

## Arbitration and Conciliation (Amendment) Act, 2019



ASIA

India is amending its arbitration law again (the Arbitration and Conciliation Act, 1996, the "Act").

A dramatic reform of the Indian arbitration landscape started in 2012 with the first of a series of decisions of the Supreme Court of India aiming at reducing the interference of the Indian courts in the international arbitration process.

This was followed in 2015 by an amendment to the Act with the double purpose to streamline the arbitration process and make India a more attractive seat for international arbitration, as well as to ease the enforcement of foreign awards in India.

As a latest step, the Arbitration and Conciliation (Amendment) Act, 2019 (the "**2019 Amendment**") was published on 9 August 2019.

The 2019 Amendment is pursuing the reform of arbitration in India:

### 1. Further minimizing the involvement of Indian courts in the arbitration process:

Appointment of arbitrators shall no longer be made by courts but by arbitral institutions designated by the Supreme Court in case of international arbitration and by the High Court in case of domestic arbitration. An application for appointment of arbitrators shall be disposed of within 30 days.

### 2. Further streamlining the arbitration process:

A new institution, the Arbitration Council of India (the "Council"), is established.

The Council's tasks are to promote alternative dispute resolution mechanisms, to grade arbitral institutions and arbitrators and to frame policy and guidelines towards universal standards.

### 3. Reviewing time limits:

The 2019 Amendment is setting a new time limit and relaxing an existing one:

- New time limit for completion of the statement of claim and the defence to the claim within 5 months of the appointment of a tribunal;
- Relaxing the time limit introduced by the 2015 Amendment requiring a tribunal to issue the award within 12 months of its appointment: for international arbitration, the 2019 Amendment is instead recommending that the award "be made as expeditiously as possible" and urging tribunals to complete the proceedings within 12 months from the date of fulfillment of the statement of claim and the defence to the claim.

### 4. Adopting some key standards of international arbitration:

The 2019 Amendment insert two new sections:

- One about confidentiality that is expressly recognized as an obligation for the arbitrators, the arbitral institutions and the parties;
- One about immunity of the arbitrators

who act "in good faith" under the Act or subsequent rules.

**5. Clarifying** that the 2015 Amendment shall only apply to arbitral proceedings started from 23 October 2015.

Ultimately, the 2019 Amendment is introducing a new Schedule ("**the Eighth Schedule**") on qualification of arbitrators and general norms applicable to them.

It's worth noting that the qualification required from arbitrators is presented in a very restrictive way including various professionals and senior public or private officers: "A person shall not be qualified to be an arbitrator unless he-".

Then, as far as professionals are concerned, it is somewhat worrying that all listed qualifications refer to qualifications solely under the Indian law: for instance, to be qualified as an arbitrator, an attorney shall be "an advocate with the meaning of the Advocates Act, 1961". Same for chartered accountants who are only referred to "within the meaning of the Chartered Accountants Act, 1949".

One might wonder on the impact of these new provisions and whether a foreign attorney or chartered accountant could still be appointed as an arbitrator in a case seated in India.

For any additional information please contact:

[asia@dsavocats.com](mailto:asia@dsavocats.com)

To unsubscribe, click [here](#)

I. the "Balco decision"

II. The Arbitration and Conciliation (Amendment) Act 2015 (the "2015 Amendment")

The Newsletter is provided for general informational purposes only. Any information contained in this should not be construed as legal advice and is not intended to be a substitute for legal counsel on any subject.