

## Client Alert

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## India's Arbitration and Conciliation (Amendment) Act 2019 comes into force

On 9 August 2019, the Arbitration and Conciliation (Amendment) Act 2019 (“**the Amendment Act**”) came into force in India. The legislative changes introduced by way of the Amendment Act seek to promote institutional arbitration in India and expedite the resolution of commercial disputes by arbitration with a view to making India a hub for domestic and international arbitration. In this regard, the Amendment Act introduces the following changes so as to make the arbitral process cost effective, speedy and with minimal court intervention.

### Arbitral institutions

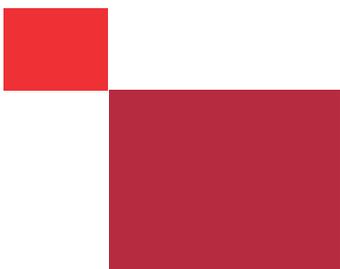
The Supreme Court (in cases of international commercial arbitration) and the High Court (in cases of arbitrations other than international commercial arbitration) have the power to designate arbitral institutions who will be responsible for the appointment of arbitrators. These arbitral institutions will be graded by a newly established Arbitration Council of India (“**Council**”). Where no graded arbitral institution is available, the Chief Justice of the relevant High Court may maintain a panel of arbitrators for discharging the functions and duties of an arbitral institution. The Chief Justice may also review the panel of arbitrators from time to time.

The appointment of an arbitrator or arbitrators will be disposed of by the arbitral institution within 30 days from the date of service of notice on the opposite party. The arbitral institution will also determine the fees and manner of payment to the arbitral tribunal.

### Establishment of an Arbitration Council of India

The Amendment Act also establishes the abovementioned Council with the head office in Delhi, India. The Council will consist of:

1. A Chairperson, to be appointed by the Central Government in consultation with the Chief Justice of India, who will be either a retired Judge of the Supreme Court or High Court, or an eminent person with special knowledge and experience in arbitration;
2. A Member nominated by the Central Government who is an eminent arbitration practitioner with substantial knowledge and experience in both domestic and international institutional arbitration;
3. A Member appointed by the Central Government in consultation with the Chairperson who is an eminent academician with experience in research and teaching in the field of arbitration and alternative dispute resolution laws;





4. An *ex officio* Member who is the Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice;
5. An *ex officio* Member who is the Secretary to the Government of India in the Department of Expenditure, Ministry of Finance;
6. A Part-time Member who is a representative of a recognized body of commerce and industry chosen on a rotational basis by the Central Government; and
7. An *ex officio* Member-Secretary who will be the Chief Executive Officer.

The Chairperson and Members of the Council, other than *ex officio* Members, will hold office for a term of three years.

The Council has a number of duties focused on promoting and encouraging arbitration and all other alternative dispute resolution mechanisms as well as framing a policy and guidelines for the establishment, operation and maintenance of uniform professional standards in respect of arbitration. The Council is required to make grading of arbitral institutions on the basis of criteria relating to infrastructure, quality and caliber of arbitrators, performance, and compliance of time limits for disposal of domestic or international commercial arbitrations.

### **Qualifications and experience of an Arbitrator**

The Council is also empowered to review the grading of arbitrators whereby the qualifications, experience and norms for accreditation of arbitrators are specified in the Eighth Schedule to the Indian Arbitration and Conciliation Act 1996. The Eighth Schedule specifies nine categories of qualifications as an arbitrator, including, *inter alia*, being an Indian advocate, chartered accountant, costs accountant or company secretary with certain levels of experience.

The Eighth Schedule also sets out the general norms applicable to an arbitrator, including, *inter alia*, being a person with a reputation of fairness and integrity, impartial and neutral, and without any conflict of interest.

Notably, the criteria set out in the Eighth Schedule does not qualify foreign registered lawyers or retired foreign officers as arbitrators.

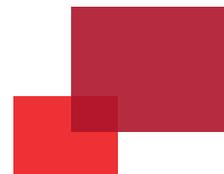
### **Confidentiality of information**

A new provision imposing an obligation on the arbitral institution and the parties to the arbitration agreement to maintain confidentiality of all arbitral proceedings except of an award where its disclosure is necessary for the purpose of implementation and enforcement of the award.

### **Time limits**

The Amendment Act imposes time limits on the filing of pleadings, issuing of arbitral awards and the granting of extensions of time.

1. A statement of claim and defence will need to be completed within a period of six months from the date the arbitrator receives notice, in writing, of their appointment.



2. Further, arbitral awards, other than in international commercial arbitration, will need to be made within a period of 12 months from the date of completion of pleadings. In international commercial arbitration matters, awards ought to be made as expeditiously as possible and endeavors ought to be made to dispose of the matter within a period of 12 months from the date of completion of pleadings.
3. Where an application for an extension of time is pending, the mandate of the arbitrator will continue until the disposal of the application.

### **Comment**

The legislative changes under the Amendment Act are largely a positive step towards making arbitration in India consistent with current international best practices. However, it remains unclear whether India will become an attractive destination for international arbitration given that foreign-registered lawyers and academics are not qualified to be appointed as arbitrators under the Amendment Act.

Moreover, while the time limit for issuance of an award will likely bring about efficiency in arbitration proceedings, there are concerns with enforceability if the time limits are not complied with. Therefore, it is prudent for all parties to attempt to manage arbitration proceedings accordingly.

We will be monitoring further developments on the Amendment Act and will provide updates as they become available.

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