



Arbitration Weekly Update - New Delhi International Arbitration Centre Bill, 2018 - Next Step to Take Indian Institutional Arbitration Forward?

Arbitration Update
January 8, 2018

The New Delhi International Arbitration Centre Bill, 2018 ("Bill") has been introduced in the Lok Sabha for establishing the New Delhi International Arbitration Centre ("NDIAC") in place of the existing International Centre for Alternative Dispute Resolution ("ICADR") set up in 1995.

The Bill aims to declare the NDIAC an institution of national importance for the overall development of alternate dispute resolution. Notably, the proposed functions of the institution include not only serving as an arbitration institution, but also establishing an academy for training arbitrators, particularly in international commercial arbitration, and conducting research in alternate dispute resolution.

JUSTICE SRIKRISHNA COMMITTEE REPORT

The Bill has been introduced pursuant to the recommendations made by the High Level Committee, chaired by Justice B.N. Srikrishna (ret'd), constituted to review the institutionalization of arbitration mechanism in India. The Committee, in their Report dated 30 July 2017 ("Report"), has dedicated an entire section to assessing the functioning and performance of the ICADR, and providing their recommendations.

The Report states that, though the ICADR receives substantial funding from the government and has necessary infrastructure, it has failed to achieve most of its objectives. The Committee has made the following observations in this regard:

- a) The ICADR has failed to market themselves to parties at the stage of contract formation, in light of which, the case load of ICADR is extremely low;
- b) Governing Council of ICADR is too large to be effective. It requires a young, talented CEO with experience in arbitrations to take the institution forward;
- c) The ICADR has failed to keep pace with the developments in arbitration law worldwide. Unlike other international arbitral institutions, ICADR has failed to update their Rules to incorporate new provisions in line with latest legal developments;
- d) Though the ICADR has necessary infrastructure, it is being put to limited use. It needs to market its facilities as a viable venue for conducting arbitrations.

In light of the above, the Committee *inter alia* recommended that a legislation be passed declaring the ICADR an institution of national importance, and providing for transfer of the properties, assets, debts, obligations, liabilities and contracts of the ICADR to a separate body corporate. It also recommended that the said legislation should contain provisions laying down a new governance structure, powers and functions for the body corporate.

It is in the above backdrop that the Bill came to be introduced.

SALIENT FEATURES OF THE BILL

Following are some of the salient features of the Bill:

- a) The NDIAC shall be an institution of national importance;
- b) The undertakings of the ICADR, along with the right, title and interest in relation to such undertakings shall stand transferred to and vest in the Central Government;
- c) The membership of the NDIAC has been set out in section 5 of the Bill. The NDIAC shall consist of (a) a Chairperson who is a former Supreme Court or High Court judge or an eminent person, having experience in arbitration, and to be appointed by the Central Government in consultation with the Chief Justice of India; (b) Two full time or part-time members who are eminent persons having substantial knowledge and experience of institutional arbitration, and to be appointed by the Central Government; (c) one part-time member who is a representative of a recognized body of commerce and industry, and to be appointed by the Central Government; (d) an ex-officio member who is a Secretary to the Government of India in the Ministry of Law or Justice or his representative; (e) an ex-officio member who is a Financial Adviser nominated by the Ministry of Finance; (d) an ex-officio member who is a Chief Executive Officer.
- d) The Chief Executive Officer shall be responsible for the day-to-day administration of the NDIAC;
- e) There shall be a Secretariat to the NDIAC consisting of a Registrar, a Counsel and such other officers or employees as may be


prescribed, for dealing with the activities of the NDIAC.

- f) The objects and functions of NDIAC have been set out under section 14 and 15 thereof. They include:
- i) To promote research and study, and provide training in arbitration, conciliation, mediation and other alternate dispute resolution matters;
 - ii) To provide facilities and administrative assistance for arbitral proceedings; and
 - iii) To maintain panels of accredited arbitrators, conciliators, and mediators, or specialists such as surveyors and investigators;
 - iv) To set up facilities in India and abroad to promote the activities of NDIAC;
 - v) To cooperate with other societies, institutions and organizations, national and international, for promoting alternative dispute resolution.
- g) Section 28 of the Bill provides for setting up of a Chamber of Arbitration which will scrutinize applications for admission in the panel of reputed arbitrators. The Chamber of Arbitration shall also lay down criteria for admission to the panel of arbitrators.
- h) Section 29 of the Bill provides for the establishment of an Arbitration Academy to train arbitrators, particularly in the area of international commercial arbitration. The Academy shall also conduct research in the area of alternate dispute resolution, and give suggestions for achieving the objectives of the Act.

ELP ANALYSIS

A reading of the objects and functions of the ICADR will show that they are by and large the same as those envisaged under the Bill for the NDIAC. The Report, while analyzing the performance of the ICADR has indicated that it has failed to take off as an arbitration institution of repute despite the substantial funds pumped in by the Central Government and state-of-the-art infrastructure. Much of this has been attributed to the administrative structure of the ICADR, and the lack of initiative on the part of the institution to market their services and raise awareness. In light of this, it is unclear whether declaring the NDIAC as an institute of national importance alone would provide it with the necessary impetus. The success of the new NDIAC is more likely to depend on the commitment, vision and initiative of those at the helm.

Disclaimer: The information provided in this update is intended for informational purposes only and does not constitute legal opinion or advice. Readers are requested to seek formal legal advice prior to acting upon any of the information provided herein. This update is not intended to address the circumstances of any particular individual or corporate body. There can be no assurance that the judicial/ quasi judicial authorities may not take a position contrary to the views mentioned herein.

	ECONOMIC LAWS PRACTICE ADVOCATES & SOLICITORS	
MUMBAI mumbai@elp-in.com	NEW DELHI delhi@elp-in.com	BENGALURU bengaluru@elp-in.com
AHMEDABAD ahmedabad@elp-in.com	PUNE pune@elp-in.com	CHENNAI chennai@elp-in.com

© Economic Laws Practice 2018