

Corpsec Hotline

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ARBITRATION: THE HAGUE OR NEW DELHI? THE FLIGHT IS YOURS!

A recent proposal by the Permanent Court of Arbitration, The Hague to establish a regional centre in New Delhi, India has been accepted by the Ministry of Law and Justice, Government of India ("Law Ministry"). The Permanent Court of Arbitration and the Law Ministry are now working together on drafting a Memorandum of Understanding ("MOU"). Once the MOU is ratified by both the Permanent Court of Arbitration and the Law Ministry, India will be the third regional centre outside The Hague, the other two being Costa Rica and South Africa. The centre is likely to be established by the end of the year 2007.

Positive impact on foreign investors

There has been a significant increase in cross border transactions including investments into different industries/sectors in India, increased outsourcing activity and technology licensing. However, investors and companies setting up operations in India or transferring their IP have been wary of the long delays caused by legal proceedings in the Indian courts. The need for an alternate dispute resolution mechanism becomes more compounded in view of the reality that subordinate courts in India have more than 2.5 million cases pending. Therefore, this gives rise to the need for alternate dispute resolution mechanisms, which are cost-effective, reliable and speedy.

Most foreign parties prefer choosing destinations outside India for the purpose of arbitration proceedings primarily because of unfamiliarity with the institutional arbitration and arbitration rules in India. Often Indian parties are left with no choice but to accept the foreign institutional arbitration and venue, adding significant costs in the event of a dispute arising. In fact if the witnesses are located in India and evidence is available within India, it becomes expensive for even a foreign party to have arbitration outside India. With the setting up of the regional office of the Permanent Court of Arbitration, New Delhi, companies will benefit from the availability of an arbitration forum which would match the facilities offered at The Hague, at a far lower cost. The establishment of the regional centre will benefit from India's vast talent pool of arbitration experts and retired judges, who would bring with them a sound appreciation of Indian law and the Indian legal process. Additionally, the regional centre in New Delhi can be used as a regional arbitration hub for disputes which may arise in the South East Asian region.

According to reports, the Permanent Court of Arbitration's New Delhi office, its arbiters, staff and officials will enjoy immunity and privileges similar to those which are granted to officials of United Nations. Thereby, granting a significant autonomy to the officers of the regional office, New Delhi.

Source: The Economic Times, August 24, 2007

- **Rajesh Pathania & Gowree Gokhale**
You can direct your queries or comments to the authors

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