



Proposed Amendments to India's Arbitration Act

The Government of India has announced possible amendments to the Indian Arbitration and Conciliation Act 1996 ("Act"). On 7 March 2018, the Cabinet of Ministers approved the Arbitration and Conciliation (Amendment) Bill 2018 ("Bill"). The Bill seeks to clarify the application of previous amendments made to the Act in 2015 (contained in the Arbitration and Conciliation (Amendment) Act 2015 ("2015 Amendments")), which has been highly contentious following a series of conflicting High Court decisions on their application. The Bill also adopts the recommendations of the "High Level Committee to Review the Institutionalization of Arbitration Mechanism in India" led by former Indian Supreme Court judge Justice B.N. Srikrishna, which were submitted to the Union Law Ministry in August 2017.

The key amendments proposed in the Bill are set out below:

- **Appointment of arbitrators by designated institutions:** The Bill seeks to streamline the appointment of arbitrators by allowing certain institutions to serve as appointing authorities (rather than the local courts).
- **Establishment of Arbitration Council of India ("ACI"):** The Bill proposes the establishment of an independent body, the ACI, to grade arbitral institutions, and to promote and improve standards for alternate dispute resolution mechanisms.
- **Removal or extension of deadline for awards:** The Bill proposes that the Act's requirement for awards to be rendered within 12 months from the constitution of the tribunal be relaxed by: (i) removing its application for international arbitrations; and (ii) extending the deadline for all other arbitrations (i.e., domestic arbitrations) so that it commences from the completion of the pleadings (rather than the tribunal's constitution). This would be particularly helpful for complex cases which involve complicated evidentiary or legal issues and often require more time.
- **Confidentiality and immunity:** The Bill proposes that arbitration proceedings should be kept confidential (except for awards) and that arbitrators should be immune from suit with respect to any action or omission in good faith on their part during the course of arbitral proceedings.
- **Applicability of 2015 Amendments:** The Bill seeks to clarify that the 2015 Amendments to the Act *should not apply* to: (i) arbitral proceedings that commenced before the 2015 Amendments came into force; and (ii) court proceedings arising out of such arbitral proceedings (irrespective of whether the court proceedings commenced before or after the 2015 Amendments). Following the introduction of the Bill, however, the Indian Supreme Court has held that the 2015 Amendments *do apply* to court proceedings arising from arbitrations commenced before the 2015 Amendments (*Board of Control for Cricket in India v Kochi Cricket Pvt. Ltd.*, Civil Appeal Nos. 2879-2880 of 2018). It remains to be seen whether Parliament will seek to amend the Bill in line with the Court's ruling.

Although the Bill has yet to be introduced and passed by Parliament, it is the latest initiative in a series of steps the Indian Government has taken to improve its arbitration framework and boost its credibility as an arbitral seat. It is also particularly significant for foreign businesses with dealings in India, which [tend to prefer arbitration as a forum for cross-border disputes](#) rather than litigation in India.

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