

# New Delhi International Arbitration Centre: Building India into a Global Arbitration Hub

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On 5 January 2018, the Central Government introduced [New Delhi International Arbitration Centre Bill, 2018](#) (the “**Bill**”) in the lower house of Indian Parliament (Lok Sabha). This was with the objective of making India an investor-friendly nation. There are few arbitral institutions operating in India – Indian Council of Arbitration (“**ICA**”), International Centre for Alternative Dispute Resolution (the “**ICADR**”) and more recently Mumbai Centre for International Arbitration (“**M CIA**”). However, foreign investors have long preferred referring their disputes to arbitration centres located in Singapore, Hong Kong or London under the aegis of institutional rules of International Chamber of Commerce (“**ICC**”), Singapore International Arbitration Centre (“**SIAC**”) or London Court of International Arbitration (“**LCIA**”). Unwarranted judicial intervention and under-developed dispute resolution infrastructure and procedures have dented investors’ confidence, and discourages investors from adopting recourse to contract enforcement measures. The Bill proposes to establish the New Delhi International Arbitration Centre (the “**NDIAC**”) in order to acquire and revamp the procedural framework and governance structure that was previously in place under the ICADR. Further, the Bill seeks to develop and expedite the dispute resolution process. Undoubtedly, this is a welcome move to encourage foreign investment in the country and would auger well for India’s reputation globally.

### **Key features of the Bill**

The following features of the Bill seeks to do away with the procedural issues previously in place under the ICADR, making it distinct from other arbitral institutions in India.

- **Incorporation of NDIAC**

The NDIAC is proposed to be established as a body corporate, different from the ICADR and ICA that are registered as a society under the Societies Registration Act, 1860. M CIA has been registered as a not-for-profit organisation in Mumbai. Akin to other body corporates, it is proposed to have perpetual succession and a common seal that will permit it to acquire and transfer property, and enter into contracts in its own name. However, as NDIAC will be established pursuant to a notification issued by Central Government, it will be exempt from other requirements, such as minimum shareholders and directors, applicable to body corporates established under the Companies Act, 2013. The NDIAC is proposed to have a head office at New Delhi and branches at various other places in India and abroad.

- **Institute of national importance**

The Bill proposes to declare NDIAC an institute of national importance – a step expected to allow NDIAC have autonomy in administrative, financial and academic activities. It is for the first time that the Central Government has proposed to declare an arbitral institution as an institute of national importance. The Central Government also proposes to make contributions to the funds of NDIAC in each financial year to give it the financial fillip required and to enable NDIAC promote research and study, organise conferences and seminars for imparting knowledge of law and procedures on alternative dispute resolution.

- **Organisational structure**

The Bill proposes to eliminate the large ICADR governing council. The ICADR governing council consists of 47 members that handles the management of the ICADR. All the decisions are taken based on majority approval of the governing council and various committees of ICADR. Similarly, the MCIA council consists of 17 arbitration practitioners. Lack of coordination among the members of the governing council causes delay in the decision making process of arbitration institutions. NDIAC is proposed to consist of only 7 members appointed by the Central Government. That will expedite the decision making process.

- **Transfer of undertakings**

In order to utilise the elaborate infrastructure set up for ICADR, the Bill proposes that ICADR will transfer all its undertakings, including assets and all property, in favour of the Central Government and the Central Government will thereafter transfer the right, title and interest in the undertakings in favour of NDIAC which will facilitate discharge of arbitration proceedings.

- **Chamber of arbitration and arbitration academy**

It is proposed that NDIAC will establish two other bodies, namely, a chamber of arbitration to maintain a permanent panel of arbitration practitioners, and an arbitration academy to impart training to the arbitrators and conduct research activities. The proposed panel of expert arbitrators will assist the disputing parties in resolving their disputes in a more efficient and effective manner.

### **Ambiguities in the Bill**

Though the Bill is a crucial step to build India into a global arbitration hub, there are some inherent ambiguities in the Bill that will cause roadblocks in the development of an effective dispute resolution mechanism.

Illustratively, the Central Government is the appointing authority of the members of the NDIAC and a periodic contributor to its funds. Further, its accounts are proposed to be audited by the Comptroller and Auditor-General of India. The Central Government would also have the power to remove members from office. Investors adopting alternate modes of dispute resolution prefer a neutral decision making body. The proactive role played by the Central Government may discourage contracting parties from referring disputes to NDIAC for fear that the independence and credibility of the arbitral institution will be compromised, especially in cases where the opposite party is a public sector undertaking. Although SIAC was established with government aid and funding, it has now become a completely self-sufficient and independent arbitration institute.

Further, the Bill only addresses the administrative issues in relation to NDIAC. It remains to be seen how the procedural framework concerning the settlement of disputes is laid. The primary reason behind ICADR's failure to become an institute of choice was its antiquated approach in resolving disputes. In order to present NDIAC as a preferred arbitration institute, it must be competitively priced, have state of the art facilities and must have precise timelines for the completion of

arbitration proceedings. Separately, provisions such as consolidation of arbitrations, emergency arbitrators, immunity to arbitrators and confidentiality of information that were not envisaged under the ICADR Rules must be incorporated in the NDIAC procedural framework.

## **Conclusion**

The Bill, establishing NDIAC with an organised governance structure, will replace the outdated ICADR and lay a strong foundation in the institutional arbitration setup of India. The High Level Committee headed by Justice B.N. Srikrishna (the “**Committee**”) suggested taking over of ICADR and overhauling its governance structure because of the procedural deficiencies in the functioning of the ICADR. Particularly, the large governing council and the archaic rules make the institute unattractive to the potential contracting parties. The Bill proposes to overcome these roadblocks by streamlining the organisational structure of the arbitration centre. Further, the Arbitration and Conciliation (Amendment) Bill, 2018 (the “**Arbitration Amendment Bill**”) proposes to establish the Arbitration Council of India (the “**ACI**”) which will periodically review and grade the arbitral institutions in India. The periodic review and grading will certainly help in promoting the credibility of NDIAC among the foreign investors. It is hoped that NDIAC will change the perception of doing business in our country and will expedite the dispute settlement mechanism. However, the Parliament must clear the ambiguities associated with the Bill. Particularly, an investor friendly procedural framework must be adopted. A transparent process for appointment and removal of the members must be incorporated. Separately, the Central Government involvement/ interference in the functioning and funding of NDIAC must be phased out to gain investors’ confidence.

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