuse or limit the written and oral testimony of witnesses (whether witnesses of fact or expert witnesses).

(4) The Arbitral Tribunal and any party may request that a witness, on whose written testimony another party relies, should attend for oral questioning at a hearing before the Arbitral Tribunal. If the Arbitral Tribunal orders that other party to secure the attendance of that witness and the witness refuses or fails to attend the hearing without good cause, the Arbitral Tribunal may place such weight on the written testimony or exclude all or any part thereof altogether as it considers appropriate in the circumstances.

(5) Subject to the mandatory provisions of any applicable law, rules of law and any order of the Arbitral Tribunal otherwise, it shall not be improper for any party or its legal representatives to interview any potential witness for the purpose of presenting his or her testimony in written form to the Arbitral Tribunal or producing such person as an oral witness at any hearing.

(6) Subject to any order by the Arbitral Tribunal otherwise, any individual intending to testify to the Arbitral Tribunal may be treated as a witness notwithstanding that the individual is a party to the arbitration or was, remains or has become an officer, employee, owner or shareholder of any party or is otherwise identified with any party.

(7) Subject to the mandatory provisions of any applicable law, the Arbitral Tribunal shall be entitled (but not required) to administer any appropriate oath to any witness at any hearing, prior to the oral testimony of that witness.

(8) Any witness who gives oral testimony at a hearing before the Arbitral Tribunal may be questioned by each of the parties under the control of the Arbitral Tribunal. The Arbitral Tribunal may put questions at any stage of such testimony.[26]

[26] LCIA Rules, 2014

8. Expert(s) to Arbitral Tribunal — (1) The Arbitral Tribunal, after consultation with the parties, may appoint one or more experts to report in writing to the Arbitral Tribunal and the parties on specific issues in the arbitration, as identified by the Arbitral Tribunal.

(2) Any such expert shall be and remain impartial and independent of the parties; and he or she shall sign a written declaration to such effect, delivered to the Arbitral Tribunal and copied to all parties.

(3) The Arbitral Tribunal may require any party at any time to give to such expert any relevant information or to provide access to any relevant documents, goods, samples, property, site or thing for inspection under that party's control on such terms as the Arbitral Tribunal thinks appropriate in the circumstances.

(4) If any party so requests or the Arbitral Tribunal considers it necessary, the Arbitral Tribunal may order the expert, after delivery of the expert's written report, to participate in a hearing at which the parties shall have a reasonable opportunity to question the expert on the report and to present witnesses in order to testify on relevant issues arising from the report.

(5) The fees and expenses of any expert appointed by the Arbitral Tribunal under this Section may be paid out of the deposits payable by the parties under Article 24 and shall form part of the Arbitration Costs under Section 47.

Explanation: Experts under this Section include language experts appointed for any translation purposes by the ICADR under Section 37 of this Act.[27]

9. Additional Powers — (1) The Arbitral Tribunal shall have the power, upon the application of any party or (save for sub-paragraphs (viii), (ix) and (x) below) upon its own initiative, but in either case only after giving the parties a reasonable opportunity to state their views and upon such terms (as to costs and otherwise) as the Arbitral Tribunal may decide:

(i) to allow a party to supplement, modify or amend any claim, defence, cross-claim, defence to cross-claim and reply, including a Request, Response and any other written statement, submitted by such party;

(ii) to abridge or extend (even where the period of time has expired) any period of time prescribed under the Arbitration Agreement, any other agreement of the parties or any order made by the Arbitral Tribunal;

[27] Ibid

(iii) to conduct such enquiries as may appear to the Arbitral Tribunal to be necessary or expedient, including whether and to what extent the Arbitral Tribunal should itself take the initiative in identifying relevant issues and ascertaining relevant facts and the law(s) or rules of law applicable to the Arbitration Agreement, the arbitration and the merits of the parties' dispute;

(iv) to order any party to make any documents, goods, samples, property, site or thing under its control available for inspection by the Arbitral Tribunal, any other party, any expert to such party and any expert to the Tribunal;

(v) to order any party to produce to the Arbitral Tribunal and to other parties documents or copies of documents in their possession, custody or power which the Arbitral Tribunal decides to be relevant;

(vi) to decide whether or not to apply any strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material tendered by a party on any issue of fact or expert opinion; and to decide the time, manner and form in which such material should be exchanged between the parties and presented to the Arbitral Tribunal;

(vii) to order compliance with any legal obligation, payment of compensation for breach of any legal obligation and specific performance of any agreement (including any arbitration agreement or any contract relating to land);

(viii) to allow one or more third persons to be joined in the arbitration as a party provided any such third person and the applicant party have consented to such joinder in writing following the Commencement Date or (if earlier) in the Arbitration Agreement; and thereafter to make a single final award, or separate awards, in respect of all parties so implicated in the arbitration;

(ix) to order, with the approval of the Governing Council, the consolidation of the arbitration with one or more other arbitrations into a single arbitration subject to the provisions of this Act where all the parties to the arbitrations to be consolidated so agree in writing;

(x) to order, with the approval of the Governing Council, the consolidation of the arbitration with one or more other arbitrations subject to the provisions of this Act commenced under the same arbitration agreement or any compatible arbitration agreement(s) between the same disputing parties, provided that no arbitral tribunal has yet been formed by the Governing Council for such other arbitration(s) or, if already formed, that such tribunal(s) is(are) composed of the same arbitrators; and

(xi) to order the discontinuance of the arbitration if it appears to the Arbitral Tribunal that the arbitration has been abandoned by the parties or all claims and any cross-claims withdrawn by the parties, provided that, after fixing a reasonable period of time within

which the parties shall be invited to agree or to object to such discontinuance, no party has stated its written objection to the Arbitral Tribunal to such discontinuance upon the expiry of such period of time.

(2) By agreeing to arbitration under the Arbitration Agreement, the parties shall be treated as having agreed not to apply to any state court or other legal authority for any order available from the Arbitral Tribunal (if formed) under subsection 1 of this Section, except with the agreement in writing of all parties.

(3) The Arbitral Tribunal shall decide the parties' dispute in accordance with the law(s) or rules of law chosen by the parties as applicable to the merits of their dispute. If and to the extent that the Arbitral Tribunal decides that the parties have made no such choice, the Arbitral Tribunal shall apply the law(s) or rules of law which it considers appropriate.

(4) The Arbitral Tribunal shall only apply to the merits of the dispute principles deriving from "ex aequo et bono", "amiable composition" or "honourable engagement" where the parties have so agreed in writing.

(5) Subject to any order of the Arbitral Tribunal under subsection 1 sub-clause (ii) of this subsection, the Governing Council may also abridge or extend any period of time under the Arbitration Agreement or other agreement of the parties (even where the period of time has expired).

(6) Without prejudice to the generality of sub-clauses (ix) and (x) of subsection 1, the Governing Council may determine, after giving the parties a reasonable opportunity to state their views, that two or more arbitrations, subject to the provisions of this Act, and commenced under the same arbitration agreement between the same disputing parties, shall be consolidated to form one single arbitration subject to the provisions of this Act, provided that no arbitral tribunal has yet been formed by the provisions of this Act, for any of the arbitrations to be consolidated.[28]

10. Deposits — (1) The Governing Council may direct the parties, in such proportions and at such times as it thinks appropriate, to make one or more payments to the Registrar on account of the Arbitration Costs. Such payments deposited by the parties may be applied by the Governing Council to pay any item of such Arbitration Costs (including the ICADR's own fees and expenses) in accordance with the provisions of this Act.

(2) All payments made by parties on account of the Arbitration Costs shall be held by the Registrar in trust under Indian law in India, to be disbursed or otherwise applied by the Registrar in accordance with the provisions of this Act, and invested having regard

[28] LCIA Rules, 2014

also to the interests of the Registrar. Each payment made by a party shall be credited by the Registrar with the current rate of interest at the rate from time to time credited to an overnight deposit of that amount with the bank(s) engaged by the Registrar to manage deposits from time to time; and any surplus income (beyond such interest) shall accrue for the sole benefit of the Registrar. In the event that payments (with such interest) exceed the total amount of the Arbitration Costs at the conclusion of the arbitration, the excess amount shall be returned by the Registrar to the parties as the ultimate default beneficiaries of the trust.

(3) Save for exceptional circumstances, the Arbitral Tribunal should not proceed with the arbitration without having ascertained from the Registrar or will be in requisite funds as regards outstanding and future Arbitration Costs.

(4) In the event that a party fails or refuses to make any payment on account of the Arbitration Costs as directed by the Governing Council, the Governing Council may direct the other party or parties to effect a substitute payment to allow the arbitration to proceed (subject to any order or award on Arbitration Costs).

(5) In such circumstances, the party effecting the substitute payment may request the Arbitral Tribunal to make an order or award in order to recover that amount as a debt immediately due and payable to that party by the defaulting party, together with any interest.

(6) Failure by a claiming or cross-claiming party to make promptly and in full any required payment on account of Arbitration Costs may be treated by the Arbitral Tribunal as a withdrawal from the arbitration of the claim or cross-claim respectively, thereby removing such claim or crossclaim (as the case may be) from the scope of the Arbitral Tribunal's jurisdiction under the Arbitration Agreement, subject to any terms decided by the Arbitral Tribunal as to the reinstatement of the claim or cross-claim in the event of subsequent payment by the claiming or cross-claiming party. Such a withdrawal shall not preclude the claiming or cross-claiming party from defending as a respondent any claim or cross-claim made by another party.

Explanation.- The expression "current rate of interest" shall have the same meaning as assigned to it under subclause (b) of section 2 of the Interest Act, 1978 (14 of 1978)

11. Interim and Conservatory Measures — (1) The Arbitral Tribunal shall have the power upon the application of any party, after giving all other parties a reasonable opportunity to respond to such application and upon such terms as the Arbitral Tribunal considers appropriate in the circumstances:

(i) to order any respondent party to a claim or cross-claim to provide security for all or part of the amount in dispute, by way of deposit or bank guarantee or in any other manner;

(ii) to order the preservation, storage, sale or other disposal of any documents, goods, samples, property, site or thing under the control of any party and relating to the subject matter of the arbitration; and

(iii) to order on a provisional basis, subject to a final decision in an award, any relief which the Arbitral Tribunal would have power to grant in an award, including the payment of money or the disposition of property as between any parties. Such terms may include the provision by the applicant party of a cross-indemnity, secured in such manner as the Arbitral Tribunal considers appropriate, for any costs or losses incurred by the respondent party in complying with the Arbitral Tribunal's order. Any amount payable under such cross-indemnity and any consequential relief may be decided by the Arbitral Tribunal by one or more awards in the arbitration.

(2) The Arbitral Tribunal shall have the power upon the application of a party, after giving all other parties a reasonable opportunity to respond to such application, to order any claiming or cross-claiming party to provide or procure security for Legal Costs and Arbitration Costs by way of deposit or bank guarantee or in any other manner and upon such terms as the Arbitral Tribunal considers appropriate in the circumstances. Such terms may include the provision by that other party of a cross-indemnity, itself secured in such manner as the Arbitral Tribunal considers appropriate, for any costs and losses incurred by such claimant or cross-claimant in complying with the Arbitral Tribunal's order. Any amount payable under such cross-indemnity and any consequential relief may be decided by the Arbitral Tribunal by one or more awards in the arbitration. In the event that a claiming or cross-claiming party does not comply with any order to provide security, the Arbitral Tribunal may stay that party's claims or cross-claims or dismiss them by an award.

(3) The power of the Arbitral Tribunal under subsection (1) of this Section, shall not prejudice any party's right to apply to a state court or other legal authority for interim or conservatory measures to similar effect:

(i) before the formation of the Arbitral Tribunal; and

(ii) after the formation of the Arbitral Tribunal, in exceptional cases and with the Arbitral Tribunal's authorisation, until the final award. After the Commencement Date, any application and any order for such measures before the formation of the Arbitral Tribunal shall be communicated promptly in writing by the applicant party to the Registrar; after its formation, also to the Arbitral Tribunal; and in both cases also to all other parties.

(4) By agreeing to arbitration under the Arbitration Agreement, the parties shall be taken to have agreed not to apply to any state court or other legal authority for any order for security for Legal Costs or Arbitration Costs.

12. Award(s) — (1) The Arbitral Tribunal may make separate awards on different issues at different times, including interim payments on account of any claim or cross-claim (including Legal and Arbitration Costs). Such awards shall have the same status as any other award made by the Arbitral Tribunal.

(2) The Arbitral Tribunal shall make any award in writing and, unless all parties agree in writing otherwise, shall state the reasons upon which such award is based. The award shall also state the date when the award is made and the seat of the arbitration; and it shall be signed by the Arbitral Tribunal or those of its members assenting to it.

(3) An award may be expressed in any currency, unless the parties have agreed otherwise.

(4) Unless the parties have agreed otherwise, the Arbitral Tribunal may order that simple or compound interest shall be paid by any party on any sum awarded at such rates as the Arbitral Tribunal decides to be appropriate (without being bound by rates of interest practised by any state court or other legal authority) in respect of any period which the Arbitral Tribunal decides to be appropriate ending not later than the date upon which the award is complied with.

(5) Where there is more than one arbitrator and the Arbitral Tribunal fails to agree on any issue, the arbitrators shall decide that issue by a majority. Failing a majority decision on any issue, the presiding arbitrator shall decide that issue.

(6) If any arbitrator refuses or fails to sign the award, the signatures of the majority or (failing a majority) of the presiding arbitrator shall be sufficient, provided that the reason for the omitted signature is stated in the award by the majority or by the presiding arbitrator.

(7) The sole or presiding arbitrator shall be responsible for delivering the award to the Governing Council, which shall transmit to the parties the award authenticated by the Registrar as an ICADR award, provided that all Arbitration Costs have been paid in full to the ICADR in accordance with Sections 43 and 47. Such transmission may be made by any electronic means, in addition to paper form (if so requested by any party). In the event of any disparity between electronic and paper forms, the paper form shall prevail.

(8) Every award (including reasons for such award) shall be final and binding on the parties. The parties undertake to carry out any award immediately and without any delay (subject only to Section 46); and the parties also waive irrevocably their right to any form of appeal, review or recourse to any state court or other legal authority, insofar as such waiver shall not be prohibited under any applicable law. An award may only be appealed from in the interest of public policy.

(9) In the event of any final settlement of the parties' dispute, the Arbitral Tribunal may decide to make an award recording the settlement if the parties jointly so request in writing (a "Consent Award"), provided always that such Consent Award shall contain an express statement on its face that it is an award made at the parties' joint request and with their consent. A Consent Award need not contain reasons. If the parties do not jointly request a Consent Award, on written confirmation by the parties to the ICADR that a final settlement has been reached, the Arbitral Tribunal shall be discharged and the arbitration proceedings concluded by the ICADR, subject to payment by the parties of any outstanding Arbitration Costs in accordance with Sections 43 and 47.

(10) Subject to the provisions of this Act, The Convention on the Recognition and Enforcement of Foreign Arbitral Awards at Concluded at New York on 10th June 1958 shall apply to all awards given out under this Act.

(11) Awards made under this Act may be published by the ICADR subject to the conditions laid down under Section 49(3) of this Act. The published award shall not mention the names of the parties to the dispute and shall omit any details that may allude to the identity of the said parties to the dispute.

13. Correction of Award(s) and Additional Award(s) — (1) Within 30 days of receipt of any award, a party may by written notice to the Registrar (copied to all other parties) request the Arbitral Tribunal to correct in the award any error in computation, any clerical or typographical error, any ambiguity or any mistake of a similar nature. If the Arbitral Tribunal considers the request to be justified, after consulting the parties, it shall make the correction within 30 days of receipt of the request. Any correction shall take the form of a memorandum by the Arbitral Tribunal.

(2) The Arbitral Tribunal may also correct any error (including any error in computation, any clerical or typographical error or any error of a similar nature) upon its own initiative in the form of a memorandum within 30 days of the date of the award, after consulting the parties.

(3) Within 30 days of receipt of the final award, a party may by written notice to the Registrar (copied to all other parties), request the Arbitral Tribunal to make an additional award as to any claim or cross-claim presented in the arbitration but not decided in any award. If the Arbitral Tribunal considers the request to be justified, after consulting the parties, it shall make the additional award within 45 days of receipt of the request.

(4) As to any claim or cross-claim presented in the arbitration but not decided in any award, the Arbitral Tribunal may also make an additional award upon its own initiative within 30 days of the date of the award, after consulting the parties.

(5) The provisions of Section 45(2) to 45(7) shall apply to any memorandum or additional award made hereunder. A memorandum shall be treated as part of the award.

14. Arbitration Costs and Legal Costs — (1) The costs of the arbitration other than the legal or other expenses incurred by the parties themselves (the "Arbitration Costs") shall be determined by the Registrar in accordance with the Schedule of Costs. The parties shall be jointly and severally liable to the Registrar and the Arbitral Tribunal for such Arbitration Costs.

(2) The Arbitral Tribunal shall specify by an award the amount of the Arbitration Costs determined by the ICADR (in the absence of a final settlement of the parties' dispute regarding liability for such costs). The Arbitral Tribunal shall decide the proportions in which the parties shall bear such Arbitration Costs. If the Arbitral Tribunal has decided that all or any part of the Arbitration Costs shall be borne by a party other than a party which has already covered such costs by way of a payment to the ICADR under Section 43, the latter party shall have the right to recover the appropriate amount of Arbitration Costs from the former party.

(3) The Arbitral Tribunal shall also have the power to decide by an award that all or part of the legal or other expenses incurred by a party (the "Legal Costs") be paid by another party. The Arbitral Tribunal shall decide the amount of such Legal Costs on such reasonable basis as it thinks appropriate. The Arbitral Tribunal shall not be required to apply the rates or procedures for assessing such costs practised by any state court or other legal authority.

(4) The Arbitral Tribunal shall make its decisions on both Arbitration Costs and Legal Costs on the general principle that costs should reflect the parties' relative success and failure in the award or arbitration or under different issues, except where it appears to the Arbitral Tribunal that in the circumstances the application of such a general principle would be inappropriate under the Arbitration Agreement or otherwise. The Arbitral Tribunal may also take into account the parties' conduct in the arbitration, including any co-operation in facilitating the proceedings as to time and cost and any non-co-operation resulting in undue delay and unnecessary expense. Any decision on costs by the Arbitral Tribunal shall be made with reasons in the award containing such decision.

(5) In the event that the parties have howsoever agreed before their dispute that one or more parties shall pay the whole or any part of the Arbitration Costs or Legal Costs whatever the result of any dispute, arbitration or award, such agreement (in order to be effective) shall be confirmed by the parties in writing after the Commencement Date.

(6) If the arbitration is abandoned, suspended, withdrawn or concluded, by agreement or otherwise, before the final award is made, the parties shall remain jointly and severally liable to pay to the Registrar and the Arbitral Tribunal the Arbitration Costs determined by the Governing Council.

(7) In the event that the Arbitration Costs are less than the deposits received by the ICADR under Section 43, there shall be a refund by the ICADR to the parties in such proportions as the parties may agree in writing, or failing such agreement, in the same proportions and to the same payers as the deposits were paid to the ICADR.

(8) The fees and charges to be included in the costs shall be as specified in Schedule-I.

(9) The arbitral tribunal shall determine which party shall bear the costs taking into account 2 the provisions of subsections (2) to (5) of section 31A of the Arbitration Act the circumstances of the case and may apportion the costs between the parties if it is reasonable to do so.

(10) the arbitral tribunal may also determine whether costs are payable by one party to another party as provided in section 31A(1)(a) of the Arbitration Act;

Explanation- For the purpose of sub-clause (a), "costs" means reasonable costs relating to –

(i) the fees and expenses of the arbitrators and witnesses,
(ii) legal fees and expenses,
(iii) the administrative fees and charges of the ICADR, and
(iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

15. Determinations and Decisions by the ICADR — (1) The determinations of the Governing Council with respect to all matters relating to the arbitration shall be conclusive and binding upon the parties and the Arbitral Tribunal, unless otherwise directed by the Governing Council. Save for reasoned decisions on arbitral challenges under Section 30, such determinations are to be treated as administrative in nature; and the Governing shall not be required to give reasons for any such determination.

(2) To the extent permitted by any applicable law, the parties shall be taken to have waived any right of appeal or review in respect of any determination and decision of the Governing Council to any state court or other legal authority. If such appeal or review takes place due to mandatory provisions of any applicable law or otherwise, the Governing Council may determine whether or not the arbitration should continue, notwithstanding such appeal or review.

16. Confidentiality — (1) The parties undertake as a general principle to keep confidential all awards in the arbitration, together with all materials in the arbitration created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain, save and to the extent that

disclosure may be required of a party by legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a state court or other legal authority.

(2) The deliberations of the Arbitral Tribunal shall remain confidential to its members, save as required by any applicable law and to the extent that disclosure of an arbitrator's refusal to participate in the arbitration is required of the other members of the Arbitral Tribunal under Sections 30, 32, 36 and 46.

(3) The Governing Council does not publish any award or any part of an award without the prior written consent of all parties and the Arbitral Tribunal.

17. Limitation of Liability — (1) None of the Registrar (including its officers, members and employees), the Governing Council (including its President and Secretaries), any arbitrator, any Emergency Arbitrator and any expert to the Arbitral Tribunal shall be liable to any party howsoever for any act or omission in connection with any arbitration, save:

(i) where the act or omission is shown by that party to constitute conscious and deliberate wrongdoing committed by the body or person alleged to be liable to that party; or

(ii) to the extent that any part of this provision is shown to be prohibited by any applicable law.

(2) After the award has been made and all possibilities of any memorandum or additional award under Section 46 have lapsed or been exhausted, neither the Registrar (including its officers, members and employees), the Governing Council (including its President and Secretaries), any arbitrator, any Emergency Arbitrator or any expert to the Arbitral Tribunal shall be under any legal obligation to make any statement to any person about any matter concerning the arbitration; nor shall any party seek to make any of these bodies or persons a witness in any legal or other proceedings arising out of the arbitration.[29]

18. General Rules (1) A party who knows that any provision of the Arbitration Agreement has not been complied with and yet proceeds with the arbitration without promptly stating its objection as to such noncompliance to the Registrar (before the formation of the Arbitral Tribunal) or the Arbitral Tribunal (after its formation), shall be treated as having irrevocably waived its right to object for all purposes.

[29] LCIA Rules, 2014

(2) For all matters not expressly provided in the Arbitration Agreement, the Governing Council, the ICADR, the Registrar, the Arbitral Tribunal and each of the parties shall act at all times in good faith, respecting the spirit of the Arbitration Agreement, and shall make every reasonable effort to ensure that any award is legally recognized and enforceable at the arbitral seat.

(3) If and to the extent that any part of the Arbitration Agreement is decided by the Arbitral Tribunal, the Emergency Arbitrator, or any court or other legal authority of competent jurisdiction to be invalid, ineffective or unenforceable, such decision shall not, of itself, adversely affect any order or award by the Arbitral Tribunal or the Emergency Arbitrator or any other part of the Arbitration Agreement which shall remain in full force and effect, unless prohibited by any applicable law.

19. Act applicable to substance of dispute — (1) Where the place of arbitration is situated in India-

(a) in an international commercial arbitration -

(i) the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;

(ii) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules;

(iii) failing any designation of the law under sub-clause (a) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

(2) The arbitral tribunal will decide ex aequo et bono or as amiable compositeur only if the parties have expressly authorized it to do so.

(3) The arbitral tribunal shall, in all cases, while deciding and making an award, take into account the terms of the contract and trade usages applicable to the transaction.

20. Settlement. — (1) If, during arbitral proceedings, the parties settle the dispute, in terms of section 30 of the Arbitration Act the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An arbitral award on agreed terms shall be made in accordance with Section 32 and shall state that it is an arbitral award.

(3) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award.

21. Interest on sums awarded.— (1) Where and in so far as an arbitral award is for the payment of money, 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.

(2) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two percent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.- The expression "current rate of interest" shall have the same meaning as assigned to it under sub-clause (b) of section 2 of the Interest Act, 1978 (14 of 1978)

22. Administrative assistance.— The Governing Council will arrange the administrative services specified in CHAPTER VI if-

(a) the parties designate the ICADR for arranging such services, in the arbitration agreement;

(b) the parties, or the arbitral tribunal with the consent of the parties, request the ICADR to arrange such services.

THE NINTH SCHEDULE
(Fees For International Commercial Arbitrations)

I. Administrative fee:

S. No.	Amount in Dispute (in US dollars)	Amount of fee
1.	Where the total amount in dispute does not exceed $50,000	$1,500
2.	Where the total amount in dispute exceeds $50,000 but does not exceed $1,75,000	$1,500 plus 3 per cent of the amount by which the total amount in dispute exceeds $50,000
3.	Where the total amount in dispute exceeds	$5,250 plus 2 per cent of the amount by

	$1,75,000 but does not exceed $5,00,000	which the total amount in dispute exceeds $1,75,000
4.	Where the total amount in dispute exceeds $5,00,000 but does not exceed $10,00,000	$11,750 plus 1 per cent of the amount by which the total amount in dispute exceeds $5,00,000
5.	Where the total amount in dispute exceeds $10,00,000 but does not exceed $20,00,000	$16,750 plus 0.5 per cent of the amount by which the total amount in dispute exceeds $10,00,000
6.	Where the total amount in dispute exceeds $20,00,000 but does not exceed $50,00,000	$21,750 plus 0.25 per cent of the amount by which the total amount in dispute exceeds $20,00,000
7.	Where the total amount in dispute exceeds $50,00,000	$29,250 plus 0.125 per cent of the amount by which the total amount in dispute exceeds $50,00,000 with a ceiling of $35,000.

Note : Where a dispute cannot be expressed in terms of money, the Secretary-General of the ICADR shall determine the amount of administrative fees, in his discretion, in each case.

(1) Non-refundable fee
(ICADR acts only as an appointing authority)
US $1,000

II. Arbitrator's fee

S. No	Amount in dispute (in US dollars)	Amount of fee (in US dollars)
1.	where the total amount in dispute does not exceed $50,000	$3,000
2.	where the total amount in dispute ex-ceeds $50,000 but does not exceed $1,75,000	$3,000 plus 5 per cent. of the amount by which the total amount in dispute exceeds $50,000
3.	where the total amount in dispute exceeds $ 1,75,000 but does not exceed $5,00,000	$9,250 plus 4 per cent. of the amount by which the total amount in dispute exceeds $1,75,000
4.	where the total amount in dispute exceeds $ 5,00,000 but does not exceed $10,00,000	$22,250 plus 3 per cent. of the amount by which the total amount in dispute exceeds $5,00,000

5.	where the total amount in dispute exceeds $10,00,000 but does not exceed $20,00,000	$37,250 plus 2 per cent. of the amount by which the total amount in dispute exceeds $10,00,000
6.	where the total amount in dispute exceeds $20,00,000 but does not exceed $50,00,000	$57,250 plus 1 per cent. of the amount by which the total amount in dispute exceeds $20,00,000
7.	where the total amount in dispute exceeds $50,00,000	$87,250 plus 0.5 per cent. of the amount by which the total amount in dispute exceeds $50,00,000 with a ceiling of $ 1,00,000

Note : Where a dispute cannot be expressed in terms of money, the arbitral tribunal shall determine the amount of fee in each case.

III. Charges for facilities

US $350 for one day or part thereof plus $50 Wi-fi charges for two hours (optional), plus $50 Documentation Camera charges for two hours (optional), plus $100 Stenographic service charges (optional).

Note: Where the facilities are provided in a place other than in ICADR's offices, the charges will be determined in each case and billed separately.

THE TENTH SCHEDULE
(See Section 29B)

MODEL GUIDELINES FOR THE ARBITRATORS AND THE PARTIES FOR EXPEDITIOUS CONDUCT OF ARBITRATION PROCEEDINGS

1. The arbitrators and the parties to the dispute shall follow these guidelines to ensure economic and expeditious disposal of arbitration cases.

For Arbitrators

2. (1) The arbitrators must take up the arbitration expeditiously on receipt of the request from the ICADR and should also complete the same with reasonable mode dispatch. Serious efforts should be made to settle arbitration cases expeditiously within a period of one year where the amount of claim exceeds 1 crore and within a period of 6 months where the amount of claim is less than Rs. 1 crore.

(2) The Arbitrator(s) shall send to the Arbitration Committee of ICADR quarterly report of the progress of arbitration proceedings.

(3) The Arbitration Committee may, where necessary, give suggestions to the Arbitrator(s) concerned to expedite the proceedings.

3. When accepting his mandate, the arbitrator shall be able to perform his task with the necessary competence according to his professional qualifications.

4. When accepting his appointment, the arbitrator shall give a declaration in writing, in the Form specified in Schedule-III as under: -

(i) no circumstances exist in terms of sub-section (1) of section 12 of the Arbitration Act read with Fifth Schedule thereof that give rise to justifiable doubts as to his independence or impartiality,

(ii) he does not have any relationship with any of the parties to the dispute or their counsel or the subject matter of the dispute as specified in the Seventh Schedule of the Arbitration Act, and

(iii) where any qualifications are required of an arbitrator by the agreement of the parties, he possesses those qualifications.

Where necessary due to supervening facts, this declaration shall be repeated in the course of the entire arbitral proceedings until the award is filed.

5. Where facts that should have been disclosed are subsequently discovered, the arbitrator may either withdraw or be challenged or the ICADR may refuse to appoint him in other arbitral proceedings on this ground.

6. The arbitrator may at all stages suggest the possibility of a settlement to the parties but may not influence their decision by indicating that he has already reached a decision on the dispute.

7. In the course of the arbitral proceedings, the arbitrator shall refrain from all unilateral contact with the parties or their counsel which is not notified to the ICADR so that the ICADR can inform the other parties and arbitrators.

8. The arbitrator shall refrain from giving the parties, either directly or through their counsel, notice of decisions in the evidence taking place or on the merits; notice of these decisions may be given exclusively by the ICADR.

9. The arbitrator shall neither request nor accept any direct arrangement on costs or fees with the party which has designated him. The arbitrator is entitled to reimbursement of expenses and a fee as exclusively determined by the ICADR according to its Schedule of Fees, which are deemed to have been agreed by the arbitrator when accepting his mandate.

10. The arbitrator shall encourage a serene and positive development of the arbitral proceedings. In particular, he shall decide on the date and manner of the hearings in such a way as to allow both parties to fully participate therein, in compliance with the principle of equal treatment and opportunity.

11. The first hearing of the arbitral tribunal should be convened within 20 days of the receipt of the complete reply of the respondent when the arbitral tribunal may issue necessary directions. Admission and denial of the documents may be got done expeditiously. Issues if any to be framed, may be done at the same or at the next hearing. The arbitrators should make efforts to hold arbitration hearings continuously on day-to-day basis during office hours.

12. The parties should be asked to furnish a list of their witnesses, if any, in advance and they should be asked to file affidavits of witnesses on the date fixed for evidence preferably within a week of the settlement of issues. Cross examination of such of the deponent's witnesses whose presence is demanded by the opposite party should be completed at a hearing to be fixed within 15 days.

13. Adjournments of duly fixed hearing should not be granted except for unavoidable reasons which should be spelt out in the adjournment order.

14. Arguments preferably should be heard within 15 days of the completion of evidence, to be followed by submission of written arguments, if any.

15. The Arbitrator should make the award expeditiously after the close of the hearings, preferably within 30 days.

16. The arbitrator who does not comply with the provisions of these guidelines may be replaced by the ICADR in consultation with the parties. Where it is not appropriate to replace the arbitrator in order not to cause delay in the arbitral proceedings, the ICADR may also take such action after the conclusion of the arbitral proceedings, by refusing to appoint him in subsequent arbitral proceedings.

For Parties

17. The claimant should file the applications or demand for arbitration to the ICADR with all the information and papers as per this Act, full statement of claim and copies of documents relied upon, in 3 sets in case of a Sole Arbitrator and in 5 sets in case of three arbitrators.

18. The respondent should file his reply to the claim with complete information and documents relied upon, in 3 or 5 sets as above as early as possible within the prescribed time. Fresh documentation/ claims should not be entertained at a later stage of the proceedings unless the arbitral tribunal is satisfied about the reasons for granting such permission.

19. If any party to arbitration, particularly in cases where any arbitrator, advocate or any of the parties has to come from out station to participate in arbitration proceedings, desires to seek adjournment on any valid ground, it must submit a written request to the ICADR at least before 5 working days stating the grounds which compel it to request for postponement of the hearing so that the ICADR is in a position to take necessary steps to inform the Parties, Arbitrators and Advocates regarding postponement of the hearing. Parties seeking adjournment will have to pay cost to ICADR as may be determined by the arbitral tribunal.

20. Parties should deposit arbitration and administrative fees with the ICADR within the stipulated time, as per this Act and no extension should be sought in this behalf except for compelling reasons.

21. To avoid excessive costs in arbitration proceedings, the parties are advised to choose their arbitrators from the Panel, as far as possible from the place where the arbitration hearings have to be held. In case, a party still chooses an arbitrator from a place other than the place of hearing, the concerned party will bear the entire extra cost to be incurred on stay TA/DA etc. of the arbitrator nominated by it.

For Arbitration Committee of ICADR

22. The Arbitration Committee of ICADR may examine the arbitration case file, from time to time to evaluate the progress of the proceedings and to ascertain whether the arbitrators have granted adjournments only on reasonable grounds.

23. The Arbitration Committee of ICADR shall be sole judge of the grounds of violation of the guidelines and its decision shall be final and binding on the arbitral tribunal as well as the parties.

ELEVENTH SCHEDULE

NAME:

CONTACT DETAILS:

PRIOR EXPERIENCE (INCLUDING EXPERIENCE WITH ARBITRATIONS):

NUMBER OF ONGOING ARBITRATIONS:

CIRCUMSTANCES DISCLOSING ANY PAST OR PRESENT RELATIONSHIP WITH OR INTEREST IN ANY OF THE PARTIES OR IN RELATION TO THE SUBJECT-MATTER IN DISPUTE, WHETHER FINANCIAL, BUSINESS, PROFESSIONAL OR OTHER KIND, WHICH IS LIKELY TO GIVE RISE TO JUSTIFIABLE DOUBTS AS TO YOUR INDEPENDENCE OR IMPARTIALITY (LIST OUT):

CIRCUMSTANCES WHICH ARE LIKELY TO AFFECT YOUR ABILITY TO DEVOTE SUFFICIENT TIME TO THE ARBITRATION AND IN PARTICULAR YOUR ABILITY TO FINISH THE ENTIRE ARBITRATION WITHIN TWELVE MONTHS (LIST OUT):"

D. SUGGESTED DRAFT OF ARBITRATION AND CONCILIATION (INTERNATIONAL COMMERCIAL ARBITRATION) AMENDMENT ACT, 2016

Statement of Objects and Reasons

The Indian economy registered rapid growth over the last couple of years. This was largely due to the deployment of policies that streamlined and simplified governance of commerce in the country. These policies also encourage a massive influx of foreign direct investment into the country. In an effort to liberalize the economy further, the Government of India decided to open up the current legal services sector to foreign players. The move is slated to bolster current economic momentum by catalyzing investments, fostering the growth of the indigenous legal regime by raising standards and increasing employment opportunities and granting businesses the access they need to global legal services.

In today's interconnected global economy, efforts to liberalize legal policies will help drive the expansion of world trade and help countries to integrate into an increasingly globalized production system, rather than being left on the margins of world trade. Commerce in a country thrives with the support of a legal framework that provides for the swift resolution of commercial disputes. Stakeholders across the spectrum of international trade and business are demanding an open, responsive and receptive dispensation mechanism for legal services in India. The growth of international services is becoming increasingly relevant to the development of the Indian legal sector and the national economy. Arbitration is the most favored dispute resolution mechanism amongst the global business community today. More than 80% of private international contracts contain clauses providing that disputes shall be settled through arbitration. Any country that wishes to be an economic heavyweight in the global arena must have a robust framework in place to ensure the growth of international arbitration within its borders.

In view of such inexorable economic realities and the recent decisions of the Madras High Court and the Supreme court in the AK Balaji case, the Ministry of Law and Justice, with the sanction of the Central Government has decided to amend the extant Arbitration act to allow foreign lawyers to practice arbitration in India with the hope that it will help India become a global hub for international arbitration.

Short Summary

An Act to make provision for the conduct of international commercial arbitrations based on the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law and conciliation proceedings and to give effect to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and for matters connected therewith.

CHAPTER I

PRELIMINARY

1. Short title, extent and Commencement
This Act may be cited as the Arbitration and Conciliation (International Commercial Arbitration) Amendment Act 2016 and shall come into operation on _____.

2. Amendment of Section 2.—In the Arbitration and Conciliation Act, 1996 (26 of 1996) (hereinafter referred to as the principal Act) in section 2,—
(I) in sub-section (1), the following clauses shall be added—

"(cc)"Arbitration Council" means the body appointed for the oversight of institutional arbitration in India;
(i) "Business entity" means any sole-proprietorship, partnership or body corporate, with or without limited liability, which engages in any business;
(j) "Chairperson" means the Chairperson of the Governing Council;
(k) "Governing Council" means the Governing Council of the ICADR;
(l) "Foreign Law Firm" or an "FLF" includes, but is not limited to, a professional legal corporation, a limited liability company or partnership, the legal department of a corporation or other organization and a qualified legal assistance organization, engaged in the practice of law in a foreign country;
(m) "Professional legal corporation" or a "PLC" means a corporation, or an association treated as a corporation, authorized by law to practice law for profit in a foreign country;
(n) "Foreign Legal Consultant" or an "FLC" means a person who, including a foreign law firm and Professional legal corporation as defined under this Act, by whatever name called or described, who/which is entitled to practice law in a foreign country;
(o)"ICADR" means the International Centre for Alternative Dispute Resolution, New Delhi or, as the case may be, any of its Regional Offices;"

2A. Insertion of new sections 6A, 6B, 6C, 6D and 6E – The following sections shall be inserted into the new Act, namely —

"6A. *Arbitration Council*: An Arbitration Council shall be constituted under this Act to oversee all matters pertaining to International Commercial Arbitration in India. The Council shall comprise of five members. The Minister of Law and Justice, in consultation with the Chief Justice of India shall nominate members to this Council.

6B. *Composition of the Council*: The Council will comprise of the following:

(a) Four eminent jurists with at least 15 years' experience in the Arbitration domain.

(b) An ex-judge of the Supreme Court of India.

(c) A member of the Council cannot be younger than 40 years of age and cannot be older than 60 years of age.

(d) The term of appointment for each member shall be a period of 3 years. No member shall serve for more than two consecutive terms on the Council.

6C. *Powers of the Arbitration Council*: The Arbitration Council shall have the following powers under this Act:

(i) It will nominate the members of the Governing Council of the ICADR

(ii) It will, from time to time, make rules for international arbitration in India.

(iii) It will select the panel of arbitrators who will be allowed to practice arbitration in India and set out the selection criteria for persons wishing to be listed on this panel.

(iv) It will host events, such as seminars and conferences etc, to ensure the promotion of arbitration in India. The Arbitration Council shall take suitable measures for the promotion of arbitration advocacy, creating awareness and imparting training about arbitration issues.

(v) It will decide the curriculum for an accreditation course for arbitration in India which shall be offered by select legal universities and institutions within the country. The Arbitration Council has the discretion to determine which Universities may offer this course.

6C. *Governing Council*: The Governing Council is to oversee the functioning and administration of the ICADR on a day to day basis. The Governing Council is also responsible for appointing the disciplinary committee for any allegations that may be brought to it regarding the conduct of an arbitrator. It will comprise of a President and three secretaries.

6D. *Registrar of the ICADR*: The Registrar of the ICADR shall be responsible for handling all procedural formalities pertaining to arbitrations held in the ICADR."

3. Substitution of new section for Section 10 — For Section 10 of the principal Act, the following section shall be substituted, namely: -

"10. *Number of Arbitrators*.— (1) A sole arbitrator shall be appointed in any arbitration under this Act unless the parties have otherwise agreed or it appears to the Registrar, giving due regard to any proposals by the parties, that the complexity, the quantum involved or other relevant circumstances of the dispute, warrants the appointment of three arbitrators.

(2) If the parties have agreed that any arbitrator is to be appointed by one or more of the parties, or by any third person including by the arbitrators already appointed, that agreement shall be deemed an agreement to nominate an arbitrator under this Act."

4. Amendment of section 11 — (I) Under sub-section (1) of section 11 of the principal Act, the following clauses shall be added, namely –

"(a) Where the parties are of different nationalities, a sole arbitrator or the presiding arbitrator shall not have the same nationality as any party unless the parties who are not of the same nationality as the arbitral candidate all agree in writing otherwise.

(b) The nationality of a party shall be understood to include those of its controlling shareholders or interests.

(c) A person who is a citizen of two or more States shall be treated as a national of each State; citizens of the European Union shall be treated as nationals of its different Member States and shall not be treated as having the same nationality; a citizen of a State's overseas territory shall be treated as a national of that territory and not of that State; and a legal person incorporated in a State's overseas territory shall be treated as such and not (by such fact alone) as a national of or a legal person incorporated in that State."

(II) In section 11 of the principal Act, the following sub-sections shall be added, namely.—

"(2A) In all cases, the arbitrators nominated by the parties, or by any third person including by the arbitrators already appointed, shall be subject to appointment by the Registrar in its discretion.

(2B) The Governing Council shall appoint an arbitrator as soon as practicable. Any decision by the ICADR to appoint an arbitrator under this Act shall be final and not subject to appeal.

(2C) The ICADR may appoint any nominee whose appointment has already been suggested or proposed by any party.

(2D) The terms of appointment of each arbitrator shall be fixed by the ICADR in accordance with this Act, or in accordance with the agreement of the parties."

5. Insertion of new Sections 11B, 11C and 11D — The following sections shall be inserted into the principal Act, namely—

"11B. *Sole Arbitrator* – (1) If a sole arbitrator is to be appointed, either party may propose to the other party the names of one or more persons to serve as the sole

arbitrator. Where the parties have reached an agreement on the nomination of a sole arbitrator, Section 15(3) shall apply.

(2) If within 15 days after the date of commencement of the arbitration, or within the period otherwise agreed by the parties, the parties have not reached an agreement on the nomination of a sole arbitrator, or if at any time either party so requests, the Registrar shall appoint the sole arbitrator.

11C. *Three Arbitrators* – (1) If three arbitrators are to be appointed, each party shall nominate one arbitrator.

(2) If a party fails to make a nomination of an arbitrator within 15 days after receipt of a party's nomination of an arbitrator, or within the period otherwise agreed by the parties or set by the Governing Council, the Governing Council shall proceed to appoint an arbitrator on its behalf.

(3) Unless the parties have agreed upon another procedure for appointing the third arbitrator, or if such agreed procedure does not result in a nomination within the period agreed by the parties or set by the Governing Council, the Governing Council shall appoint the third arbitrator, who shall be the presiding arbitrator.

11D. *Multi-Party Appointment of Arbitrator(s)* -- (1) Where there are more than two parties to the arbitration, and a sole arbitrator is to be appointed, the parties may agree to jointly nominate the sole arbitrator. In the absence of such joint nomination having been made within 30 days of the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the Registrar, the President shall appoint the sole arbitrator.

(2) Where there are more than two parties to the arbitration, and three arbitrators are to be appointed, the Claimant(s) shall jointly nominate one arbitrator and the Respondent(s) shall jointly nominate one arbitrator. The third arbitrator, who shall be the presiding arbitrator, shall be appointed in accordance with Section 11C(3). If both such joint nominations have not been made within 15 days of the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the Governing Council, the Governing Council shall appoint all three arbitrators and shall designate one of them to be the presiding arbitrator."

6. Insertion of new section 11E — The following sections shall be inserted into the principal Act, namely—

"11E. *Qualifications of Arbitrators and Formation of the Arbitral Tribunal* – (1) Any arbitrator appointed in an arbitration under this Act, whether or not nominated by the parties, shall be and remain at all times independent and impartial.

(2) In appointing an arbitrator under this Act, the Governing Council shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations that are relevant to the impartiality or independence of the arbitrator.

(3) The Governing Council shall also consider whether the arbitrator has sufficient availability to determine the case in a prompt and efficient manner that is appropriate given the nature of the arbitration.

(5) No party or person acting on behalf of a party shall have any ex-parte communication relating to the case with any arbitrator or with any candidate for appointment as party-nominated arbitrator, except to advise the candidate of the general nature of the controversy and of the anticipated proceedings; to discuss the candidate's qualifications, availability or independence in relation to the parties; or to discuss the suitability of candidates for selection as the presiding arbitrator where the parties or party-nominated arbitrators are to participate in that selection. No party or person acting on behalf of a party shall have any ex parte communication relating to the case with any candidate for presiding arbitrator.

(6) The formation of the Arbitral Tribunal by the ICADR Court shall not be impeded by any controversy between the parties relating to the sufficiency of the Request or the Response. The ICADR Court may also proceed with the arbitration notwithstanding that the Request is incomplete or the Response is missing, late or incomplete.

(7) Before appointment by the Governing Council, each arbitral candidate shall furnish to the Registrar (upon the latter's request) a brief written summary of his or her qualifications and professional positions (past and present); the candidate shall also agree in writing fee-rates conforming to the Schedule of Costs; the candidate shall sign a written declaration stating:

(i) whether there are any circumstances currently known to the candidate which are likely to give rise in the mind of any party to any justifiable doubts as to his or her impartiality or independence and, if so, specifying in full such circumstances in the declaration; and

(ii) whether the candidate is ready, willing and able to devote sufficient time, diligence and industry to ensure the expeditious and efficient conduct of the arbitration. The candidate shall furnish promptly such agreement and declaration to the Registrar.

Explanation: The candidate must, in his written summary, disclose any misconduct that he was previously accused off. He must include all details and particulars. Any discrepancy in information will be met with punitive action.

(8) If appointed, each arbitral candidate shall thereby assume a continuing duty as an arbitrator, until the arbitration is finally concluded, forthwith to disclose in writing any

circumstances becoming known to that arbitrator after the date of his or her written declaration (under subsection 7) which are likely to give rise in the mind of any party to any justifiable doubts as to his or her impartiality or independence, to be delivered to the Governing Council, any other members of the Arbitral Tribunal and all parties in the arbitration.

(9) The expression the "Arbitral Tribunal" includes a sole arbitrator or all the arbitrators where more than one."

7. Substitution of new section for Section 13 – For Section 13 of the principal Act, a new section shall be substituted, namely –

"13. *Challenge procedure* — (1) Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess any requisite qualification on which the parties have agreed.

(2) A party may challenge the arbitrator nominated by it only for reasons of which it becomes aware after the appointment has been made.

(3) A party that intends to challenge an arbitrator shall file a notice of challenge with the Registrar in accordance with the requirements of Section 13(4) within 15 days after receipt of the notice of appointment of the arbitrator who is being challenged or within 15 days after the circumstances specified in Section 13 (1) or Section 13 (2) became known or should have reasonably been known to that party.

(4) The notice of challenge shall state the reasons for the challenge. The date of receipt of the notice of challenge by the Registrar shall be deemed to be the date the notice of challenge is filed. The party challenging an arbitrator shall, at the same time as it files a notice of challenge with the Registrar, send the notice of challenge to the other party, the arbitrator who is being challenged and the other members of the Tribunal (or if the Tribunal has not yet been constituted, any appointed arbitrator), and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

(5) The party making the challenge shall pay the requisite challenge fee under this Act, in accordance with the applicable Schedule of Fees. If the party making the challenge fails to pay the challenge fee within the time limit set by the Registrar, the challenge shall be considered as withdrawn.

(6) After receipt of a notice of challenge under Section 13(4), the Registrar may order a suspension of the arbitral proceedings until the challenge is resolved. Unless the Registrar orders the suspension of the arbitral proceedings pursuant to this subsection, the challenged arbitrator shall be entitled to continue to participate in the arbitration

pending the determination of the challenge by the Court in accordance with Section 13A.

(7) Where an arbitrator is challenged by a party, the other party may agree to the challenge, and the Court shall remove the arbitrator if all parties agree to the challenge. The challenged arbitrator may also voluntarily withdraw from office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

(8) If an arbitrator is removed or withdraws from office in accordance with Section 13(7), a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced. This procedure shall apply even if, during the process of appointing the challenged arbitrator, a party failed to exercise its right to nominate an arbitrator. The time limits applicable to the nomination and appointment of the substitute arbitrator shall commence from the date of receipt of the agreement of the other party to the challenge or the challenged arbitrator's withdrawal from office."

8. Insertion of new sections 13A — The following section shall be inserted into the principal Act, namely –

"13A. *Decision on challenge* **–** (1) If, within seven days of receipt of the notice of challenge under Section 13, the other party does not agree to the challenge and the arbitrator who is being challenged does not withdraw voluntarily from office, the Governing Council shall decide the challenge. The Court may request comments on the challenge from the parties, the challenged arbitrator and the other members of the Tribunal (or if the Tribunal has not yet been constituted, any appointed arbitrator), and set a schedule for such comments to be made.

(2) If the Court accepts the challenge to an arbitrator, the Court shall remove the arbitrator, and a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced. The time limits applicable to the nomination and appointment of the substitute arbitrator shall commence from the date of the Registrar's notification to the parties of the decision by the Court.

(3) If the Court rejects the challenge to an arbitrator, the challenged arbitrator shall continue with the arbitration.

(4) The Court's decision on any challenge to an arbitrator under this section shall be reasoned, unless otherwise agreed by the parties, and shall be issued to the parties by the Registrar. Any such decision on any challenge by the Court shall be final and not subject to appeal.

Explanation: For the purposes of this Section, "Court" means the particular High Court in whose jurisdiction the arbitration is being conducted."

9. Substitution of new section for sections 14 and 15 — For section 14 of the principal Act, a new section shall be substituted, namely —

"14. *Replacement of an Arbitrator* – (1) Except as otherwise provided in this Act, in the event of the death, resignation, withdrawal or removal of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced.

(2) In the event that an arbitrator refuses or fails to act or perform his functions in accordance with this Act or within prescribed time limits, or in the event of any de jure or de facto impossibility by an arbitrator to act or perform his functions, the procedure for challenge and replacement of an arbitrator provided in Sections 13, 13A and 14(1) shall apply.

(3) The Governing Council may, on its own initiative and in its discretion, remove an arbitrator who refuses or fails to act or to perform his functions in accordance with this Act or within prescribed time limits, or in the event of a de jure or de facto impossibility of an arbitrator to act or perform his functions, or if the arbitrator does not conduct or participate in the arbitration with due diligence and/or in a manner that ensures the fair, expeditious, economical and final resolution of the dispute. The Governing Council shall consult the parties and the members of the Tribunal, including the arbitrator to be removed (or if the Tribunal has not yet been constituted, any appointed arbitrator) prior to the removal of an arbitrator under this Section.

(4) If the sole or presiding arbitrator is replaced in accordance with the procedure in Sections 13, 13A and 14, any hearings held previously shall be repeated unless otherwise agreed by the parties.

(5) If any other arbitrator is replaced, any hearings held previously may be repeated at the discretion of the Tribunal after consulting with the parties.

(6) If the Tribunal has issued an interim or partial Award, any hearings relating solely to that Award shall not be repeated, and the Award shall remain in effect.

(7) The Governing Council may revoke any arbitrator's appointment upon its own initiative, at the written request of all other members of the Arbitral Tribunal or upon a written challenge by any party if:

(i) that arbitrator gives written notice to the Governing Council of his or her intent to resign as arbitrator, to be copied to all parties and all other members of the Arbitral Tribunal (if any);

(ii) that arbitrator falls seriously ill, refuses or becomes unable or unfit to act; or

(iii) circumstances exist that give rise to justifiable doubts as to that arbitrator's impartiality or independence.

(8) The Governing Council may determine that an arbitrator is unfit to act under subsection 1 of this Section if that arbitrator:

(i) acts in deliberate violation of the Arbitration Agreement;

(ii) does not act fairly or impartially as between the parties; or

(iii) does not conduct or participate in the arbitration with reasonable efficiency, diligence and industry.

(9) A party challenging an arbitrator under subsection 1 of this section shall, within 15 days of the formation of the Arbitral Tribunal or (if later) within 15 days of becoming aware of any grounds described in subsection 1 or subsection 2 of this section, deliver a written statement of the reasons for its challenge to the Governing Council, the Arbitral Tribunal and all other parties. A party may challenge an arbitrator whom it has nominated, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made by the Governing Council.

(10) The Governing Council shall provide to those other parties and the challenged arbitrator a reasonable opportunity to comment on the challenging party's written statement. The Governing Council may require at any time further information and materials from the challenging party, the challenged arbitrator, other parties and other members of the Arbitral Tribunal (if any).

(11) If all other parties agree in writing to the challenge within 14 days of receipt of the written statement, the Governing Council shall revoke that arbitrator's appointment (without reasons).

(12) Unless the parties so agree or the challenged arbitrator resigns in writing within 15 days of receipt of the written statement, the Governing Council shall decide the challenge and, if upheld, shall revoke that arbitrator's appointment. The Governing Council's decision shall be made in writing, with reasons; and a copy shall be transmitted by the Registrar to the parties, the challenged arbitrator and other members of the Arbitral Tribunal (if any). A challenged arbitrator who resigns in writing prior to the Governing Council's decision shall not be considered as having admitted any part of the written statement.

(13) The Governing Council shall determine the amount of fees and expenses (if any) to be paid for the former arbitrator's services, as it may consider appropriate in the circumstances. The Governing Council may also determine whether, in what amount and to whom any party should pay forthwith the costs of the challenge; and the

Governing Council may also refer all or any part of such costs to the later decision of the Arbitral Tribunal and/or the Governing Council under (Arbitration and Legal costs).

(14) In the event that the Governing Council determines that justifiable doubts exist as to any arbitral candidate's suitability, independence or impartiality, or if a nominee declines appointment as arbitrator, or if an arbitrator is to be replaced for any reason, the Governing Council may determine whether or not to follow the original nominating process for such arbitral appointment.

(15) The Governing Council may determine that any opportunity given to a party to make any renomination (under the Arbitration Agreement or otherwise) shall be waived if not exercised within 15 days (or such lesser or greater time as the Governing Council may determine), after which the Governing Council shall appoint the replacement arbitrator without such re-nomination."

10. Insertion of new sections 14A, 14B, 14C, 14D – The following sections shall be inserted into the principal Act, namely –

"14A. *Expedited Formation of Arbitral Tribunal* — (1) In the case of exceptional urgency, any party may apply to the Governing Council for the expedited formation of the Arbitral Tribunal.

(2) Such an application shall be made to the Registrar in writing (preferably by electronic means), together with a copy of the Request (if made by a Claimant) or a copy of the Response (if made by a Respondent), delivered or notified to all other parties to the arbitration. The application shall set out the specific grounds for exceptional urgency requiring the expedited formation of the Arbitral Tribunal.

(3) The Governing Council shall determine the application as expeditiously as possible in the circumstances. If the application is granted, for the purpose of forming the Arbitral Tribunal the Governing Council may abridge any period of time under the Arbitration Agreement or other agreement of the parties.
14B. *Expedited appointment of Replacement Arbitrator* — (1) Any party may apply to the Governing Council for the expedited appointment of a replacement arbitrator under Section 14B.

(2) Such an application shall be made in writing to the Registrar (preferably by electronic means), delivered (or notified) to all other parties to the arbitration; and it shall set out the specific grounds requiring the expedited appointment of the replacement arbitrator.

(3) The Governing Council shall determine the application as expeditiously as possible in the circumstances. If the application is granted, for the purpose of expediting the appointment of the replacement arbitrator the Governing Council may abridge any period of time in the Arbitration Agreement or any other agreement of the parties.

14C. *Emergency Arbitrator* – (1) A party that wishes to seek emergency interim relief may, concurrent with or following the filing of a Notice of Arbitration but prior to the constitution of the Tribunal, file an application for emergency interim relief with the Registrar. The party shall, at the same time as it files the application for emergency interim relief, send a copy of the application to all other parties. The application for emergency interim relief shall include:

a. the nature of the relief sought;

b. the reasons why the party is entitled to such relief; and

c. a statement certifying that all other parties have been provided with a copy of the application or, if not, an explanation of the steps taken in good faith to provide a copy or notification to all other parties.

(2) Any application for emergency interim relief shall be accompanied by payment of the non-refundable administration fee and the requisite deposits under this towards the Emergency Arbitrator's fees and expenses for proceedings pursuant to this Schedule I. In appropriate cases, the Registrar may increase the amount of the deposits requested from the party making the application. If the additional deposits are not paid within the time limit set by the Registrar, the application shall be considered as withdrawn.

(3) The President shall, if he determines that the Registrar should accept the application for emergency interim relief, seek to appoint an Emergency Arbitrator within one day of receipt by the Registrar of such application and payment of the administration fee and deposits.

(4) If the parties have agreed on the seat of the arbitration, such seat shall be the seat of the proceedings for emergency interim relief. Failing such an agreement, the seat of the proceedings for emergency interim relief shall be ICADR or any of its regional offices, without prejudice to the Tribunal's determination of the seat of the arbitration under this Act.

(5) Prior to accepting appointment, a prospective Emergency Arbitrator shall disclose to the Registrar any circumstances that may give rise to justifiable doubts as to his impartiality or independence. Any challenge to the appointment of the Emergency Arbitrator must be made within two days of the communication by the Registrar to the parties of the appointment of the Emergency Arbitrator and the circumstances disclosed.

(6) An Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless otherwise agreed by the parties.

(7) The Emergency Arbitrator shall, as soon as possible but, in any event, within two days of his appointment, establish a schedule for consideration of the application for emergency interim relief. Such schedule shall provide a reasonable opportunity for the parties to be heard, but may provide for proceedings by telephone or video conference or on written submissions as alternatives to a hearing in person. The Emergency Arbitrator shall have the powers vested in the Tribunal pursuant to this Act, including the authority to rule on his own jurisdiction, without prejudice to the Tribunal's determination.

(8) The Emergency Arbitrator shall have the power to order or award any interim relief that he deems necessary, including preliminary orders that may be made pending any hearing, telephone or video conference or written submissions by the parties. The Emergency Arbitrator shall give summary reasons for his decision in writing. The Emergency Arbitrator may modify or vacate the preliminary order, the interim order or Award for good cause.

(9) The Emergency Arbitrator shall make his interim order or Award within 15 days from the date of his appointment unless, in exceptional circumstances, the Registrar extends the time. No interim order or Award shall be made by the Emergency Arbitrator until it has been approved by the Registrar as to its form.

(10) The Emergency Arbitrator shall have no power to act after the Tribunal is constituted. The Tribunal may reconsider, modify or vacate any interim order or Award issued by the Emergency Arbitrator, including a ruling on his own jurisdiction. The Tribunal is not bound by the reasons given by the Emergency Arbitrator. Any interim order or Award issued by the Emergency Arbitrator shall, in any event, cease to be binding if the Tribunal is not constituted within 30 days of such order or Award or when the Tribunal makes a final Award or if the claim is withdrawn.

(11) Any interim order or Award by the Emergency Arbitrator may be conditioned on provision by the party seeking such relief of appropriate security.

(12) The parties agree that an order or Award by an Emergency Arbitrator pursuant to this Schedule 1 shall be binding on the parties from the date it is made, and undertake to carry out the interim order or Award immediately and without delay. The parties also irrevocably waive their rights to any form of appeal, review or recourse to any High court or other judicial authority with respect to such Award insofar as such waiver may be validly made.

(13) The costs associated with any application pursuant to this Schedule 1 may initially be apportioned by the Emergency Arbitrator, subject to the power of the Tribunal to determine finally the apportionment of such costs.

(14) This Act shall apply as appropriate to any proceeding pursuant to this Schedule I, taking into account the urgency of such a proceeding. The Emergency Arbitrator may

decide in what manner this Act shall apply as appropriate, and his decision as to such matters is final and not subject to appeal, review or recourse. The Governing may abbreviate any time limits under this Section in applications made pursuant to proceedings commenced.

14D. *Majority Power to Continue Deliberations* – (1) In exceptional circumstances, where an arbitrator without good cause refuses or persistently fails to participate in the deliberations of an Arbitral Tribunal, the remaining arbitrators jointly may decide (after their written notice of such refusal or failure to the Governing Council, the parties and the absent arbitrator) to continue the arbitration (including the making of any award) notwithstanding the absence of that other arbitrator, subject to the written approval of the Governing Council.

(2) In deciding whether to continue the arbitration, the remaining arbitrators shall take into account the stage of the arbitration, any explanation made by or on behalf of the absent arbitrator for his or her refusal or non-participation, the likely effect upon the legal recognition or enforceability of any award at the seat of the arbitration and such other matters as they consider appropriate in the circumstances. The reasons for such decision shall be stated in any award made by the remaining arbitrators without the participation of the absent arbitrator.

(3) In the event that the remaining arbitrators decide at any time thereafter not to continue the arbitration without the participation of the absent arbitrator, the remaining arbitrators shall notify in writing the parties and the Governing Council of such decision; and, in that event, the remaining arbitrators or any party may refer the matter to the Governing Council for the revocation of the absent arbitrator's appointment and the appointment of a replacement arbitrator under Sections 30 and 31.

(4) In the event that an arbitrator and/or arbitrators decide not to continue with the proceedings or are unable to continue or are forcefully recused and are substituted by new arbitrators, the proceedings are to be carried out from the point where the original arbitrators left and shall not be resumed afresh."

11. Insertion of new section 15 – The following section shall be inserted into the principal Act, namely –

"15. Communications between Parties and Arbitral Tribunal – (1) Following the formation of the Arbitral Tribunal, all communications shall take place directly between the Arbitral Tribunal and the parties (to be copied to the Registrar), unless the Arbitral Tribunal decides that communications should continue to be made through the Registrar.

(2) Where the Registrar sends any written communication to one party on behalf of the Arbitral Tribunal or the Governing Council, he or she shall send a copy to each of the other parties.

(3) Where any party delivers to the Arbitral Tribunal any communication (including statements and documents under Section 35), whether by electronic means or otherwise, it shall deliver a copy to each arbitrator, all other parties and the Registrar; and it shall confirm to the Arbitral Tribunal in writing that it has done or is doing so.

(4) During the arbitration from the Arbitral Tribunal's formation onwards, no party shall deliberately initiate or attempt to initiate any unilateral contact relating to the arbitration or the parties' dispute with any member of the Arbitral Tribunal or any member of the Governing Council exercising any function in regard to the arbitration (but not including the Registrar), which has not been disclosed in writing prior to or shortly after the time of such contact to all other parties, all members of the Arbitral Tribunal (if comprised of more than one arbitrator) and the Registrar.

(5) Prior to the Arbitral Tribunal's formation, unless the parties agree otherwise in writing, any arbitrator, candidate or nominee who is required to participate in the selection of a presiding arbitrator may consult any party in order to obtain the views of that party as to the suitability of any candidate or nominee as presiding arbitrator, provided that such arbitrator, candidate or nominee informs the Registrar of such consultation."

12. Amendment of Section 19 – In sub-section (1) of section 19 the words "and shall be bound by the procedure laid out in the 8th Schedule" shall be inserted after the words "…the Indian Evidence Act, 1872 (1 of 1872)".

13. Amendment of Section 29B – The following sub-section shall be added to section 29B of the principal Act, namely –

"(7) The parties, arbitrators and arbitral institution are bound to follow the procedural guidelines laid down in the Tenth Schedule of this Act."

14. Insertion of new part – After Part IV of the principal Act, the following part shall be inserted, namely –

“PART V

PROVISIONS PERTAINING TO FLCS

CHAPTER I

REGISTRATION OF FLCs AND THE EXTENT TO WHICH THEY CAN PRACTICE LAW IN INDIA

87. Practice of Arbitration by FLCs: nature and extent of:- (1) FLCs may come to India on for a temporary period of five years and conduct arbitration proceedings in respect of disputes arising out of a contract relating to international commercial arbitration.

88. Licensing required by FLCs to open a liaison office:- (1) In its discretion the ICADR, pursuant to the notification of this Act in the official Gazette, may grant a license to practice arbitration and other alternative dispute resolution mechanisms in India as an FLC, without examination, an FLC who:

(a) is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;

(b) for at least three of the five years immediately preceding his or her application, has been a member in good standing of such legal profession and has actually been engaged in the practice of arbitration in such foreign country or elsewhere substantially involving or relating to the rendering of advice or the provision of alternative dispute resolution services concerning the law of such foreign country;

(c) possesses the good moral character and general fitness requisite for a member of the global legal fraternity;

(d) is over 28 years of age; and

(e) intends to practice arbitration as a legal consultant in India and to maintain an office in this country for that purpose.

Explanation: For the purpose of this section a person of good standing is any individual who does not meet any of the following criteria:

(a) the individual is of unsound mind and stands so declared by a competent court;

(b) the individual is an undischarged insolvent;

(c) the individual has applied to be adjudicated as an insolvent and his application is pending;

(d) the individual has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

(e) an order disqualifying the individual as a lawyer has been passed by a court or Tribunal and the order is in force;

(f) has not filed financial statements or annual returns for any continuous period of three financial years; or

(g) has failed to repay the deposits accepted by him/her or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more.

(2) In considering whether to license an applicant to practice as a legal consultant, the ICADR may in its discretion take into account whether a legal consultant from India would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission.

(3) A license issued under this Section shall be valid for a period of five years provided that the licensed Foreign Legal Consultant is not found guilty of contravening any stipulation under this Act.

(4) The fee for obtaining a license under this Section shall be decided by the Central Government.

89. Permitted areas of legal practice:- (1) The FLC must have relevant legal expertise and experience in arbitration and other ADR proceedings pertaining to any of the following areas of legal practice:

(i) Banking Law;
(ii) Finance Law;
(iii) Corporate Law;
(iv) Intellectual property Law;
(v) Maritime law;

(vi) Trade Law;
(vii) Property Law;
(viii) Insurance Law;
(ix) any matter pertaining to trade treaties concerning business or industry to which India is a signatory
(x) any other areas of legal practice that facilitate or assist in the growth and development of the Indian economy;

CHAPTER II

DISCIPLINARY ISSUES AND PENALTIES FOR SECURING REGISTRATION BY MISREPRESENTATION

90. Disciplinary Issues: (1) An FLC practicing arbitration in India shall be subject to the ethical and practice standards stipulated under this Act under Schedule IA.

(2) Disciplinary Committee: The Arbitration Council shall appoint a Disciplinary Committee under this Act to look into the disciplinary issues regarding FLCs.

(2) Where on receipt of a complaint or otherwise the Disciplinary Committee has reason to believe that any FLC practicing arbitration in India under this Act is guilty of contravening the ethical code of conduct set out under the UNCITRAL rules or any provisions of any law of the land prevailing within the Union of India, it shall issue a show cause notice to the FLC so accused.

(3) If the FLCs' response to the Disciplinary Committee's show-cause notice is deemed dissatisfactory by the Disciplinary Committee, the Disciplinary Committee may initiate proceedings with regard to the complaint against the FLC.

(4) While disposing of the proceedings under this Section, the disciplinary committee may take any of the following actions: -

(a) dismiss the complaint or drop the proceedings;

(b) reprimand the foreign legal consultant;

(c) bar the foreign legal consultant from practicing arbitration in India for such time as it may deem fit;

(d) Bar the foreign legal consultant from practicing arbitration in India temporarily and/or permanently;

(e) Impose a penalty on the FLC of an amount it may deem fit;

(f) impose the costs of proceedings;

91. Consequences of securing a license for a foreign liaison office by misrepresentation, fraud etc :- The Disciplinary Committee, if satisfied, either on a complaint made to it or otherwise that any FLC has secured a license for opening a liaison office under this Act by misrepresenting an essential fact or through fraud or undue influence, it may, after granting the FLC the opportunity of a hearing, cancel the registration/renewal of License of that particular FLC with or without penalty of such an amount as it may deem fit.

However, if an inessential fact is misrepresented, the Disciplinary Committee may pass any of the following orders:-

(a) Dismiss the complaint or drop the proceedings;
(b) Reprimand the FLC;
(c) Impose a penalty as it may deem fit.

15. Insertion of the new Eighth schedule, Ninth Schedule, Tenth Schedule and Eleventh Schedule – After the Seventh Schedule to the principal Act, the following new schedules shall be inserted, namely—

"THE EIGHTH SCHEDULE
(See Section 19(1))

1. Conduct of Proceedings – (1) The parties and the Arbitral Tribunal are encouraged to make contact (whether by a hearing in person, telephone conference-call, video conference or exchange of correspondence) as soon as practicable but no later than 15 days from receipt of the Registrar's written notification of the formation of the Arbitral Tribunal.

(2) The parties may agree on joint proposals for the conduct of their arbitration for consideration by the Arbitral Tribunal. They are encouraged to do so in consultation with the Arbitral Tribunal and consistent with the Arbitral Tribunal's general duties under the Arbitration Agreement.

(3) Such agreed proposals shall be made by the parties in writing or recorded in writing by the Arbitral Tribunal at the parties' request and with their authority.

(4) Under the Arbitration Agreement, the Arbitral Tribunal's general duties at all times during the arbitration shall include:

(i) a duty to act fairly and impartially as between all parties, giving each a reasonable opportunity of putting its case and dealing with that of its opponent(s); and

(ii) a duty to adopt procedures suitable to the circumstances of the arbitration, avoiding unnecessary delay and expense, so as to provide a fair, efficient and expeditious means for the final resolution of the parties' dispute.

2. Written Statements – (1) Unless the parties have agreed or jointly proposed in writing otherwise or the Arbitral Tribunal should decide differently, the written stage of the arbitration and its procedural time-table shall be as set out in this section.

(2) Within 30 days of receipt of the Registrar's written notification of the Arbitral Tribunal's formation, the Claimant shall deliver to the Arbitral Tribunal and all other parties either:

(i) its written election to have its Request treated as its Statement of Case complying with this subsection; or

(ii) its written Statement of Case setting out in sufficient detail the relevant facts and legal submissions on which it relies, together with the relief claimed against all other parties, and all essential documents.

(3) Within 30 days of receipt of the Claimant's Statement of Case or the Claimant's election to treat the Request as its Statement of Case, the Respondent shall deliver to the Arbitral Tribunal and all other parties either:

(i) its written election to have its Response treated as its Statement of Defence and (if applicable) Cross-claim complying with this subsection; or

(ii) its written Statement of Defence and (if applicable) Statement of Cross-claim setting out in sufficient detail the relevant facts and legal submissions on which it relies, together with the relief claimed against all other parties, and all essential documents.

(4) Within 15 days of receipt of the Respondent's Statement of Defence and (if applicable) Statement of Cross-claim or the Respondent's election to treat the Response as its Statement of Defence and (if applicable) Cross-claim, the Claimant shall deliver to the Arbitral Tribunal and all other parties a written Statement of Reply which, where there are any cross-claims, shall also include a Statement of Defence to Cross-claim in the same manner required for a Statement of Defence, together with all essential documents.

(5) If the Statement of Reply contains a Statement of Defence to Cross-claim, within 30 days of its receipt the Respondent shall deliver to the Arbitral Tribunal and all other parties its written Statement of Reply to the Defence to Cross-claim, together with all essential documents.

(6) The Arbitral Tribunal may provide additional directions as to any part of the written stage of the arbitration (including witness statements, submissions and evidence),

particularly where there are multiple claimants, multiple respondents or any cross-claim between two or more respondents or between two or more claimants.

(7) No party may submit any further written statement following the last of these Statements, unless otherwise ordered by the Arbitral Tribunal.

(8) If the Respondent fails to submit a Statement of Defence or the Claimant a Statement of Defence to Cross-claim, or if at any time any party fails to avail itself of the opportunity to present its written case in the manner required under this Section or otherwise by order of the Arbitral Tribunal, the Arbitral Tribunal may nevertheless proceed with the arbitration (with or without a hearing) and make one or more awards.

(9) As soon as practicable following this written stage of the arbitration, the Arbitral Tribunal shall proceed in such manner as has been agreed in writing by the parties or pursuant to its authority under the Arbitration Agreement.

(10) In any event, the Arbitral Tribunal shall seek to make its final award within 30 days after the last submission from the parties (whether made orally or in writing), in accordance with a timetable notified to the parties and the Registrar as soon as practicable (if necessary, as revised and re-notified from time to time). When the Arbitral Tribunal (not being a sole arbitrator) establishes a time for what it contemplates shall be the last submission from the parties (whether written or oral), it shall set aside adequate time for deliberations as soon as possible after that last submission and notify the parties of the time it has set aside.

3. Seat(s) of Arbitration and Place(s) of Hearing – (1) The parties may agree in writing the seat (or legal place) of their arbitration at any time before the formation of the Arbitral Tribunal and, after such formation, with the prior written consent of the Arbitral Tribunal.

(2) In default of any such agreement, the seat of the arbitration shall be the ICADR (Delhi) India, unless and until the Arbitral Tribunal orders, in view of the circumstances and after having given the parties a reasonable opportunity to make written comments to the Arbitral Tribunal, that another arbitral seat is more appropriate. Such default seat shall not be considered as a relevant circumstance by the Governing Council in appointing any arbitrators under this Act.

(3) The Arbitral Tribunal may hold any hearing at any convenient geographical place in consultation with the parties and hold its deliberations at any geographical place of its own choice; and if such place(s) should be elsewhere than the seat of the arbitration, the arbitration shall nonetheless be treated for all purposes as an arbitration conducted at the arbitral seat and any order or award as having been made at that seat.

(4) The law applicable to the Arbitration Agreement and the arbitration shall be the law applicable at the seat of the arbitration, unless and to the extent that the parties have

agreed in writing on the application of other laws or rules of law and such agreement is not prohibited by the law applicable at the arbitral seat.

4. Language(s) of Arbitration – (1) The initial language of the arbitration (until the formation of the Arbitral Tribunal) shall be the English language, unless the parties have agreed in writing otherwise.

(2) A non-participating or defaulting party shall have no cause for complaint if communications to and from the Governing Council and Registrar are conducted in the initial language(s) of the arbitration or of the arbitral seat.

(3) Following the formation of the Arbitral Tribunal, unless the parties have agreed upon the language or languages of the arbitration, the Arbitral Tribunal shall decide upon the language(s) of the arbitration after giving the parties a reasonable opportunity to make written comments and taking into account the initial language(s) of the arbitration and any other matter it may consider appropriate in the circumstances.

(4) If any document is expressed in a language other than the language(s) of the arbitration and no translation of such document is submitted by the party relying upon the document, the Arbitral Tribunal may order a panel of independent experts to assist with the translation of that particular document.

(5) The ICADR will make a provision for translators to assist with the arbitration proceedings at the request of any party. The translators shall be appointed by the ICADR itself.

5. Legal Representatives – (1) Any party may be represented in the arbitration by one or more authorised legal representatives appearing by name before the Arbitral Tribunal.

(2) Until the Arbitral Tribunal's formation, the Registrar may request from any party:

(i) written proof of the authority granted by that party to any legal representative designated in its Request or Response; and

(ii) written confirmation of the names and addresses of all such party's legal representatives in the arbitration. After its formation, at any time, the Arbitral Tribunal may order any party to provide similar proof or confirmation in any form it considers appropriate.

(3) Following the Arbitral Tribunal's formation, any intended change or addition by a party to its legal representatives shall be notified promptly in writing to all other parties, the Arbitral Tribunal and the Registrar; and any such intended change or addition shall only take effect in the arbitration subject to the approval of the Arbitral Tribunal.

(4) The Arbitral Tribunal may withhold approval of any intended change or addition to a party's legal representatives where such change or addition could compromise the composition of the Arbitral Tribunal or the finality of any award (on the grounds of possible conflict or other like impediment). In deciding whether to grant or withhold such approval, the Arbitral Tribunal shall have regard to the circumstances, including: the general principle that a party may be represented by a legal representative chosen by that party, the stage which the arbitration has reached, the efficiency resulting from maintaining the composition of the Arbitral Tribunal (as constituted throughout the arbitration) and any likely wasted costs or loss of time resulting from such change or addition.

(5) Each party shall ensure that all its legal representatives appearing by name before the Arbitral Tribunal have agreed to comply with the ethical guidelines annexed to this Act under Schedule IA. In permitting any legal representative so to appear, a party shall thereby represent that the legal representative has agreed to such compliance.

(6) In the event of a complaint by one party against another party's legal representative appearing by name before the Arbitral Tribunal (or of such complaint by the Arbitral Tribunal upon its own initiative), the Arbitral Tribunal may decide, after consulting the parties and granting that legal representative a reasonable opportunity to answer the complaint, whether or not the legal representative has violated the general guidelines. If such violation is found by the Arbitral Tribunal, the Arbitral Tribunal may order any or all of the following sanctions against the legal representative:

(i) a written reprimand;

(ii) a written caution as to future conduct in the arbitration; and

(iii) any other measure necessary to fulfil within the arbitration the general duties required of the Arbitral Tribunal under Section 34(4)(i) and (ii).

6. Oral Hearing(s) – (1) Any party has the right to a hearing before the Arbitral Tribunal on the parties' dispute at any appropriate stage of the arbitration (as decided by the Arbitral Tribunal), unless the parties have agreed in writing upon a documents-only arbitration. For this purpose, a hearing may consist of several part-hearings (as decided by the Arbitral Tribunal).

(2) The Arbitral Tribunal shall organise the conduct of any hearing in advance, in consultation with the parties. The Arbitral Tribunal shall have the fullest authority under the Arbitration Agreement to establish the conduct of a hearing, including its date, form, content, procedure, time limits and geographical place. As to form, a hearing may take place by video or telephone conference or in person (or a combination of all three). As to content, the Arbitral Tribunal may require the parties to address a list of specific questions or issues arising from the parties' dispute.

(3) The Arbitral Tribunal shall give to the parties reasonable notice in writing of any hearing.

(4) All hearings shall be held in private, unless the parties agree otherwise in writing.

7. Witness(es) – (1) Before any hearing, the Arbitral Tribunal may order any party to give written notice of the identity of each witness that party wishes to call (including rebuttal witnesses), as well as the subject-matter of that witness's testimony, its content and its relevance to the issues in the arbitration.

(2) Subject to any order otherwise by the Arbitral Tribunal, the testimony of a witness may be presented by a party in written form, either as a signed statement or like document.

(3) The Arbitral Tribunal may decide the time, manner and form in which these written materials shall be exchanged between the parties and presented to the Arbitral Tribunal; and it may allow, refuse or limit the written and oral testimony of witnesses (whether witnesses of fact or expert witnesses).

(4) The Arbitral Tribunal and any party may request that a witness, on whose written testimony another party relies, should attend for oral questioning at a hearing before the Arbitral Tribunal. If the Arbitral Tribunal orders that other party to secure the attendance of that witness and the witness refuses or fails to attend the hearing without good cause, the Arbitral Tribunal may place such weight on the written testimony or exclude all or any part thereof altogether as it considers appropriate in the circumstances.

(5) Subject to the mandatory provisions of any applicable law, rules of law and any order of the Arbitral Tribunal otherwise, it shall not be improper for any party or its legal representatives to interview any potential witness for the purpose of presenting his or her testimony in written form to the Arbitral Tribunal or producing such person as an oral witness at any hearing.

(6) Subject to any order by the Arbitral Tribunal otherwise, any individual intending to testify to the Arbitral Tribunal may be treated as a witness notwithstanding that the individual is a party to the arbitration or was, remains or has become an officer, employee, owner or shareholder of any party or is otherwise identified with any party.

(7) Subject to the mandatory provisions of any applicable law, the Arbitral Tribunal shall be entitled (but not required) to administer any appropriate oath to any witness at any hearing, prior to the oral testimony of that witness.

(8) Any witness who gives oral testimony at a hearing before the Arbitral Tribunal may be questioned by each of the parties under the control of the Arbitral Tribunal. The Arbitral Tribunal may put questions at any stage of such testimony.

8. Expert(s) to Arbitral Tribunal — (1) The Arbitral Tribunal, after consultation with the parties, may appoint one or more experts to report in writing to the Arbitral Tribunal and the parties on specific issues in the arbitration, as identified by the Arbitral Tribunal.

(2) Any such expert shall be and remain impartial and independent of the parties; and he or she shall sign a written declaration to such effect, delivered to the Arbitral Tribunal and copied to all parties.

(3) The Arbitral Tribunal may require any party at any time to give to such expert any relevant information or to provide access to any relevant documents, goods, samples, property, site or thing for inspection under that party's control on such terms as the Arbitral Tribunal thinks appropriate in the circumstances.

(4) If any party so requests or the Arbitral Tribunal considers it necessary, the Arbitral Tribunal may order the expert, after delivery of the expert's written report, to participate in a hearing at which the parties shall have a reasonable opportunity to question the expert on the report and to present witnesses in order to testify on relevant issues arising from the report.

(5) The fees and expenses of any expert appointed by the Arbitral Tribunal under this Section may be paid out of the deposits payable by the parties under Article 24 and shall form part of the Arbitration Costs under Section 47.

Explanation: Experts under this Section include language experts appointed for any translation purposes by the ICADR under Section 37 of this Act.

9. Additional Powers — (1) The Arbitral Tribunal shall have the power, upon the application of any party or (save for sub-paragraphs (viii), (ix) and (x) below) upon its own initiative, but in either case only after giving the parties a reasonable opportunity to state their views and upon such terms (as to costs and otherwise) as the Arbitral Tribunal may decide:

(i) to allow a party to supplement, modify or amend any claim, defence, cross-claim, defence to cross-claim and reply, including a Request, Response and any other written statement, submitted by such party;

(ii) to abridge or extend (even where the period of time has expired) any period of time prescribed under the Arbitration Agreement, any other agreement of the parties or any order made by the Arbitral Tribunal;

(iii) to conduct such enquiries as may appear to the Arbitral Tribunal to be necessary or expedient, including whether and to what extent the Arbitral Tribunal should itself take the initiative in identifying relevant issues and ascertaining relevant facts and the law(s) or rules of law applicable to the Arbitration Agreement, the arbitration and the merits of the parties' dispute;

(iv) to order any party to make any documents, goods, samples, property, site or thing under its control available for inspection by the Arbitral Tribunal, any other party, any expert to such party and any expert to the Tribunal;

(v) to order any party to produce to the Arbitral Tribunal and to other parties documents or copies of documents in their possession, custody or power which the Arbitral Tribunal decides to be relevant;

(vi) to decide whether or not to apply any strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material tendered by a party on any issue of fact or expert opinion; and to decide the time, manner and form in which such material should be exchanged between the parties and presented to the Arbitral Tribunal;

(vii) to order compliance with any legal obligation, payment of compensation for breach of any legal obligation and specific performance of any agreement (including any arbitration agreement or any contract relating to land);

(viii) to allow one or more third persons to be joined in the arbitration as a party provided any such third person and the applicant party have consented to such joinder in writing following the Commencement Date or (if earlier) in the Arbitration Agreement; and thereafter to make a single final award, or separate awards, in respect of all parties so implicated in the arbitration;

(ix) to order, with the approval of the Governing Council, the consolidation of the arbitration with one or more other arbitrations into a single arbitration subject to the provisions of this Act where all the parties to the arbitrations to be consolidated so agree in writing;

(x) to order, with the approval of the Governing Council, the consolidation of the arbitration with one or more other arbitrations subject to the provisions of this Act commenced under the same arbitration agreement or any compatible arbitration agreement(s) between the same disputing parties, provided that no arbitral tribunal has yet been formed by the Governing Council for such other arbitration(s) or, if already formed, that such tribunal(s) is(are) composed of the same arbitrators; and

(xi) to order the discontinuance of the arbitration if it appears to the Arbitral Tribunal that the arbitration has been abandoned by the parties or all claims and any cross-claims withdrawn by the parties, provided that, after fixing a reasonable period of time within which the parties shall be invited to agree or to object to such discontinuance, no party has stated its written objection to the Arbitral Tribunal to such discontinuance upon the expiry of such period of time.

(2) By agreeing to arbitration under the Arbitration Agreement, the parties shall be treated as having agreed not to apply to any state court or other legal authority for any order available from the Arbitral Tribunal (if formed) under subsection 1 of this Section, except with the agreement in writing of all parties.

(3) The Arbitral Tribunal shall decide the parties' dispute in accordance with the law(s) or rules of law chosen by the parties as applicable to the merits of their dispute. If and to the extent that the Arbitral Tribunal decides that the parties have made no such choice, the Arbitral Tribunal shall apply the law(s) or rules of law which it considers appropriate.

(4) The Arbitral Tribunal shall only apply to the merits of the dispute principles deriving from "ex aequo et bono", "amiable composition" or "honourable engagement" where the parties have so agreed in writing.

(5) Subject to any order of the Arbitral Tribunal under subsection 1 sub-clause (ii) of this subsection, the Governing Council may also abridge or extend any period of time under the Arbitration Agreement or other agreement of the parties (even where the period of time has expired).

(6) Without prejudice to the generality of sub-clauses (ix) and (x) of subsection 1, the Governing Council may determine, after giving the parties a reasonable opportunity to state their views, that two or more arbitrations, subject to the provisions of this Act, and commenced under the same arbitration agreement between the same disputing parties, shall be consolidated to form one single arbitration subject to the provisions of this Act, provided that no arbitral tribunal has yet been formed by the provisions of this Act, for any of the arbitrations to be consolidated.

10. Deposits — (1) The Governing Council may direct the parties, in such proportions and at such times as it thinks appropriate, to make one or more payments to the Registrar on account of the Arbitration Costs. Such payments deposited by the parties may be applied by the Governing Council to pay any item of such Arbitration Costs (including the ICADR's own fees and expenses) in accordance with the provisions of this Act.

(2) All payments made by parties on account of the Arbitration Costs shall be held by the Registrar in trust under Indian law in India, to be disbursed or otherwise applied by the Registrar in accordance with the provisions of this Act, and invested having regard also to the interests of the Registrar. Each payment made by a party shall be credited by the Registrar with the current rate of interest at the rate from time to time credited to an overnight deposit of that amount with the bank(s) engaged by the Registrar to manage deposits from time to time; and any surplus income (beyond such interest) shall accrue for the sole benefit of the Registrar. In the event that payments (with such interest) exceed the total amount of the Arbitration Costs at the conclusion of the arbitration, the excess amount shall be returned by the Registrar to the parties as the ultimate default beneficiaries of the trust.

(3) Save for exceptional circumstances, the Arbitral Tribunal should not proceed with the arbitration without having ascertained from the Registrar or will be in requisite funds as regards outstanding and future Arbitration Costs.

(4) In the event that a party fails or refuses to make any payment on account of the Arbitration Costs as directed by the Governing Council, the Governing Council may direct the other party or parties to effect a substitute payment to allow the arbitration to proceed (subject to any order or award on Arbitration Costs).

(5) In such circumstances, the party effecting the substitute payment may request the Arbitral Tribunal to make an order or award in order to recover that amount as a debt immediately due and payable to that party by the defaulting party, together with any interest.

(6) Failure by a claiming or cross-claiming party to make promptly and in full any required payment on account of Arbitration Costs may be treated by the Arbitral Tribunal as a withdrawal from the arbitration of the claim or cross-claim respectively, thereby removing such claim or crossclaim (as the case may be) from the scope of the Arbitral Tribunal's jurisdiction under the Arbitration Agreement, subject to any terms decided by the Arbitral Tribunal as to the reinstatement of the claim or cross-claim in the event of subsequent payment by the claiming or cross-claiming party. Such a withdrawal shall not preclude the claiming or cross-claiming party from defending as a respondent any claim or cross-claim made by another party.

Explanation.- The expression "current rate of interest" shall have the same meaning as assigned to it under subclause (b) of section 2 of the Interest Act, 1978 (14 of 1978)

11. Interim and Conservatory Measures — (1) The Arbitral Tribunal shall have the power upon the application of any party, after giving all other parties a reasonable opportunity to respond to such application and upon such terms as the Arbitral Tribunal considers appropriate in the circumstances:

(i) to order any respondent party to a claim or cross-claim to provide security for all or part of the amount in dispute, by way of deposit or bank guarantee or in any other manner;

(ii) to order the preservation, storage, sale or other disposal of any documents, goods, samples, property, site or thing under the control of any party and relating to the subject matter of the arbitration; and

(iii) to order on a provisional basis, subject to a final decision in an award, any relief which the Arbitral Tribunal would have power to grant in an award, including the payment of money or the disposition of property as between any parties. Such terms may include the provision by the applicant party of a cross-indemnity, secured in such

manner as the Arbitral Tribunal considers appropriate, for any costs or losses incurred by the respondent party in complying with the Arbitral Tribunal's order. Any amount payable under such cross-indemnity and any consequential relief may be decided by the Arbitral Tribunal by one or more awards in the arbitration.

(2) The Arbitral Tribunal shall have the power upon the application of a party, after giving all other parties a reasonable opportunity to respond to such application, to order any claiming or cross-claiming party to provide or procure security for Legal Costs and Arbitration Costs by way of deposit or bank guarantee or in any other manner and upon such terms as the Arbitral Tribunal considers appropriate in the circumstances. Such terms may include the provision by that other party of a cross-indemnity, itself secured in such manner as the Arbitral Tribunal considers appropriate, for any costs and losses incurred by such claimant or cross-claimant in complying with the Arbitral Tribunal's order. Any amount payable under such cross-indemnity and any consequential relief may be decided by the Arbitral Tribunal by one or more awards in the arbitration. In the event that a claiming or cross-claiming party does not comply with any order to provide security, the Arbitral Tribunal may stay that party's claims or cross-claims or dismiss them by an award.

(3) The power of the Arbitral Tribunal under subsection (1) of this Section, shall not prejudice any party's right to apply to a state court or other legal authority for interim or conservatory measures to similar effect:

(i) before the formation of the Arbitral Tribunal; and

(ii) after the formation of the Arbitral Tribunal, in exceptional cases and with the Arbitral Tribunal's authorisation, until the final award. After the Commencement Date, any application and any order for such measures before the formation of the Arbitral Tribunal shall be communicated promptly in writing by the applicant party to the Registrar; after its formation, also to the Arbitral Tribunal; and in both cases also to all other parties.

(4) By agreeing to arbitration under the Arbitration Agreement, the parties shall be taken to have agreed not to apply to any state court or other legal authority for any order for security for Legal Costs or Arbitration Costs.

12. Award(s) — (1) The Arbitral Tribunal may make separate awards on different issues at different times, including interim payments on account of any claim or cross-claim (including Legal and Arbitration Costs). Such awards shall have the same status as any other award made by the Arbitral Tribunal.

(2) The Arbitral Tribunal shall make any award in writing and, unless all parties agree in writing otherwise, shall state the reasons upon which such award is based. The award shall also state the date when the award is made and the seat of the arbitration; and it shall be signed by the Arbitral Tribunal or those of its members assenting to it.

(3) An award may be expressed in any currency, unless the parties have agreed otherwise.

(4) Unless the parties have agreed otherwise, the Arbitral Tribunal may order that simple or compound interest shall be paid by any party on any sum awarded at such rates as the Arbitral Tribunal decides to be appropriate (without being bound by rates of interest practised by any state court or other legal authority) in respect of any period which the Arbitral Tribunal decides to be appropriate ending not later than the date upon which the award is complied with.

(5) Where there is more than one arbitrator and the Arbitral Tribunal fails to agree on any issue, the arbitrators shall decide that issue by a majority. Failing a majority decision on any issue, the presiding arbitrator shall decide that issue.

(6) If any arbitrator refuses or fails to sign the award, the signatures of the majority or (failing a majority) of the presiding arbitrator shall be sufficient, provided that the reason for the omitted signature is stated in the award by the majority or by the presiding arbitrator.

(7) The sole or presiding arbitrator shall be responsible for delivering the award to the Governing Council, which shall transmit to the parties the award authenticated by the Registrar as an ICADR award, provided that all Arbitration Costs have been paid in full to the ICADR in accordance with Sections 43 and 47. Such transmission may be made by any electronic means, in addition to paper form (if so requested by any party). In the event of any disparity between electronic and paper forms, the paper form shall prevail.

(8) Every award (including reasons for such award) shall be final and binding on the parties. The parties undertake to carry out any award immediately and without any delay (subject only to Section 46); and the parties also waive irrevocably their right to any form of appeal, review or recourse to any state court or other legal authority, insofar as such waiver shall not be prohibited under any applicable law. An award may only be appealed from in the interest of public policy.

(9) In the event of any final settlement of the parties' dispute, the Arbitral Tribunal may decide to make an award recording the settlement if the parties jointly so request in writing (a "Consent Award"), provided always that such Consent Award shall contain an express statement on its face that it is an award made at the parties' joint request and with their consent. A Consent Award need not contain reasons. If the parties do not jointly request a Consent Award, on written confirmation by the parties to the ICADR that a final settlement has been reached, the Arbitral Tribunal shall be discharged and the arbitration proceedings concluded by the ICADR, subject to payment by the parties of any outstanding Arbitration Costs in accordance with Sections 43 and 47.

(10) Subject to the provisions of this Act, The Convention on the Recognition and Enforcement of Foreign Arbitral Awards at Concluded at New York on 10th June 1958 shall apply to all awards given out under this Act.

(11) Awards made under this Act may be published by the ICADR subject to the conditions laid down under Section 49(3) of this Act. The published award shall not mention the names of the parties to the dispute and shall omit any details that may allude to the identity of the said parties to the dispute.

13. Correction of Award(s) and Additional Award(s) — (1) Within 30 days of receipt of any award, a party may by written notice to the Registrar (copied to all other parties) request the Arbitral Tribunal to correct in the award any error in computation, any clerical or typographical error, any ambiguity or any mistake of a similar nature. If the Arbitral Tribunal considers the request to be justified, after consulting the parties, it shall make the correction within 30 days of receipt of the request. Any correction shall take the form of a memorandum by the Arbitral Tribunal.

(2) The Arbitral Tribunal may also correct any error (including any error in computation, any clerical or typographical error or any error of a similar nature) upon its own initiative in the form of a memorandum within 30 days of the date of the award, after consulting the parties.

(3) Within 30 days of receipt of the final award, a party may by written notice to the Registrar (copied to all other parties), request the Arbitral Tribunal to make an additional award as to any claim or cross-claim presented in the arbitration but not decided in any award. If the Arbitral Tribunal considers the request to be justified, after consulting the parties, it shall make the additional award within 45 days of receipt of the request.

(4) As to any claim or cross-claim presented in the arbitration but not decided in any award, the Arbitral Tribunal may also make an additional award upon its own initiative within 30 days of the date of the award, after consulting the parties.

(5) The provisions of Section 45(2) to 45(7) shall apply to any memorandum or additional award made hereunder. A memorandum shall be treated as part of the award.

14. Arbitration Costs and Legal Costs — (1) The costs of the arbitration other than the legal or other expenses incurred by the parties themselves (the "Arbitration Costs") shall be determined by the Registrar in accordance with the Schedule of Costs. The parties shall be jointly and severally liable to the Registrar and the Arbitral Tribunal for such Arbitration Costs.

(2) The Arbitral Tribunal shall specify by an award the amount of the Arbitration Costs determined by the ICADR (in the absence of a final settlement of the parties' dispute regarding liability for such costs). The Arbitral Tribunal shall decide the proportions in

which the parties shall bear such Arbitration Costs. If the Arbitral Tribunal has decided that all or any part of the Arbitration Costs shall be borne by a party other than a party which has already covered such costs by way of a payment to the ICADR under Section 43, the latter party shall have the right to recover the appropriate amount of Arbitration Costs from the former party.

(3) The Arbitral Tribunal shall also have the power to decide by an award that all or part of the legal or other expenses incurred by a party (the "Legal Costs") be paid by another party. The Arbitral Tribunal shall decide the amount of such Legal Costs on such reasonable basis as it thinks appropriate. The Arbitral Tribunal shall not be required to apply the rates or procedures for assessing such costs practised by any state court or other legal authority.

(4) The Arbitral Tribunal shall make its decisions on both Arbitration Costs and Legal Costs on the general principle that costs should reflect the parties' relative success and failure in the award or arbitration or under different issues, except where it appears to the Arbitral Tribunal that in the circumstances the application of such a general principle would be inappropriate under the Arbitration Agreement or otherwise. The Arbitral Tribunal may also take into account the parties' conduct in the arbitration, including any co-operation in facilitating the proceedings as to time and cost and any non-co-operation resulting in undue delay and unnecessary expense. Any decision on costs by the Arbitral Tribunal shall be made with reasons in the award containing such decision.

(5) In the event that the parties have howsoever agreed before their dispute that one or more parties shall pay the whole or any part of the Arbitration Costs or Legal Costs whatever the result of any dispute, arbitration or award, such agreement (in order to be effective) shall be confirmed by the parties in writing after the Commencement Date.

(6) If the arbitration is abandoned, suspended, withdrawn or concluded, by agreement or otherwise, before the final award is made, the parties shall remain jointly and severally liable to pay to the Registrar and the Arbitral Tribunal the Arbitration Costs determined by the Governing Council.

(7) In the event that the Arbitration Costs are less than the deposits received by the ICADR under Section 43, there shall be a refund by the ICADR to the parties in such proportions as the parties may agree in writing, or failing such agreement, in the same proportions and to the same payers as the deposits were paid to the ICADR.

(8) The fees and charges to be included in the costs shall be as specified in Schedule-I.

(9) The arbitral tribunal shall determine which party shall bear the costs taking into account 2 the provisions of subsections (2) to (5) of section 31A of the Arbitration Act the circumstances of the case and may apportion the costs between the parties if it is reasonable to do so.

(10) the arbitral tribunal may also determine whether costs are payable by one party to another party as provided in section 31A(1)(a) of the Arbitration Act;

Explanation- For the purpose of sub-clause (a), "costs" means reasonable costs relating to –

(i) the fees and expenses of the arbitrators and witnesses,
(ii) legal fees and expenses,
(iii) the administrative fees and charges of the ICADR, and
(iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

15. Determinations and Decisions by the ICADR — (1) The determinations of the Governing Council with respect to all matters relating to the arbitration shall be conclusive and binding upon the parties and the Arbitral Tribunal, unless otherwise directed by the Governing Council. Save for reasoned decisions on arbitral challenges under Section 30, such determinations are to be treated as administrative in nature; and the Governing shall not be required to give reasons for any such determination.

(2) To the extent permitted by any applicable law, the parties shall be taken to have waived any right of appeal or review in respect of any determination and decision of the Governing Council to any state court or other legal authority. If such appeal or review takes place due to mandatory provisions of any applicable law or otherwise, the Governing Council may determine whether or not the arbitration should continue, notwithstanding such appeal or review.

16. Confidentiality — (1) The parties undertake as a general principle to keep confidential all awards in the arbitration, together with all materials in the arbitration created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain, save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a state court or other legal authority.

(2) The deliberations of the Arbitral Tribunal shall remain confidential to its members, save as required by any applicable law and to the extent that disclosure of an arbitrator's refusal to participate in the arbitration is required of the other members of the Arbitral Tribunal under Sections 30, 32, 36 and 46.

(3) The Governing Council does not publish any award or any part of an award without the prior written consent of all parties and the Arbitral Tribunal.

17. Limitation of Liability — (1) None of the Registrar (including its officers, members and employees), the Governing Council (including its President and Secretaries), any arbitrator, any Emergency Arbitrator and any expert to the Arbitral Tribunal shall be liable to any party howsoever for any act or omission in connection with any arbitration, save:

(i) where the act or omission is shown by that party to constitute conscious and deliberate wrongdoing committed by the body or person alleged to be liable to that party; or

(ii) to the extent that any part of this provision is shown to be prohibited by any applicable law.

(2) After the award has been made and all possibilities of any memorandum or additional award under Section 46 have lapsed or been exhausted, neither the Registrar (including its officers, members and employees), the Governing Council (including its President and Secretaries), any arbitrator, any Emergency Arbitrator or any expert to the Arbitral Tribunal shall be under any legal obligation to make any statement to any person about any matter concerning the arbitration; nor shall any party seek to make any of these bodies or persons a witness in any legal or other proceedings arising out of the arbitration.

18. General Rules (1) A party who knows that any provision of the Arbitration Agreement has not been complied with and yet proceeds with the arbitration without promptly stating its objection as to such noncompliance to the Registrar (before the formation of the Arbitral Tribunal) or the Arbitral Tribunal (after its formation), shall be treated as having irrevocably waived its right to object for all purposes.

(2) For all matters not expressly provided in the Arbitration Agreement, the Governing Council, the ICADR, the Registrar, the Arbitral Tribunal and each of the parties shall act at all times in good faith, respecting the spirit of the Arbitration Agreement, and shall make every reasonable effort to ensure that any award is legally recognized and enforceable at the arbitral seat.

(3) If and to the extent that any part of the Arbitration Agreement is decided by the Arbitral Tribunal, the Emergency Arbitrator, or any court or other legal authority of competent jurisdiction to be invalid, ineffective or unenforceable, such decision shall not, of itself, adversely affect any order or award by the Arbitral Tribunal or the Emergency Arbitrator or any other part of the Arbitration Agreement which shall remain in full force and effect, unless prohibited by any applicable law.

19. Act applicable to substance of dispute — (1) Where the place of arbitration is situated in India-

(a) in an international commercial arbitration -

(iv) the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;

(v) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules;

(vi) failing any designation of the law under sub-clause (a) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

(2) The arbitral tribunal will decide ex aequo et bono or as amiable compositeur only if the parties have expressly authorized it to do so.

(3) The arbitral tribunal shall, in all cases, while deciding and making an award, take into account the terms of the contract and trade usages applicable to the transaction.

20. Settlement. — (1) If, during arbitral proceedings, the parties settle the dispute, in terms of section 30 of the Arbitration Act the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An arbitral award on agreed terms shall be made in accordance with Section 32 and shall state that it is an arbitral award.

(3) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award.

21. Interest on sums awarded.— (1) Where and in so far as an arbitral award is for the payment of money, 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.

(2) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two percent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.- The expression "current rate of interest" shall have the same meaning as assigned to it under sub-clause (b) of section 2 of the Interest Act, 1978 (14 of 1978)

22. Administrative assistance.— The Governing Council will arrange the administrative services specified in CHAPTER VI if-

(a) the parties designate the ICADR for arranging such services, in the arbitration agreement;

(b) the parties, or the arbitral tribunal with the consent of the parties, request the ICADR to arrange such services.

THE NINTH SCHEDULE
(Fees For International Commercial Arbitrations)

I. Administrative fee:

S. No.	Amount in Dispute (in US dollars)	Amount of fee
1.	Where the total amount in dispute does not exceed $50,000	$1,500
2.	Where the total amount in dispute exceeds $50,000 but does not exceed $1,75,000	$1,500 plus 3 per cent of the amount by which the total amount in dispute exceeds $50,000
3.	Where the total amount in dispute exceeds $1,75,000 but does not exceed $5,00,000	$5,250 plus 2 per cent of the amount by which the total amount in dispute exceeds $1,75,000
4.	Where the total amount in dispute exceeds $5,00,000 but does not exceed $10,00,000	$11,750 plus 1 per cent of the amount by which the total amount in dispute exceeds $5,00,000
5.	Where the total amount in dispute exceeds $10,00,000 but does not exceed $20,00,000	$16,750 plus 0.5 per cent of the amount by which the total amount in dispute exceeds $10,00,000
6.	Where the total amount in dispute exceeds $20,00,000 but does not exceed $50,00,000	$21,750 plus 0.25 per cent of the amount by which the total amount in dispute exceeds $20,00,000
7.	Where the total amount in dispute exceeds $50,00,000	$29,250 plus 0.125 per cent of the amount by which the total amount in dispute exceeds $50,00,000 with a ceiling of $35,000.

Note : Where a dispute cannot be expressed in terms of money, the Secretary-General of the ICADR shall determine the amount of administrative fees, in his discretion, in each case.

(1) Non-refundable fee
(ICADR acts only as an appointing authority)
US $1,000

II. Arbitrator's fee

S. No	Amount in dispute (in US dollars)	Amount of fee (in US dollars)
1.	where the total amount in dispute does not exceed $50,000	$3,000
2.	where the total amount in dispute exceeds $50,000 but does not exceed $1,75,000	$3,000 plus 5 per cent. of the amount by which the total amount in dispute exceeds $50,000
3.	where the total amount in dispute exceeds $ 1,75,000 but does not exceed $5,00,000	$9,250 plus 4 per cent. of the amount by which the total amount in dispute exceeds $1,75,000
4.	where the total amount in dispute exceeds $ 5,00,000 but does not exceed $10,00,000	$22,250 plus 3 per cent. of the amount by which the total amount in dispute exceeds $5,00,000
5.	where the total amount in dispute exceeds $10,00,000 but does not exceed $20,00,000	$37,250 plus 2 per cent. of the amount by which the total amount in dispute exceeds $10,00,000
6.	where the total amount in dispute exceeds $20,00,000 but does not exceed $50,00,000	$57,250 plus 1 per cent. of the amount by which the total amount in dispute exceeds $20,00,000
7.	where the total amount in dispute exceeds $50,00,000	$87,250 plus 0.5 per cent. of the amount by which the total amount in dispute exceeds $50,00,000 with a ceiling of $ 1,00,000

Note : Where a dispute cannot be expressed in terms of money, the arbitral tribunal shall determine the amount of fee in each case.

III. Charges for facilities

US $350 for one day or part thereof plus $50 Wi-fi charges for two hours (optional), plus $50 Documentation Camera charges for two hours (optional), plus $100 Stenographic service charges (optional).

Note: Where the facilities are provided in a place other than in ICADR's offices, the charges will be determined in each case and billed separately.

THE TENTH SCHEDULE
(See Section 29B)

MODEL GUIDELINES FOR THE ARBITRATORS AND THE PARTIES FOR EXPEDITIOUS CONDUCT OF ARBITRATION PROCEEDINGS

1. The arbitrators and the parties to the dispute shall follow these guidelines to ensure economic and expeditious disposal of arbitration cases.

For Arbitrators

2. (1) The arbitrators must take up the arbitration expeditiously on receipt of the request from the ICADR and should also complete the same with reasonable mode dispatch. Serious efforts should be made to settle arbitration cases expeditiously within a period of one year where the amount of claim exceeds 1 crore and within a period of 6 months where the amount of claim is less than Rs. 1 crore.

(2) The Arbitrator(s) shall send to the Arbitration Committee of ICADR a quarterly report of the progress of arbitration proceedings.

(3) The Arbitration Committee may, where necessary, give suggestions to the Arbitrator(s) concerned to expedite the proceedings.

3. When accepting his mandate, the arbitrator shall be able to perform his task with the necessary competence according to his professional qualifications.

4. When accepting his appointment, the arbitrator shall give a declaration in writing, in the Form specified in Schedule-III as under: -

(i) no circumstances exist in terms of sub-section (1) of section 12 of the Arbitration Act read with Fifth Schedule thereof that give rise to justifiable doubts as to his independence or impartiality,

(ii) he does not have any relationship with any of the parties to the dispute or their counsel or the subject matter of the dispute as specified in the Seventh Schedule of the Arbitration Act, and

(iii) where any qualifications are required of an arbitrator by the agreement of the parties, he possesses those qualifications.

Where necessary due to supervening facts, this declaration shall be repeated in the course of the entire arbitral proceedings until the award is filed.

5. Where facts that should have been disclosed are subsequently discovered, the arbitrator may either withdraw or be challenged or the ICADR may refuse to appoint him in other arbitral proceedings on this ground.

6. The arbitrator may at all stages suggest the possibility of a settlement to the parties but may not influence their decision by indicating that he has already reached a decision on the dispute.

7. In the course of the arbitral proceedings, the arbitrator shall refrain from all unilateral contact with the parties or their counsel which is not notified to the ICADR so that the ICADR can inform the other parties and arbitrators.

8. The arbitrator shall refrain from giving the parties, either directly or through their counsel, notice of decisions in the evidence taking place or on the merits; notice of these decisions may be given exclusively by the ICADR.

9. The arbitrator shall neither request nor accept any direct arrangement on costs or fees with the party which has designated him. The arbitrator is entitled to reimbursement of expenses and a fee as exclusively determined by the ICADR according to its Schedule of Fees, which are deemed to have been agreed by the arbitrator when accepting his mandate.

10. The arbitrator shall encourage a serene and positive development of the arbitral proceedings. In particular, he shall decide on the date and manner of the hearings in such a way as to allow both parties to fully participate therein, in compliance with the principle of equal treatment and opportunity.

11. The first hearing of the arbitral tribunal should be convened within 20 days of the receipt of the complete reply of the respondent when the arbitral tribunal may issue necessary directions. Admission and denial of the documents may be got done expeditiously. Issues if any to be framed, may be done at the same or at the next

hearing. The arbitrators should make efforts to hold arbitration hearings continuously on day-to-day basis during office hours.

12. The parties should be asked to furnish a list of their witnesses, if any, in advance and they should be asked to file affidavits of witnesses on the date fixed for evidence preferably within a week of the settlement of issues. Cross examination of such of the deponent's witnesses whose presence is demanded by the opposite party should be completed at a hearing to be fixed within 15 days.

13. Adjournments of duly fixed hearing should not be granted except for unavoidable reasons which should be spelt out in the adjournment order.

14. Arguments preferably should be heard within 15 days of the completion of evidence, to be followed by submission of written arguments, if any.

15. The Arbitrator should make the award expeditiously after the close of the hearings, preferably within 30 days.

16. The arbitrator who does not comply with the provisions of these guidelines may be replaced by the ICADR in consultation with the parties. Where it is not appropriate to replace the arbitrator in order not to cause delay in the arbitral proceedings, the ICADR may also take such action after the conclusion of the arbitral proceedings, by refusing to appoint him in subsequent arbitral proceedings.

For Parties

17. The claimant should file the applications or demand for arbitration to the ICADR with all the information and papers as per this Act, full statement of claim and copies of documents relied upon, in 3 sets in case of a Sole Arbitrator and in 5 sets in case of three arbitrators.

18. The respondent should file his reply to the claim with complete information and documents relied upon, in 3 or 5 sets as above as early as possible within the prescribed time. Fresh documentation/ claims should not be entertained at a later stage of the proceedings unless the arbitral tribunal is satisfied about the reasons for granting such permission.

19. If any party to arbitration, particularly in cases where any arbitrator, advocate or any of the parties has to come from out station to participate in arbitration proceedings, desires to seek adjournment on any valid ground, it must submit a written request to the ICADR at least before 5 working days stating the grounds which compel it to request for postponement of the hearing so that the ICADR is in a position to take necessary steps to inform the Parties, Arbitrators and Advocates regarding

postponement of the hearing. Parties seeking adjournment will have to pay cost to ICADR as may be determined by the arbitral tribunal.

20. Parties should deposit arbitration and administrative fees with the ICADR within the stipulated time, as per this Act and no extension should be sought in this behalf except for compelling reasons.

21. To avoid excessive costs in arbitration proceedings, the parties are advised to choose their arbitrators from the Panel, as far as possible from the place where the arbitration hearings have to be held. In case, a party still chooses an arbitrator from a place other than the place of hearing, the concerned party will bear the entire extra cost to be incurred on stay TA/DA etc. of the arbitrator nominated by it.

For Arbitration Committee of ICADR

22. The Arbitration Committee of ICADR may examine the arbitration case file, from time to time to evaluate the progress of the proceedings and to ascertain whether the arbitrators have granted adjournments only on reasonable grounds.

23. The Arbitration Committee of ICADR shall be sole judge of the grounds of violation of the guidelines and its decision shall be final and binding on the arbitral tribunal as well as the parties.

ELEVENTH SCHEDULE

NAME:

CONTACT DETAILS:

PRIOR EXPERIENCE (INCLUDING EXPERIENCE WITH ARBITRATIONS):

NUMBER OF ONGOING ARBITRATIONS:

CIRCUMSTANCES DISCLOSING ANY PAST OR PRESENT RELATIONSHIP WITH OR INTEREST IN ANY OF THE PARTIES OR IN RELATION TO THE SUBJECT-MATTER IN DISPUTE, WHETHER FINANCIAL, BUSINESS, PROFESSIONAL OR OTHER KIND, WHICH IS LIKELY TO GIVE RISE TO JUSTIFIABLE DOUBTS AS TO YOUR INDEPENDENCE OR IMPARTIALITY (LIST OUT):

CIRCUMSTANCES WHICH ARE LIKELY TO AFFECT YOUR ABILITY TO DEVOTE SUFFICIENT TIME TO THE ARBITRATION AND IN PARTICULAR YOUR ABILITY TO FINISH THE ENTIRE ARBITRATION WITHIN TWELVE MONTHS (LIST OUT):"

E. CONTRIBUTIONS

Our sincere thanks to our colleagues, mentioned below, who tirelessly worked on giving shape to the report & whose contributions are enormous:

- Meghna Bal
- Jogesh Sharma
- Ankit Jindal

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Founder
Hammurabi & Solomon

Manoj is a Doctor of Excellence (Honoris Causa) an alumnus of the Harvard Business School and the National Law School of India University. Manoj has been recongnised as one of the 100 Legal Luminaries of India and is a visiting fellow at Observer Research Foundation (ORF). As Founder & Managing Partner of the Firm, Manoj is engaged in providing high quality strategy and legal advice & services in India through its offices/associate offices across India. Manoj is closely involved in Policy & Regulatory practice, advising and assisting clients on policy and regulatory issues. Manoj has expanded and led the transformation of the Hammurabi & Solomon corporate legal practice over the past few decades. In 2001, he founded Hammurabi & Solomon, which is now counted amongst the leading & well reputed Law Firms in the country.

Kaviraj Singh

Secretary General –Indian National Bar Association | Founder & Managing Partner, Trustman & Co

Kaviraj is the founder and managing partner of Trustman & Co that he formed in the year 1998. Mr. Singh started his legal career in the year of 1996. Mr. Singh also edits a legal encyclopedia covering various laws of India. Mr. Singh is a Emeritus Chapter Chairman of New York State Bar Association, International Section. Mr. Kaviraj Singh had been nominated by the Hon'ble Chief Minister of Delhi, India to the governing body of Aurbindo College under University of Delhi. Mr. Singh is presented with memento by the Consular General of United State of America Consulate at New Delhi. He is currently serving as President, Legal Cell of Indo-American Friendship Group and is also serving as Director of Federation of International Business Association based at New Delhi.

S. Ramaswamy

Chairperson – Indian National Bar Association, General Counsel Section | Founder – Medhaadvisors

Ram is a B.Com (Hons), LLB, FCS, PGDBA. Aged 53. Studied at Manav Sthali Public School, New Delhi. He is a result oriented business enabler with over 30 years of Corporate Professional Managerial Experience especially as a General Counsel, Company Secretary, internal Auditor and Administrator with proven ability and effectiveness with Areas of Specialization / Functional Skills prominent in, IT, Domestic and International Litigation Management / Alternative Dispute Resolution, Corporate Law/Advisory services, etc. He also possesses vide experience in providing multi-disciplinary guidance to Board of Directors / Senior Management. His last assignment was with Escorts Ltd one of India's Prestigious Engineering Cogloromate as EVP- Group General Counsel.

Shweta Bharti

Senior Partner Hammurabi & Solomon | Vice-Chair, Indian National Bar Association, Real Estate Law Section

Shweta is an alumnus of Prestigious Institute like Harvard Business School and Bucerius Summer School and Asian Forum on Global Governance, Germany. Shweta is the Chair of the Environment Law Committee of the Inter Pacific Bar Association (IPBA). She has been recognized as one of the top Dispute Resolution Lawyers of India. She brings together a perfect blend of litigation strategy & business practices meeting the business needs of the clients. She possesses a vast experience of more than a decade in dealing with dispute resolution needs and reliefs of the clients. Shweta has represented clients in all facets of the corporate litigation and strategy.

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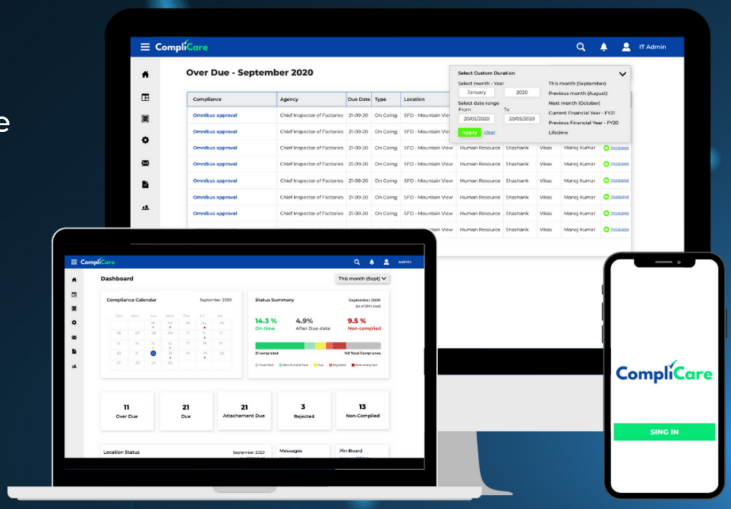

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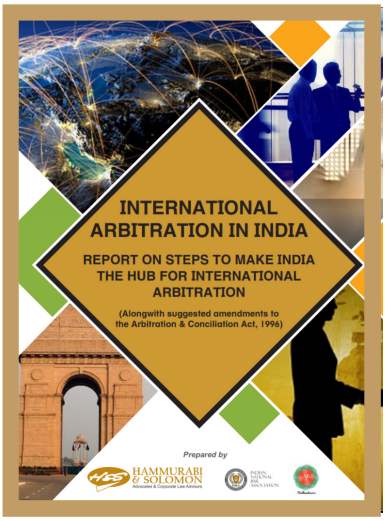
KNOWLEDGE REPORTS

2016

2017



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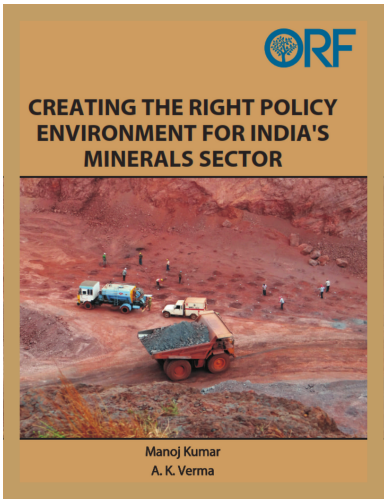

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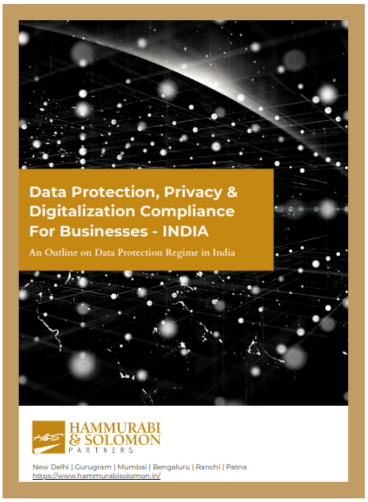
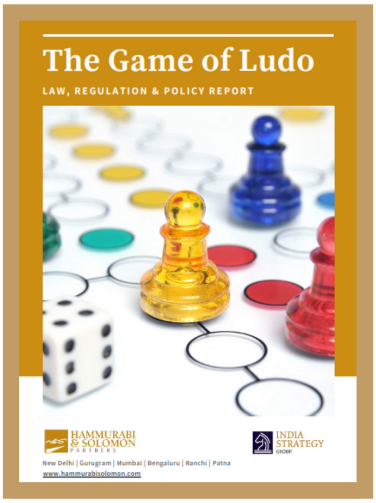


2020



2021

HAMMURABI & SOLOMON PARTNERS

ABOUT US

Hammurabi & Solomon Partners was founded in the early 2001 and is ranked amongst the top #15 law firms in India. Our journey has been marked by stellar growth and recognition over the past 2 decades with over 16 partners handpicked from the top of their fields. Paving our way into the Indian legal landscape we believe in providing complete client satisfaction with a result driven approach.

We have always aimed at being the change-maker for a newer India and the world around us. With our portfolio of services - law, public policy, regulation and justice converge to enable solutions to our client needs within the legal framework to operate in India with ease and predictability.

Our main aim is to provide world-class legal services with a unique client-centric approach. We aim at providing the utmost quality and result-oriented solutions with our out of the box thinking and teamwork. We focus on being very approachable and highly reliable legal advice with a practical and relevant approach, we tailor solutions with each client's needs.

Our firm implements a holistic approach towards client satisfaction by offering higher level of services, in-time solutions and exercising greater insights to understand the clients' sectors.

Our offices are located in New Delhi (HQ), Mumbai, Bengaluru, Gurugram, Patna & Ranchi.

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