

# Dispute Resolution Hotline

October 27, 2015

## ARBITRATION REFORMS IN INDIA: END OF THE ENDLESS SAGA?

- A twelve-month timeline for completion of arbitrations seated in India;
- Flexibility for parties to approach Indian courts for interim reliefs in aid of foreign-seated arbitrations;
- Introduction of 'costs follow the event' regime;

On October 23, 2015, the President of India has promulgated the Arbitration and Conciliation (Amendment) Ordinance, 2015 ("**Ordinance**"). The Ordinance substantially amends the provisions of Arbitration and Conciliation Act, 1996 ("**Act**"). The Ordinance is aimed at taking drastic and reform-oriented steps to bring Indian arbitration law at par with global standards and provide an effective mechanism for resolving disputes with minimum court interference.

The objective of the Act is to provide a speedy, cost-effective dispute resolution mechanism which would give parties finality. The amendments introduced by the Ordinance are in the right direction keeping in mind the objectives of the Act.

In 1996, the Act was passed with a view to bring in winds of change but fell into a chasm of its own. A number of decisions from the Courts slowly but surely ensured that the preferred seat in any cross-border contract was always a heavily negotiated point and, more often than not, ended up being either Singapore, New York or London, the established global arbitration centers. Foreign investors and corporates doing business in India were just not ready to risk the Indian legal system. However, developments in the arbitration scenario in India through recent court decisions have now shown the support of the judiciary in enabling India to adopt international best practices with respect to arbitration.

The road to the Ordinance was set by 'The Law Commission of India's Report No. 246' ("**Law Commission Report**")<sup>1</sup> which proposed amendments to the Act. One may recall that a similar attempt was made in 2010, wherein Ministry of Law and Justice had released a consultation paper suggesting certain amendments to the Act. Overall, most of the amendments brought in the Act are a reflection of the Law Commission Report and only time will tell how judiciary reacts to the new amendments.

Please find below a snapshot to the major amendments:-

- Flexibility for parties to approach Indian courts for interim reliefs in aid of foreign-seated arbitrations;
- Jurisdiction insofar as international commercial arbitrations, whether seated in India or abroad, to lie before the High Court;
- Extensive guidelines incorporated relating to the independence, impartiality and fees of arbitrators;
- Detailed schedule on ineligibility of arbitrators;
- A twelve-month timeline for completion of arbitrations seated in India;
- Expeditious disposal with indicative timelines of arbitration applications which are required to be filed before Courts;
- Incorporation of expedited/fast track arbitration procedure;
- Interim orders passed by Tribunals seated in India are deemed to be order of Courts and are thus enforceable;
- Detailed provisions in relation to award and determination of costs by Tribunals seated in India – introduction of 'costs follow the event' regime;
- Limitation of grounds on which awards arising out of International Commercial Arbitrations seated in India may be challenged; and
- No more automatic stay on filing of a challenge to an arbitral award - requirement of a specific order from Court;

The link to our comprehensive analysis of the new Ordinance is available [here](#).

- **International Dispute Resolution and Arbitration Practice**

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<sup>1</sup> The Law Commission Report was handed over to the Ministry of Law and Justice on August 5, 2014

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