

WORKING PAPER ON INSTITUTIONAL ARBITRATION REFORMS IN INDIA

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I. EXECUTIVE SUMMARY

The promotion of India as an arbitration hub has been on the agenda of Indian lawmakers for some time now. The changes brought about by the Arbitration and Conciliation (Amendment) Act, 2015 (“**2015 Amendments**”) to the Arbitration and Conciliation Act, 1996 (“**ACA**”) were aimed at achieving this goal by facilitating speedy and efficacious resolution of disputes through arbitration. The enactment of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (“**Commercial Courts Act**”) which facilitates swift disposal of arbitration-related court proceedings by providing for arbitration matters involving commercial disputes to be heard by commercial courts / divisions was another step in this direction. In this context, the promotion of institutional arbitration in India is another issue that has come to the forefront.

It is widely accepted that India prefers ad hoc arbitration. Though various arbitral institutions have been set up in India, especially in the last five years, ad hoc arbitration continues to be the preferred mode of arbitration. Moreover, a large number of international arbitrations involving Indian parties are

seated abroad and administered by foreign arbitral institutions.¹ In order to promote institutional arbitration in India, it is imperative that: (a) Indian parties involved in domestic and international arbitrations are encouraged to shift to institutionally administered arbitrations rather than resort to ad hoc arbitrations; and (b) India becomes a favoured seat of arbitration for international arbitrations, at the very least in matters involving Indian parties.

Against this background, this Working Paper delineates certain issues that exist in the institutional arbitration landscape in India. We seek to put out some important questions that need to be asked to understand better why India has thus far not established itself as a centre for institutional arbitration. To this end, an attempt will be made to understand why several existing arbitral institutions in India are not functioning effectively. Some data collection from such arbitral institutions and stakeholders in arbitration may be helpful in understanding such reasons. For this purpose, this Working Paper will be accompanied by two questionnaires that are being circulated to: (a) arbitral institutions in India; and (b) stakeholders in an arbitration such as parties, their in-house counsel, lawyers and arbitrators.

We have also studied some of the most popular arbitral institutions worldwide in order to identify international best practices. On this basis, the paper identifies areas for reform in the Indian arbitration landscape - to strengthen the existing arbitration mechanisms, and also to put forward focus areas for promoting institutional arbitration in India. Comments are invited on the Working Paper's suggestions to develop a culture of institutional arbitration in India.

II. INSTITUTIONAL ARBITRATION IN INDIA: THE STATE OF PLAY

Parties in India prefer ad hoc arbitration and regularly approach courts to appoint arbitral tribunals under the relevant provisions of the ACA. A 2013 survey by PricewaterhouseCoopers showed that there was a strong preference for ad hoc arbitration amongst both Indian companies that had experienced arbitration and Indian companies that had no experience of arbitration.² This is contrary to global practice - a 2008 worldwide survey of corporate preferences in dispute resolution by PricewaterhouseCoopers and Queen Mary University of London ("QMUL") showed that: (a) 86 per cent of arbitral awards given during the preceding ten years were given in arbitrations administered by

¹ Statistics show that 91 of the 271 cases administered by the Singapore International Arbitration Centre (SIAC) last year involved Indian parties, which amounts to twice as many as the Chinese users, who filed the second-highest number of cases. See Sathyapalan and Sivaraman, 'A Lot Still Needs to Be Done For India to Fulfil Its International Arbitration Ambitions', *The Wire* (Online) on 02.11.2016, available at <https://thewire.in/77002/international-arbitration-india/> (accessed on 26.02.2017)

² 'Corporate Attitudes & Practices towards Arbitration in India', *Pricewaterhouse Coopers* (2013), available at <https://www.pwc.in/assets/pdfs/publications/2013/corporate-attributes-and-practices-towards-arbitration-in-india.pdf> (accessed on 03.02.2017).

arbitral institutions and not ad hoc arbitrations; and (b) 67 per cent of arbitrations that states or state-owned enterprises were a party to, were institutional arbitrations.³

The preference for ad hoc arbitrations by Indian parties is not limited to arbitrations where the amounts in dispute are small. For instance, construction and infrastructure, one of the fastest growing sectors in the Indian economy, spends crores of rupees on resolution of disputes. In 2001 alone, 54,000 crores of capital was blocked in construction sector disputes.⁴ Dispute resolution in this sector consists mostly of ad hoc arbitration.⁵

Is ad hoc arbitration really preferable to institutional arbitration, particularly in the Indian context? The following paragraphs discuss this issue in detail.

A. Institutional arbitration versus ad hoc arbitration

The issue of institutional arbitration versus ad hoc arbitration has been a topic of much discussion. Institutional arbitration offers the advantages of providing a clear set of arbitration rules and timelines for the conduct of an arbitration, support from trained staff who administer various stages of the arbitration proceedings, a panel of arbitrators to choose from to decide the dispute, and in some cases, supervision in the form of scrutiny of awards.⁶ On the other hand, ad hoc arbitration gives parties greater control over the arbitration process, flexibility to decide on the procedure, and may be cost-effective where they can avoid administration charges levied by an arbitral institution.⁷

Broadly, it has been accepted that ad hoc arbitration is more effective in cases where parties to a dispute cooperate with each other, and can mutually agree to constitute a tribunal and select arbitrators to resolve their dispute.⁸ However, typically once a dispute reaches arbitration, it is highly

³ International Arbitration: Corporate attitudes and practices 2008, *Queen Mary University of London and PricewaterhouseCoopers* (2008), available at <http://www.arbitration.qmul.ac.uk/docs/123294.pdf> (accessed on 03.02.2017).

⁴ Krishna Sarma et al., 'Development and Practice of Arbitration in India -Has it Evolved as an Effective Legal Institution', Working Paper 103, of the Center on Democracy, Development, and The Rule of Law Freeman Spogli Institute for International Studies (2009), available at https://cddrl.fsi.stanford.edu/sites/default/files/No_103_Sarma_India_Arbitration_India_509.pdf (accessed on 28.02.2017).

⁵ *Id.*

⁶ Sundra Rajoo, 'Institutional and Ad hoc Arbitrations: Advantages and Disadvantages', *The Law Review* (2010), available at <http://sundrarajoo.com/wp-content/uploads/2016/01/Institutional-and-Ad-hoc-Arbitrations-Advantages-Disadvantages-by-Sundra-Rajoo.pdf> (accessed on 28.02.2017).

⁷ *Id.*

⁸ See Edlira Aliaj, 'Dispute resolution through ad hoc and institutional arbitration', *Academic Journal of Business, Administration, Law and Social Sciences*, Vol. 2 No. 2 (2016), p.241-250, available at <http://iipcl.org/wp-content/uploads/2016/07/241-250.pdf> (accessed on 28.02.2016). See also Norton Rose Fullbright, 'A basic guide to international arbitration' (February 2015), available at <http://www.nortonrosefulbright.com/files/arbitration-a-guide-to-international-arbitration-26050.pdf> (accessed on 02.03.2017).

likely that parties do not want to cooperate any longer. In such a case, ad hoc arbitration is vulnerable to the risk of dilatory tactics, increasing delays and costs. A developed arbitral institution can handle these challenges adequately. Moreover, where parties are not sophisticated and do not have sufficient knowledge regarding arbitration proceedings, institutional arbitration is decidedly preferable.⁹

In India, ad hoc arbitration is accompanied by its own share of problems. For one, ad hoc arbitrations tend to be protracted and costly. One of the reasons for these delays and costs is that the fees of arbitrators are charged on a sitting-by-sitting basis. Further, arbitrators are given the power of a civil court under the ACA and can call for evidence during proceedings, much like the procedure followed in regular courts. These repeated calls for written evidence also lead to the proceedings stretching out, and often result in proceedings similar to that of a regular court of law. Costs and delays in ad hoc arbitration also mount in case of additional procedural hearings, adjournments, litigation arising from procedural defects in ad hoc arbitrations etc.

Further, while the ACA gives sufficient powers to the arbitral tribunal to reduce delays, arbitration proceedings in India are still long-drawn and take years to conclude. In this regard, changes were made by the 2015 Amendments whereby time limits were set out for arbitration proceedings.¹⁰ Further, a provision was inserted that empowered courts to reduce the fees of arbitrators for delays attributable to the arbitral tribunal.¹¹ While these amendments can help set fixed standards and solve problems of delays and costs to some extent, it requires changes in attitudes and practices. There needs to be a change in India's arbitration culture, encouraging parties and arbitrators to resolve disputes efficiently and follow guidelines when conducting arbitration. Institutional arbitration where the progress of the arbitration is monitored by the arbitral institution is one such answer and therefore, should be encouraged where appropriate.

B. Challenges to institutional arbitration in India

This section examines the reasons why institutional arbitration is not the preferred mode of arbitration in India, with particular focus on: (1) misconceptions regarding institutional arbitration; (2) lack of governmental support for institutional arbitration; (3) lack of statutory backing for institutional arbitration; and (4) problems with delays and excessive judicial involvement in arbitration proceedings.

1. Misconceptions regarding institutional arbitration

There are several misconceptions relating to institutional arbitration that exist among parties. One of these is related to costs. Parties consider institutional arbitration to be substantially more expensive

⁹ *Id* Edlira Aliaj (2016) at p. 247.

¹⁰ Section 29A, ACA.

¹¹ Section 11(14), ACA.

than ad hoc arbitration, primarily because of the administrative fees payable to arbitral institutions.¹² This assessment is largely misconceived because: (a) numerous arbitral institutions charge very reasonable fees; (b) the use of an arbitral institution helps avoid disputes over procedural matters resulting in cost savings; and (c) the costs of an ad hoc arbitration can easily exceed the costs of an institutional arbitration in case of additional procedural hearings, adjournments, use of per-hearing fees, litigation arising from procedural infirmities in ad hoc arbitrations etc.

Parties also often believe that institutional arbitration is inflexible because arbitral institutions follow rules that take away exclusive autonomy of the parties over arbitration proceedings. However, most arbitral institutions that exist in the international scenario have made an attempt to balance institutionalisation with party autonomy- they only keep those issues which deal with the legality and integrity of proceedings out of the purview of party autonomy.

These misconceptions could be due to a general lack of awareness regarding institutional arbitration and its advantages. This could also be due to the lack of initiative on the part of arbitral institutions to promote their work and facilities as well as on the part of lawyers to properly advise parties about the advantages of institutional arbitration. Even when there is awareness on the existence of institutional arbitration as an option, there is often the misconception that this option is only available to bigger businesses and/or high value disputes.

2. Governmental support for institutional arbitration

One of the reasons for a weak institutional arbitration framework in India is the lack of sufficient governmental support for the same over the years. While the government is the most prolific litigant in India, it can do more in this capacity to encourage institutional arbitration. The general conditions of contract used by the government and public sector undertakings often contain arbitration clauses, but these clauses usually do not expressly provide for institutional arbitration.

Further, the government policy on arbitration requires a relook if institutional arbitration is to become the norm, particularly for disputes valued at large amounts. For instance, if the government, being the biggest litigant, were to adopt institutional arbitration as regular practice, the sheer volume of cases moving to arbitral institutions would provide a powerful impetus to institutional arbitration.

¹² See Gary Born, 'International Arbitration: Law and Practice', 2012 Ed. p. 13. See also 'The pros and cons of arbitration', A Lexis PSL document produced in partnership with Mayer Brown International LLP, available at https://m.mayerbrown.com/Files/News/04165fd5-5165-41ea-bb6f-19d9235c171d/Presentation/NewsAttachment/7e531e5e-4040-4251-b1a8-1d4b6168c99b/Practice%20Note_Duncan_Pros-Cons-Arbitration_oct12.pdf (accessed on 02.03.2017).

There have recently been discussions and initiatives on the part of some state governments as well to promote institutional arbitration, citing that it would be more organised and cost-effective.¹³ One of the recommendations made by the Law Commission of India¹⁴ was that trade and commerce bodies must establish chambers with their own rules.

However, effectively, the government has so far focussed its attention on arbitration in general. To encourage institutional arbitration, special action aimed at the development of arbitral institutions is required.

3. Lack of statutory backing for institutional arbitration

The ACA has been arbitration-agnostic, with no provisions specifically geared towards promoting institutional arbitration. This is in contrast with jurisdictions like Singapore, where the Singapore International Arbitration Centre (“SIAC”) is the default appointing authority for arbitrators under the International Arbitration Act, 1994 (“IAA”) which governs international arbitrations.

In fact, one of the provisions of the ACA, section 29A which was inserted by the 2015 Amendments, is perceived to have made arbitral institutions wary of arbitrations in India. Section 29A provides for strict timelines for completion of arbitration proceedings. This has been criticised as unduly restrictive of arbitral institutions which provide for timelines for different stages of the arbitration proceedings.¹⁵ The merits of such a view require examination in light of the endemic problem of delays plaguing arbitration in India.

4. Problems with delays and excessive judicial involvement in arbitration

Delays in Indian courts and excessive judicial involvement in arbitration proceedings have resulted in India not being favoured as a seat for arbitration, and consequently stunted the growth of international arbitration (including institutional arbitration) in India.

Parties often delay arbitration proceedings by initiating court proceedings before or during arbitration proceedings, or at the enforcement stage of the arbitral award. The high pendency of litigation before Indian courts means that arbitration-related court proceedings take a long time to be disposed of. The

¹³ ‘Maharashtra readies arbitration policy’, *Business Standard (online)*, 15th October 2016, available at http://www.business-standard.com/article/economy-policy/maharashtra-readies-arbitration-policy-116101400574_1.html (accessed on 17.02.2016).

¹⁴ 246th Report of the Law Commission of India (August, 2014), ‘Amendments to the Arbitration and Conciliation Act 1996’, available at <http://lawcommissionofindia.nic.in/reports/Report246.pdf> (accessed on 02.03.2017).

¹⁵ Special Address by Justice A.P. Shah at the Nani Palkhivala Arbitration Centre 9th Annual International Conference on Arbitration on Current Issues in Domestic and International Arbitration, 18.02.2017.

Commercial Courts Act sought to remedy this situation by setting up commercial courts at the district level or commercial divisions in high courts having ordinary original civil jurisdiction. These commercial courts / divisions hear arbitration matters involving commercial disputes, amongst other commercial matters. However, an examination of the recent roster of the Bombay High Court, for example, indicates that commercial division judges often hear matters other than commercial matters, such as family law matters, juvenile justice-related matters etc.¹⁶ If commercial division judges are tasked with hearing matters other than commercial matters, it would detract from the legislative intent of speedy disposal of commercial matters, including arbitration matters. Additionally, we noted that the rotation policy of these High Courts was also applicable to commercial division judges. An excessively frequent rotation might hinder the creation of specialist arbitration judges who are well-versed in arbitration law and practice.

Indian courts' tendency to frequently interfere in arbitration proceedings have also contributed to India's reputation as an 'arbitration-unfriendly' jurisdiction. It is a well-known fact that courts in India are generally interventionist when it comes to regulating arbitration proceedings, whether it is at an initial stage of arbitration proceedings (such as the appointment of arbitrators, referral of disputes to arbitration or grant of interim relief) or at the enforcement stage.¹⁷ They have, despite good intentions and justifications, often misjudged the course to take, doing justice in the case at hand but laying down questionable precedent for the future.¹⁸ Further, inconsistent judicial precedent on several crucial issues¹⁹ has contributed to uncertainty regarding the law, with severe consequences for India's reputation as a seat of arbitration.

¹⁶ Sitting List with effect from 15 November 2016 of the Bombay High Court (Original Side), available at <http://bombayhighcourt.nic.in/sittinglist/PDF/sitlistbomos20161027181818.pdf> (accessed on 02.03.2017); Sitting List with effect from 4 January 2017 of the Bombay High Court (Original Side), available at <http://bombayhighcourt.nic.in/sittinglist/PDF/sitlistbomos20161222191515.pdf> (accessed on 02.03.2017).

¹⁷ Bibek Debroy and Suparna Jain, 'Strengthening Arbitration and its Enforcement in India - Resolve in India', Research Paper of the Niti Ayog (2016), p.15, available at http://niti.gov.in/writereaddata/files/document_publication/Arbitration.pdf (accessed on 02.03.2017). See also Ghani, Moin, 'Court Assistance, Interim Measures, and Public Policy: India's Perspective on International Commercial Arbitration', *The Arbitration Brief* 2, no. 1: 16-29 (2012). Available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1026&context=ab> (accessed on 03.02.2017); Promod Nair, 'Ringfencing Arbitration from Judicial Interference: Proposed Changes to the Arbitration and Conciliation Act', *The Practical Lawyer* (2010).

¹⁸ See decisions in *Bhatia International v. Bulk Trading S.A.*, (2002) 4 SCC 105, *Venture Global Engineering v. Satyam Computer Services*, (2008) 4 SCC 190.

¹⁹ For instance, there are conflicting decisions by two High Courts on whether two Indian parties can have a foreign seat of arbitration. See *Addhar Mercantile Private Limited v. Shree Jagdamba Agrico Exports Pvt Ltd.*, Arbitration Application No. 197 of 2014 and Arbitration Petition No. 910 of 2013 (Bombay High Court) and *Sasan Power Limited v. North American Coal Corporation India Pvt. Ltd.*, First Appeal No. 310 of 2015 (Madhya Pradesh High Court).

Indian arbitration law jurisprudence has been criticised²⁰ particularly with regard to its interpretation of legal provisions concerning setting aside of domestic arbitral awards (section 34 of the ACA) and refusing enforcement of foreign arbitral awards (Section 48 of the ACA). For instance, the expansive interpretation given to the “public policy” ground for setting aside of domestic arbitral awards²¹ and its extension to foreign arbitral awards²² created a climate where parties seeking to enforce arbitral awards in India had no certainty as to its enforcement. Recent judicial decisions²³ which have restricted the use of the “public policy” ground to undertake a review on merits appear to have changed this perception to some extent. Further, the 2015 Amendments have underlined the legislative intent of limited judicial interference in the enforcement of foreign arbitral awards.

Thus, while steps have been taken to ensure minimisation of court interference, India continues to be viewed largely as an arbitration-unfriendly jurisdiction.

III. PERFORMANCE OF ARBITRAL INSTITUTIONS IN INDIA

Currently, over 30 arbitral institutions exist in India. These include, in addition to domestic and international arbitral institutions, the arbitration facilities provided by various public sector undertakings, trade and merchant associations and city-specific chambers of commerce and industry. A large number of these arbitral institutions administer arbitrations under their own rules or under the UNCITRAL Arbitration Rules.

A key difficulty with assessing the performance of the arbitral institutions in India is the lack of publicly available information in relation to their functioning. A number of them do not have websites. For several of the ones which do, their arbitration rules are not available on their websites. There is a dearth of information relating to caseload and functioning, particularly in the case of arbitration centres associated with trade and merchant associations and city-specific chambers of commerce. In fact, information relating to caseload is available on the websites of only a few arbitral institutions.

Subject to the caveats above, secondary literature and anecdotal evidence have shed some light on the state of functioning of arbitral institutions in India. We discuss some of the concerns raised by stakeholders regarding the performance of these institutions here.

See also Ghani, Moin, ‘Court Assistance, Interim Measures, and Public Policy: India’s Perspective on International Commercial Arbitration’, *The Arbitration Brief* 2, no. 1: 16-29 (2012), available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1026&context=ab> (accessed on 03.02.2017).

²¹ *ONGC v. Saw Pipes Ltd.*, (2003) 5 SCC 705; *ONGC v. Western Geco International Ltd.*, (2014) 9 SCC 263.

²² *Phulchand Exports Ltd v. O.O.O. Patriot*, (2011) 10 SCC 300.

²³ *Shri Lal Mahal Ltd. v. Progetto Grano Spa*, (2014) 2 SCC 43; *Associated Builders v. DDA*, 2014 (4) ARBLR 307(SC).

While several arbitral institutions appear to have an established presence, a number of them do not have sufficient caseloads. For instance, the LCIA India closed operations because its caseload was in single digits even after 4 years of operation.²⁴ Similarly, the International Centre for Alternative Dispute Resolution appears to have received only 20 cases over the course of two decades.²⁵

Infrastructure and support provided by several arbitral institutions is largely inadequate. Most arbitral institutions can only provide hearing venues with basic facilities and lack more advanced facilities such as multi-screen video conferencing, sound-proof caucus rooms, audio / video recording, court recorders, etc. Where the arbitral institutions provide facilities for hearing, they are far too few in comparison to their caseload, forcing parties to book hotels or clubs with limited facilities for holding hearings.

Further, because arbitral institutions are staffed mostly by persons without adequate knowledge and experience of arbitration, the quality and range of support available from arbitral institutions to parties and arbitrators is invariably limited - even in matters relating to the interpretation and application of the rules and practices followed by arbitral institutions. They are unable to monitor arbitration proceedings and ensure adherence to timelines in the same way that international arbitral institutions located outside India can.²⁶ The lack of oversight over procedural aspects of arbitrations has often resulted in arbitral awards in arbitrations administered by such institutions being vulnerable to challenge in court.²⁷

Several arbitral institutions in India also suffer from a lack of professionalism amongst arbitrators. While this is a factor affecting arbitration in India generally, the fact that many arbitral institutions cannot provide access to arbitrators who maintain a professional attitude during hearings is a serious obstacle for their growth. The panels of arbitrators maintained by arbitral institutions comprise mostly of retired judges and local lawyers who often lack exposure to international best practices and consequently a professional approach that all arbitrators are expected to adopt.²⁸ Moreover, in most cases there exist no minimum criteria for inclusion on such panels. This contrasts starkly with panels maintained by arbitral institutions such as the SIAC and the Hong Kong International Arbitration Centre

²⁴ 'LCIA India to end operations', Herbert Smith Freehills - Arbitration Notes, 08.02.2016, available at <http://hsfnotes.com/arbitration/2016/02/08/lcia-india-to-end-operations/> (accessed on 02.03.2017).

²⁵ 'Chief justice slams 'dismal' performance of govt's arbitration centre', Hindustan Times (online), 23.10.2016, available at <http://www.hindustantimes.com/india-news/chief-justice-slams-dismal-performance-of-govt-s-arbitration-centre/story-eXyMS2HwIwifLXjO2QGCSK.html> (accessed on 01.03.2017).

²⁶ Dipak Mondal, 'Making India an Arbitration Hub: A Long Haul', Business Today, 25.10.2016, available at <http://www.businesstoday.in/current/corporate/making-india-an-arbitration-hub-a-long-haul/story/238932.html> (accessed on 01.03.2017).

²⁷ Speech by Dr. Justice S. Muralidhar at the Nani Palkhivala Arbitration Centre 9th Annual International Conference on Arbitration on Current Issues in Domestic and International Arbitration, 18.02.2017.

²⁸ *Supra* n. 26.

("HKIAC") which provide for stringent criteria for empanelment, covering the arbitrator's educational qualifications, experience, professional and moral standing, accreditation by a professional institute of arbitrators etc. The lack of access to professional arbitrators results in appointments being fraught with risk for parties and substantially discourages the use of institutional arbitration.

Tied closely to the shortage of professional arbitrators is the absence of an arbitration bar comprising local and foreign lawyers. Arbitration matters are handled almost entirely by litigators who pursue arbitration matters as an adjunct to their regular practice. In comparison, an excellent and largely specialised local bar was instrumental in the establishment and growth of the HKIAC, whereas the entry of foreign-qualified lawyers and foreign law firms contributed to the SIAC's swift growth trajectory.²⁹ The absence of an arbitration bar cripples the ability to effectively monitor and encourage the development of arbitral institutions in India.

Outdated rules and practices constitute another problem facing arbitral institutions in India. While there are several established arbitral institutions in India, many institutions lack access to quality legal expertise and exposure to international best practices. For this reason, the rules and practices followed by these institutions are often outdated and inadequate. A review of the rules of arbitral institutions that were readily available show that efficient and cost-saving procedures such as e-filing, e-discovery, hearings by teleconference / videoconference, etc. do not often find a mention in several such rules and practices.³⁰ Instead, cumbersome procedures from court litigation are usually prescribed, which is further encouraged by arbitrators who are former judges and are familiar with such procedures. The use of collaborations with leading international arbitral institutions can be a solution to this obstacle, but barring the Indian Council of Arbitration and the Nani Palkhivala Arbitration Centre, no such collaborations appear to exist. The absence of such collaborations also prevents these arbitral institutions from gaining recognition at an international level and attracting international commercial arbitrations.

As discussed above, the data publicly available on the functioning of arbitral institutions in India is inadequate to undertake a comprehensive analysis of their performance and to suggest appropriate measures to facilitate their growth. Therefore, it is imperative that sufficient data be collected to review their working. Two questionnaires have been prepared for this purpose.

The first questionnaire will be circulated to arbitral institutions in India. It covers various aspects of their functioning such as: (a) organisational structure; (b) arbitration rules; (c) caseload statistics; (d) infrastructure and secretarial assistance; (e) fees; (f) panel of arbitrators; (g) appointment of

²⁹ See *infra*.

³⁰ See for instance, the Delhi International Arbitration Centre (DAC) (Arbitration Proceedings) Rules.

arbitrators; (h) timelines in arbitration proceedings; and (i) scrutiny of awards. The questionnaire is annexed as Annexure 1 to this Working Paper.

The second questionnaire seeks to get the views of stakeholders regarding the performance of both Indian and foreign arbitral institutions and their suggestions for reform. This is for parties, their in-house counsel, lawyers and arbitrators. The questionnaire is annexed as Annexure 2 to this Working Paper.

IV. LESSONS TO BE LEARNT FROM INTERNATIONAL ARBITRAL INSTITUTIONS

There are several institutions worldwide that administer arbitration proceedings. While some of these institutions may be popular in a national or regional context, only a handful has emerged as successful in an international context.

This section shall study: (a) what goes into parties' choice of arbitral institutions; (b) which are the most successful arbitral institutions; and (c) why these institutions are more successful than others, with a specific focus on the SIAC and the HKIAC.

A. Factors that affect parties' preference for certain arbitral institutions

One of the foremost reasons why parties choose a particular arbitral institution is the arbitration rules that apply as a result of such choice. Therefore, arbitral institutions which provide for rules which are clear, efficient and flexible to accommodate parties' needs and expectations tend to be favoured.³¹ However, several other factors such as geographical location, reputation, neutrality, quality of the legal system where the arbitral institution is located, the panel of arbitrators and pricing policy are considered by the parties when selecting an arbitral institution.³²

A 2015 survey conducted by the School of Arbitration at the QMUL in collaboration with White & Case LLP that sought responses from a variety of stakeholders in international arbitration across the world ("QMUL Survey") reported that parties generally considered the following four factors in decreasing order of importance while choosing an arbitral institution:

- a. a high level of administration (i.e., the proactiveness and responsiveness of the arbitral institution;
- b. perceived neutrality or 'internationalism' of the arbitral institution;

³¹ Elvira Gadelshina, 'What plays the key role in the success of an arbitration institution?', *Financier Worldwide* (2013), available at <https://www.financierworldwide.com/what-plays-the-key-role-in-the-success-of-an-arbitration-institution/#.WK5vClV96M8> (accessed on 23.02.2017).

³² *Id.*

- c. ability of the arbitral institution to administer arbitrations across the world / its global presence; and
- d. free choice of arbitrators (no exclusive list of arbitrators maintained by the arbitral institution).³³

On the other hand, features that are specific to institutions such as regional presence / expertise, expertise in specific types of matters, costs of services provided by the institution, fees of arbitrators etc., while important, were secondary to the above factors.³⁴

Previous surveys conducted by QMUL have also shown that neutrality of the arbitral institution, its reputation and arbitration rules are key to choosing the arbitral institution.³⁵ Moreover, some institutions were selected more often than others because of their reputation and recognition, parties' previous experience with them and very significantly, the connection to the chosen seat. The quality of the legal system of the seat had a strong correlation to the success of an arbitral institution located in the seat. This is borne out by the success of arbitral institutions such as the SIAC and the HKIAC where, as discussed in (C) below, the popularity of Singapore and Hong Kong as seats have led to increased preference for the SIAC and the HKIAC.

B. Most preferred arbitral institutions

According to the QMUL Survey, the International Court of Arbitration of the International Chamber of Commerce ("ICC Court"), the London Court of International Arbitration ("LCIA"), the HKIAC, the SIAC and the Arbitration Institute of the Stockholm Chambers of Commerce ("SCC") are the most preferred arbitral institutions.³⁶ Out of these, the ICC Court and the LCIA have consistently been ranked in the top two in previous surveys conducted by QMUL.³⁷

³³ '2015 International Arbitration Survey: Improvements and Innovations in International Arbitration', Queen Mary University of London and White & Case LLP (2015), available at <http://www.arbitration.qmul.ac.uk/docs/164761.pdf> (accessed on 16.02.2017).

³⁴ *Id.*

³⁵ '2010 International Arbitration Survey: Choices in International Arbitration', Queen Mary University of London and White & Case LLP (2010), available at <http://www.arbitration.qmul.ac.uk/docs/123290.pdf> (accessed on 16.02.2017).

³⁶ '2015 International Arbitration Survey: Improvements and Innovations in International Arbitration', Queen Mary University of London and White & Case LLP (2015), available at <http://www.arbitration.qmul.ac.uk/docs/164761.pdf> (accessed on 16.02.2017).

³⁷ *Supra* n. 35; See also '2006 International Arbitration Study: Corporate Attitudes and Practices', Queen Mary University of London and PricewaterhouseCoopers LLP (2006), available at <http://www.arbitration.qmul.ac.uk/docs/123295.pdf> (accessed on 16.02.2017).

C. Reasons behind the success of the top five arbitral institutions

An examination of the reasons behind the success of the leading arbitral institutions in the world reveal certain commonalities: (a) sufficient support from the government or the business community; (b) its location in a seat of arbitration which has an arbitration-friendly legislative framework and judiciary; (c) advantages offered by the arbitral institution, either unique advantages such as geographical positioning or expertise, or more generic advantages such as party-friendly rules, an experienced and skilled panel of arbitrators etc. For instance, the LCIA was established in 1892 by cooperation between the City of London and the London Chamber of Commerce.³⁸ The SIAC was created with substantial involvement from the Singaporean government. The ICC Court and the HKIAC were established by the business community, which saw a need for effective dispute resolution services. All of the five most preferred arbitral institutions function on the foundation of an arbitration-friendly seat which respects party autonomy and the finality of the arbitral award. Further, all five boast of advantages, either in providing regional expertise, or providing party-friendly rules and an experienced and skilled panel of arbitrators.

Apart from these reasons, certain factors, which are unique to each of these institutions, have contributed to their success. For instance, the growth of two of the premier arbitral institutions, the LCIA and the ICC Court coincided with the growth of international arbitration itself. Their popularity increased with developments in the international arbitration landscape, such as the adoption of The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“**New York Convention**”), the ICSID Convention and the UNCITRAL Model Law on International Commercial Arbitration (“**UNCITRAL Model Law**”).

Both the ICC Court and the LCIA were established to fill a perceived need for providing dispute resolution services in an effective manner. The ICC Court was set up in order to foster growth in international trade by providing an effective mechanism to resolve international commercial disputes. Similarly, the LCIA’s success can be attributed to a large extent, to the fact that its establishment came at a time when commercial parties were interested in private adjudication of their disputes by a tribunal constituted by them, and which was familiar with the area of business related to the dispute.³⁹ The LCIA provided them with a simple, efficient, cheap and less adversarial procedure for dispute resolution.⁴⁰ The LCIA’s link with the Chartered Institute of Arbitrators (“**CI Arb**”) which jointly

³⁸ ‘History’, LCIA website, available at <http://www.lcia.org/LCIA/history.aspx> (accessed on 27.02.2017).

³⁹ *Id.*

⁴⁰ Simon Greenberg, Christopher Kee and J. Romesh Weeramanry, ‘International Commercial Arbitration’ p. 28 (2011).

administered the LCIA with the City of London and the London Chamber of Commerce and Industry for over a decade (1975 - 1986) has been another strength.⁴¹

Both these institutions have played a significant role in the growth of international arbitration, through their lobbying efforts, and the production of guidelines, practice notes and reports. The LCIA has built its reputation on its role in the foundation of the International Dispute Resolution Centre and its voice in the international arbitration community.⁴² Similarly, the ICC Court lobbied for the adoption of the 1923 Geneva Protocol on Arbitration Clauses and played a huge role in the drafting and adoption of the New York Convention.⁴³

The SCC, established in 1917, has had a slightly different and somewhat delayed path to success as it gained popularity towards the latter half of the 20th century. During the 1970s, the SCC gained immense popularity amongst American, Soviet and Chinese parties.⁴⁴ Its success was built on the role of Sweden as a neutral forum for resolution of trade disputes involving parties from the East and the West during the Cold War period.⁴⁵ Even now, SCC arbitration is popular amongst parties from Russia and other CIS states, particularly in disputes in the oil and gas sector.⁴⁶ The continued success of the SCC has, like in the case of the other successful arbitral institutions, centred around the neutrality of Sweden, its pro-arbitration judiciary and legal system, a modern set of arbitration rules, and a well-respected board consisting of Swedish and international practitioners.⁴⁷

In the following paragraphs, we shall examine in more detail the reasons behind the success of the SIAC and the HKIAC. These two institutions have been chosen for a detailed study for the following reasons: (a) they have been relatively late entrants on the arbitration scene, compared to arbitral institutions like the ICC Court and the LCIA whose growth coincided and consequently benefited from the growth of international arbitration itself; (b) they are Asian arbitral institutions who administer a large number of arbitrations involving Indian parties; and (c) their growth has been promoted by the government and / or an interested business community and consequently present lessons for India to learn from.

⁴¹ 'History', LCIA website, available at <http://www.lcia.org/LCIA/history.aspx> (accessed on 27.02.2017).

⁴² Rolf A. Schütze, 'Institutional Arbitration: A Commentary' p. 417 (2013).

⁴³ *Supra* n. 43, at pp. 27-29.

⁴⁴ 'About the SCC', SCC website, available at <http://www.sccinstitute.com/about-the-scc/> (accessed on 23.02.2017).

⁴⁵ *Id.*

⁴⁶ Sverker Bonde, Global Arbitration Review Chapter on Sweden (2015), available at <http://globalarbitrationreview.com/chapter/1036960/sweden> (accessed on 23.02.2017).

⁴⁷ *Id.*

1. The Singapore International Arbitration Centre

The SIAC started operations in 1991. In a quarter-century, it has emerged as one of top five arbitral institutions worldwide. It has an active caseload of approximately 600 cases,⁴⁸ with 271 new cases filed in 2015.⁴⁹ The SIAC is a preferred arbitral institution for Indian parties, with Indian parties contributing the largest number of case filings after Singaporean parties.⁵⁰

The SIAC's popularity can be attributed primarily to: (a) the pro-arbitration stance of Singapore's government; (b) Singapore's arbitration-friendly judiciary; (c) the advantages offered by the SIAC as an arbitral institution; and (d) other advantages of Singapore as a seat of arbitration.

a) Singapore's pro-arbitration government

The SIAC was established as part of the Singaporean government's efforts towards the creation of an arbitration industry in Singapore.⁵¹ The years preceding and following the establishment of the SIAC saw major changes to Singapore's arbitration landscape - the adoption of the New York Convention in 1986, and the enactment of the IAA (governing international arbitrations) which was modelled on the UNCITRAL Model Law in 1994.⁵²

The SIAC was set up by the government with two governmental agencies, the Economic Development Board and the Trade Development Board as its shareholders, and operated for many years under its aegis.⁵³ The government also played a role in promoting the SIAC at an international level, getting international arbitration practitioners to be associated with the institution.⁵⁴

Further, the government has a clearly articulated philosophy of ensuring a legislative framework that is supportive of arbitrations. The Singapore legislature has been attuned to changes in the international arbitration landscape, acting quickly to clear ambiguities in the law and bring it in line with internationally accepted arbitration principles. This is amply illustrated by the fact that there have

⁴⁸ This number refers to the active caseload as of 1 June 2016. 'Statistics', SIAC website, available at <http://siac.org.sg/2014-11-03-13-33-43/facts-figures/statistics> (accessed on 27.02.2017).

⁴⁹ 'SIAC Announces Record Case Numbers for 2015', SIAC website, 25.02.2016, available at <http://siac.org.sg/2014-11-03-13-33-43/facts-figures/statistics/113-resources/press-releases/press-release-2016/474-siac-announces-record-case-numbers-for-2015> (accessed on 27.02.2017).

⁵⁰ 'Annual Report 2015', SIAC (2015), available at http://www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2015.pdf (accessed on 27.02.2017).

⁵¹ Ang Yong Tong, 'SIAC: Arbitration in the New Millennium', Law Gazette (2000), available at <http://www.lawgazette.com.sg/2000-1/Jan00-23.htm> (accessed on 27.02.2017).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Opening Address by Singaporean Minister for Law, K. Shanmugam at SIAC Congress 2016, available at <https://www.mlaw.gov.sg/content/minlaw/en/news/speeches/opening-address-by-minister-for-law--k-shanmugam--at-siac-congre.html> (accessed 23.02.2017).

been 7 amendments to the IAA since its enactment. Moreover, where judicial decisions have been conflicting or ambiguous on points of arbitration law, the legislature has been quick to enact legislative changes, often within a matter of months.⁵⁵

Apart from changes to the IAA, other supporting legislation enacted by the legislature has ensured Singapore's attractiveness as an arbitration hub. For instance, this year Singapore passed amendments to its Civil Law Act legalising third party funding for arbitration and associated proceedings.⁵⁶

Other efforts involve creating an environment conducive for arbitrations by facilitating foreign lawyers and foreign law firms to practice arbitration in Singapore. Under Singaporean law, non-residents do not require work-permits to render arbitration services in Singapore, nor does there exist any restriction on the nationality of counsel and arbitrators involved in arbitration proceedings in Singapore.

Tax incentives have also been introduced to promote arbitration and to encourage international law firms to provide international arbitration services in Singapore, including the International Arbitration Tax Incentive which allows qualifying law practices a tax exemption of fifty per cent on incremental income which arises out of international arbitration cases which culminate in Singapore or in which substantive hearings have been held in Singapore.⁵⁷ There also exist tax exemptions for income derived by non-resident arbitrators for arbitration work carried out in Singapore.⁵⁸

The government has also provided infrastructural support to the SIAC, initially allowing it to be housed in the City Hall, which was owned by the government. Later, the government provided funding to establish Maxwell Chambers, the world's first integrated dispute resolution centre with state-of-the-art infrastructure. The SIAC, together with other arbitral institutions such as ICC Court, LCIA, the International Centre for the Settlement of Investment Disputes, is housed here. The facilities include immediate translation services, transcription services, break out rooms etc.

b) Arbitration-friendly judiciary

Singapore's judiciary has traditionally been supportive of arbitration, respecting party autonomy and finality of the arbitral award. In one instance illustrative of the judiciary's regard for party autonomy,

⁵⁵ *Id.*

⁵⁶ 'UPDATE: Singapore passes law to legalise third-party funding of international arbitration and related proceedings', Herbert Smith Freehills - Arbitration Notes, 11.01.2017, available at <http://hsfnotes.com/arbitration/2017/01/11/update-singapore-passes-law-to-legalise-third-party-funding-of-international-arbitration-and-related-proceedings/> (accessed 27.02.2017).

⁵⁷ 'Incentive Schemes', Ministry of Law, Singapore, available at <https://www.mlaw.gov.sg/content/minlaw/en/legal-industry/incentive-and-exemption-schemes.html> (accessed 27.02.2017).

⁵⁸ 'Enhancing competitiveness', PricewaterhouseCoopers website, available at <http://www.pwc.com/sg/en/singapore-budget-2015/bc02-02.html> (accessed 27.02.2017).

the Singapore Court of Appeal upheld an arbitration agreement providing for SIAC arbitration in accordance with the Rules of Arbitration of the ICC.⁵⁹

Singapore's courts are reluctant to interfere in arbitration proceedings, save under limited circumstances mentioned in the law. The courts are strongly pro-enforcement. For instance, Singapore courts have refused to interfere with the finality of the arbitral award stating that even if there was an error of law and / or fact made by the arbitral tribunal, the courts cannot interfere.⁶⁰ Similarly, they have given a narrow construction to the public policy ground for refusal of enforcement of arbitral awards, stating that arbitral awards shall be set aside only in the most 'egregious' cases where "elementary notions of morality have been transgressed."⁶¹ As of March 2015, Singapore courts had not refused enforcement of any arbitral award on the ground of violation of public policy.⁶²

c) Intrinsic factors

The SIAC has a Board of Directors with some of the best arbitrators and counsel from across the world, providing the institution with international expertise. The Arbitration Rules of the SIAC ("SIAC Rules") have a reputation of being party-friendly. The SIAC has continuously reviewed its rules, six times to date, to keep pace with the developments in international arbitration. They contain provisions for multi-contract arbitrations, consolidation of arbitrations, joinder of parties, emergency arbitrators and a novel procedure for early dismissal of claims and defences.⁶³ The SIAC supplements the SIAC Rules at regular intervals with practice notes, which clarify ambiguities in the SIAC Rules, promoting certainty in the arbitration process administered under the SIAC Rules. The SIAC has also introduced new Investment Arbitration Rules in 2017.

The SIAC also maintains an excellent panel of arbitrators with arbitrators from 41 countries. The SIAC's Code of Ethics requires the arbitrators to submit an undertaking concerning their capacity to devote adequate time to the arbitration throughout the duration of the proceedings. The scale of fees for arbitrators annexed to the SIAC Rules helps parties predict the costs of the proceedings with reasonable certainty. These factors cumulatively make the SIAC a preferred arbitral institution.

⁵⁹ *Insignia Technology Co. Ltd v. Alstom Technology Ltd*, [2009] SGCA 24.

⁶⁰ *BLC v. BLB*, [2014] SGCA 40.

⁶¹ *Coal & Oil Co LLC v. GHCL Ltd*, [2015] SGHC 65.

⁶² Memorandum from Clifford Chance Singapore to the International Bar Association on Public Policy and Singapore Law of International Arbitration, 25.03.2015, available at <http://www.ibanet.org/Document/Default.aspx?DocumentUid=B179BAF0-63E1-46C5-B1D3-3834DEF95AE2> (accessed 01.03.2017).

⁶³ SIAC Rules, 2016.

d) Other advantages of Singapore as a seat of arbitration

Singapore has a reputation of adherence to the rule of law with an independent judiciary. Further, Singapore is perceived as a neutral corruption-free venue.⁶⁴ It also has all the other attributes of an arbitration-friendly jurisdiction - adoption of the New York Convention and UNCITRAL Model Law, and a supportive legal regime and judiciary which gives parties the flexibility to decide matters related to arbitration, both procedural and substantive.

Singapore and Hong Kong stand at par with each other as far as legal and physical infrastructure is concerned. However, where Singapore has an advantage over Hong Kong is in Singapore government's efforts in promoting arbitration, and Singapore's appearance as a more neutral seat than Hong Kong, considering the latter's association with mainland China, especially so far as arbitration disputes with Chinese parties are concerned.

Further, Singapore is the regional headquarter for many multinational companies, which also contributes to the arbitration docket in Singapore, and consequently of the SIAC.

2. The Hong Kong International Arbitration Centre

The HKIAC, like the SIAC has built a formidable reputation within a short span of time. The HKIAC was established in 1985⁶⁵ and has managed to become the third most preferred arbitral institution worldwide within thirty years.⁶⁶ The HKIAC registered 271 new arbitrations in 2015.⁶⁷ The HKIAC is a preferred arbitral institution amongst parties in the Asia-Pacific, particularly Chinese parties.⁶⁸

The main factors that have led to the success of the HKIAC are: (a) support from the government and more significantly, its business community and local bar; (b) Hong Kong's progressive legal framework; (c) Hong Kong's pro-arbitration judiciary; (d) advantages offered by the HKIAC; and (e) other advantages associated with Hong Kong as a seat. While some elements of the HKIAC's growth story share parallels with that of the SIAC, it is the 'organic growth' of the HKIAC that distinguishes it.

⁶⁴ Singapore is ranked 8 on the Corruption Perceptions Index 2015 of Transparency International. See 'Table of Results: Corruption Perceptions Index 2015', Transparency International website, available at <https://www.transparency.org/cpi2015/#results-table> (accessed on 27.02.2017).

⁶⁵ 'About HKIAC', HKIAC website, available at <http://www.hkiac.org/about-us> (accessed 27.02.2017).

⁶⁶ *Supra* n. 33.

⁶⁷ '2015 Case Statistics', HKIAC website, available at <http://www.hkiac.org/about-us/statistics> (accessed 27.02.2017).

⁶⁸ *Id.*

a) Support from the business community and the government

The HKIAC was set up by the business and professional community in Hong Kong in response to the need to provide dispute resolution services in Asia.⁶⁹ As in the case of the SIAC, the government of Hong Kong and the business community provided funding to the HKIAC.⁷⁰ The government also ensured that the HKIAC got an entire floor of a building in the heart of the business district in Hong Kong for use as a hearing centre.⁷¹

The HKIAC has also benefited from the support it enjoys from the local bar. In fact, two lawyers, Neil Kaplan QC and Dr. Michael Moser were instrumental in the establishment of the HKIAC.⁷² The local bar has also helped in marketing the HKIAC and in lobbying the government to upgrade Hong Kong's arbitration infrastructure.⁷³

b) Hong Kong's progressive legal framework

Arbitration was officially recognised as a dispute resolution mechanism in Hong Kong as far back as 1855 under the Civil Administration of Justice (Amendment) Ordinance.⁷⁴ However, a majority of changes that are relevant from an international arbitration perspective took place post-1977. Although Hong Kong had incorporated the New York Convention into its legislation in 1975, the legislation ratifying the New York Convention took effect in 1977.⁷⁵

In 1990, Hong Kong was the first Asian jurisdiction to adopt the UNCITRAL Model Law principles for Hong Kong-seated international arbitrations.⁷⁶ Since then, in 2011, it adopted the 2006 amendments to the UNCITRAL Model Law and unified its dual-track arbitral regime, thereby making the UNCITRAL Model Law regime applicable to both domestic and international arbitrations having its seat in Hong

⁶⁹ 'About HKIAC', HKIAC website, available at <http://www.hkiac.org/about-us> (accessed 27.02.2017).

⁷⁰ *Id.*

⁷¹ Chong Yee Leong and Qin Zhiqian, 'The Rise of Arbitral Institutes in Asia', Global Arbitration Review's The Asia-Pacific Arbitration Review 2011 (2011), available at <http://globalarbitrationreview.com/insight/the-asia-pacific-arbitration-review-2011/1036651/the-rise-of-arbitral-institutes-in-asia> (accessed on 27.02.2017).

⁷² 'White List: Asia Pacific', Global Arbitration Review (2016), available at <http://globalarbitrationreview.com/editorial/1070152/white-list-asia-pacific> (accessed on 27.02.2017).

⁷³ *Id.*

⁷⁴ Chiann Bao, 'International Arbitration in Asia on the Rise: Cause & Effect', The Arbitration Brief 4, no. 1 (2014): 31-51, p. 35, available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1042&context=ab> (accessed on 27.02.2017).

⁷⁵ *Id.* at p. 36.

⁷⁶ *Id.* at p. 37.

Kong.⁷⁷ The amended legislation was geared towards making arbitration in Hong Kong an attractive proposition for domestic and international arbitrations.

Like Singapore, Hong Kong's legislature has been receptive to developments in arbitration internationally, amending legislation swiftly to reflect international practice. To illustrate, the Hong Kong government collaborated with the HKIAC to incorporate changes in the Arbitration Ordinance, permitting enforcement of emergency relief granted by an emergency arbitrator, whether inside or outside Hong Kong.⁷⁸

c) Pro-arbitration judiciary

Hong Kong, like Singapore, has an independent judiciary. Hong Kong's judiciary has also maintained a pro-arbitration stance, often interpreting arbitration clauses broadly and granting anti-arbitration injunctions sparingly. To illustrate, in *Lin Ming v. Chen Shu Quan*,⁷⁹ a Hong Kong Court of First Instance interpreted a conflict between two legislations, one which provided for the general jurisdiction of Hong Kong courts to grant injunctive relief restraining arbitration proceedings and the other which provided for non-interference of courts in arbitration proceedings, in favour of arbitration by holding that the general jurisdiction must be exercised "very sparingly and with great caution."⁸⁰

Similarly, Hong Kong courts have also been pro-enforcement. Since 2011, only 3 awards have been set aside in Hong Kong.⁸¹ This is because Hong Kong courts have taken a strict approach, permitting setting aside of awards only in exceptional circumstances. For instance, in *Grand Pacific Holdings v. Pacific China Holdings*,⁸² the Hong Kong Court of Appeal held that an arbitral award can be set aside on procedural grounds only if the procedural violation amounts to a denial of due process.

Hong Kong courts have also interpreted the public policy ground for refusing enforcement of foreign arbitral awards narrowly, holding that a foreign arbitral award would not be set aside on that ground unless the breach of public policy was so serious as to be contrary to "fundamental conceptions of morality and justice."⁸³

The Hong Kong courts have also created an indemnity costs rule to deter parties from initiating court proceedings to frustrate arbitration proceedings. Indemnity costs are imposed on parties who are

⁷⁷ *Id* at p. 37.

⁷⁸ *Id* at p. 38.

⁷⁹ *Lin Ming v. Chen Shu Quan*, HCA 1900/2011.

⁸⁰ *Id*.

⁸¹ Statistics on enforcement of awards in Hong Kong, HKIAC website, available at <http://www.hkiac.org/about-us/statistics/enforcement-awards> (accessed 28.02.2017).

⁸² *Grand Pacific Holdings v. Pacific China Holdings* [2012] 4 HKLRD 1.

⁸³ *Hebei Import & Export Corporation v. Polytek Engineering Company Limited*, [1999] 1 HKLRD 665; *Gao Haiyan v. Keeneye Holdings Ltd*, [2011] HKEC 514.

unsuccessful in challenging or resisting enforcement of an award, or who use court proceedings to reopen issues decided in an arbitration, unless special circumstances exist.⁸⁴ This acts as a deterrent to parties who initiate court proceedings to frustrate arbitration proceedings.

d) Intrinsic factors

The HKIAC has a good track record as an arbitral institution for over two decades now. The HKIAC Administered Arbitration Rules (“HKIAC Rules”) are known for its ‘light touch’ approach to administering arbitrations, choosing not to scrutinise arbitral awards.⁸⁵ The current set of HKIAC Rules was introduced in 2013. They contain provisions for multi-contract arbitrations, joinder of parties, consolidation of arbitrations and emergency arbitrations. In addition, the HKIAC also offers administration of arbitration under the UNCITRAL Arbitration Rules.

The HKIAC has incorporated innovative rules on costs to keep arbitrations administered by it cost-effective. In determining the fees and expenses of the arbitral tribunal, the HKIAC Rules provide parties with a choice between hourly rate and ad valorem rate based on the HKIAC’s fee schedule.⁸⁶ Further, where an hourly rate is chosen, the arbitrator’s fees shall not exceed a cap set by the HKIAC.⁸⁷

e) Other advantages of Hong Kong as a seat

Hong Kong, and consequently the HKIAC, has immensely benefited from its geographical and political connection with China. With China’s economic growth, a large number of disputes involving Chinese parties have come to be arbitrated in Hong Kong as it is seen as a neutral seat for arbitration.⁸⁸ This is evident from the fact that after Hong Kong parties, Chinese parties bring the most number of disputes to the HKIAC.⁸⁹

⁸⁴ ‘Hong Kong Cements its Place in International Arbitration – Recent Developments in Hong Kong’, Mayer Brown Briefing (2009), available at <https://www.mayerbrown.com/pt/publications/detailprint.aspx?publication=443> (accessed on 01.03.2017).

⁸⁵ ‘Why choose HKIAC’, HKIAC website, available at <http://www.hkiac.org/arbitration/why-choose-hkiac> (accessed on 01.03.2017).

⁸⁶ Article 16, HKIAC Rules.

⁸⁷ Paragraph 9.3, Schedule 2, HKIAC Rules.

⁸⁸ ‘White List: Asia Pacific’, Global Arbitration Review (2016), available at <http://globalarbitrationreview.com/editorial/1070152/white-list-asia-pacific> (accessed on 27.02.2017).

⁸⁹ ‘2015 Case Statistics’, HKIAC website, available at <http://www.hkiac.org/about-us/statistics> (accessed 27.02.2017).

Further, the HKIAC was also positioned to meet the preference amongst Asian parties for regional expertise within an international framework.⁹⁰ It initially handled a large volume of construction and maritime disputes, with its share of commercial disputes growing as Chinese share of trade increased.⁹¹

V. THE WAY FORWARD FOR INDIA

Various reasons contribute to the sustained popularity of ad hoc arbitration over institutional arbitration in India. Some of the reasons that can be identified for this are related to the lack of sufficient supporting infrastructure for institutional arbitration, such as skilled and experienced arbitrators, a well-qualified arbitration bar, and internationally and domestically recognised arbitral institutions that cater to parties' needs adequately. Other reasons are related to the perception of India as a seat that is 'arbitration-unfriendly', although that perception is slowly changing. In order to encourage arbitration, and particularly institutional arbitration, there needs to be a change on both these fronts.

The following are some suggestions for the way forward in encouraging and strengthening arbitration practice and in particular, institutional arbitration in India:

a) Creation of an autonomous regulatory body for evolving common standards for arbitral institutions

While there are over 30 arbitral institutions in India, the quality of these institutions vary greatly. This has directly impacted the efficiency and speed of the arbitration process as well as the quality of the arbitral awards made in arbitrations administered by them. Therefore, the creation of a regulatory body at the national level, which shall evolve certain minimum standards for arbitral institutions in India may be considered. The regulatory body may consider minimum standards for accrediting arbitral institutions on the basis of criteria governing:

- i. governance structure;
- ii. arbitration rules;
- iii. rules concerning conflicts of interests by arbitrators;
- iv. oversight by the arbitral institution over the arbitration proceedings;
- v. expedited procedures for arbitration;
- vi. data management;
- vii. infrastructure etc.

⁹⁰ *Supra* n. 74 at p. 43.

⁹¹ *Supra* n. 74 at p. 44.

This may be set up either by mutual agreement or by statute. The nature, composition, organisational structure and financing of the regulatory body and the method of accreditation followed by it need to be considered in more detail.

Issue for consideration: Should there be a regulatory body for accrediting arbitral institutions? If so, what should the nature (statutory or self-regulatory), composition, governance structure, financing model, powers, areas for setting minimum standards and method of accreditation of such a body be?

b) Creation of a body for accreditation of arbitrators

The accreditation of arbitrators provides a reliable and objective benchmark for arbitrators and is perceived as an assurance of their competence, professionalism and experience. It is critical to the creation of a pool of skilled arbitrators in India who have substantive knowledge of arbitration law and practice, and sector-specific expertise.

Internationally, two types of accreditation are commonly available: (i) formal accreditation by a professional body of arbitrators such as the CI Arb, the Singapore Institute of Arbitrators and the Resolution Institute; and (ii) membership of a panel / list of arbitrators maintained by an arbitral institution such as the SIAC, the HKIAC etc. Both use certain common criteria such as educational qualifications, experience etc. for membership. However, professional institutes often employ a combination of qualifying examinations, peer reviews or assessments by a panel of approved arbitrators, and continuing professional development requirements to accredit arbitrators. Membership of such professional institutes is often a criterion for empanelment as an arbitrator with arbitral institutions.

At present, CI Arb India and the Indian Institution of Technical Arbitrators (“IIT Arb”) are two professional bodies which provide for accreditation of arbitrators in India. However, the membership of CI Arb India appears to be limited. The IIT Arb has a larger membership, but its membership is limited to arbitrators with technical knowledge and experience in engineering and architecture. Therefore, measures to give impetus to the accreditation of arbitrators and to encourage membership of accreditation bodies may be considered after examining international best practices. If the establishment of a new body for the accreditation of arbitrators is contemplated, the nature, composition, organisational structure and financing of such body and the method of accreditation followed by it need to be considered in more detail.

Issue for consideration: Should there be a new body for accrediting arbitrators or should we encourage membership of existing professional institutes such as CIArb India and IITArb? If a new body is set up, what should the nature (statutory or self-regulatory), composition, governance structure, financing model, powers, areas for setting minimum standards and method of accreditation of such body be?

c) Creation of a specialist arbitration bar and bench

The creation of a specialist arbitration bar is critical to improving the quality of the existing arbitral institutions, and arbitration practice in India in general. This would also ensure that these lawyers can dedicate more time and resources to arbitration alone, which would promote its use as a dispute resolution mechanism. Therefore, there is a need to consider measures that can encourage the creation of an arbitration bar in India. This would involve better interaction with some of the existing international arbitral institutions, to understand how best to train counsel to create a pool of lawyers especially for this purpose. The provision of education and training to lawyers in collaboration with professional institutes and strengthening the teaching of arbitration law in the curriculum of law schools may also be considered.

Regarding the creation of specialist arbitration judges, as discussed in section II, there is evidence to suggest that at least in some High Courts, the commercial division judges who hear arbitration matters also hear non-commercial matters, thereby frustrating the object of speedy disposal of arbitration-matters. Further, it is felt that the rotation policy followed by some High Courts means that specialist arbitration judges do not hear arbitration matters. Our view is that the judicial roster may be fixed keeping in mind the need for specialisation in arbitration. Additionally, efforts must be made to provide periodic training so that judges stay abreast of developments in international arbitration principles and practice.

Issue for consideration: What measures need to be taken to: (a) encourage the creation of an arbitration bar in India; (b) strengthen teaching of arbitration in law schools and colleges; and (c) encourage the creation of specialist arbitration judges?

d) Further amendments to the ACA

The 2015 Amendments made substantive changes to the ACA with a view to making arbitration more speedy and efficacious and improving India's reputation as a seat of arbitration. However, more may need to be done in this regard in:

- i. clarifying ambiguities brought by the 2015 Amendments which have led to conflicting judicial interpretations, such as the prospective applicability of the 2015 Amendments;
- ii. addressing concerns that the 2015 Amendments have thrown up, particularly related to the provision imposing strict timelines for the conduct of arbitration proceedings;⁹² and
- iii. bringing Indian legislation in line with international practices, including by providing for legal provisions concerning the following:
 1. third party funding
 2. immunity to arbitrators
 3. confidentiality of arbitration proceedings and related court proceedings
 4. Indian parties having a foreign seat of arbitration
 5. indemnity costs for court proceedings intended to frustrate arbitration proceedings
 6. tightening grounds for challenge to enforcement of foreign arbitral awards.

Issue for consideration: What legislative amendments need to be made to the ACA to clear ambiguities and difficulties in the present law and to keep pace with international arbitration law and practice?

e) Other legislative amendments that can promote arbitration practice in India

The government of Singapore has supported the creation of an arbitration industry by opening up the legal market to foreign-qualified lawyers, removing restrictions on foreign law firms practising law in Singapore and offering tax incentives geared at promoting arbitrations seated in Singapore. These measures were aimed specifically at the creation of an international arbitration industry. Given the large number of Indian parties entering into commercial agreements with non-Indian parties, these measures may be studied, and adopted, with suitable modifications for encouraging such parties to seat their arbitration in India, and choose an Indian arbitral institution.

Issue for consideration: What legislative changes, other than to the ACA, need to be made to encourage the development of India as a seat for international arbitration and to promote institutional arbitration (both domestic and international) in India?

f) Role of the government and legislature in promoting institutional arbitration

The case of Singapore and Hong Kong illustrate how the government and the legislature have played a significant role in helping arbitral institutions to flourish. Singapore has shown how timely legislative interventions have ensured Singapore's attractiveness as a seat for arbitration, leading to growth in the

⁹² Section 29A, ACA.

SIAC caseload. Instead of waiting for courts to clear ambiguities in legislation through case law, where appropriate, the legislature can be pro-active to ensure that the ACA keeps pace with developments in international arbitration law and practice. Similarly, the government can incentivise institutional arbitration by providing incentives for developing physical infrastructure. Further, the government can also provide a fillip to institutional arbitration by ensuring commercial contracts entered into by the government above a certain value provide for institutional arbitration in an Indian institution.

Issue for consideration: How can the government and the legislature give impetus to the growth of institutional arbitration in India?

g) Changes in arbitration culture

As noted in section III, in order to strengthen institutional arbitration, there also need to be changes in the way arbitration is viewed in India. At the same time, steps may need to be taken to change existing mindsets towards alternative dispute resolution mechanisms, including mediation. Measures that can promote the use of these mechanisms institutionally may need to be considered.

Issue for consideration: What measures can be considered to reform the arbitration and ADR culture in India to ensure timely and efficient private dispute resolution?

In addition to the above, several other reform measures may be necessary to encourage institutional arbitration in India.

The High Level Committee invites public comments on suggestions made in this Working Paper as well as any other suggestions on strengthening institutional arbitration in India. All responses should be limited to 25 typed pages. The comments may be submitted by email to hicarbitration@gmail.com on or before 7 April 2017.

Further, all existing arbitral institutions in India are requested to complete the questionnaire annexed as Annexure 1 to this Working Paper and email the completed questionnaire to hicarbitration@gmail.com on or before 7 April 2017.

All parties, in-house counsel, lawyers and arbitrators are requested to complete the questionnaire annexed as Annexure 2 to this Working Paper and email the completed questionnaire to hicarbitration@gmail.com on or before 7 April 2017.

ANNEXURE 1 - QUESTIONNAIRE FOR ARBITRAL INSTITUTIONS IN INDIA

Thank you for taking the time to respond to this questionnaire.

This questionnaire has been sent to you by the High Level Committee constituted by the Ministry of Law and Justice, Government of India to review the institutionalisation of arbitration mechanisms in India.

The purpose of this questionnaire is to gather information about the working of arbitral institutions in India with a view to suggest measures to promote the growth of institutional arbitration in India.

Your responses will be kept confidential and will only be used to generate anonymous and aggregated data for analysis.

Please print this form in hard copy, complete it and then scan and email the completed form to hlarbitration@gmail.com by 7 April 2017. Please feel free to use additional sheets or provide attachments, wherever necessary or relevant.

Name of the arbitral institution:

A. Organisational structure

- a. Year of establishment

- b. What is the juristic character (i.e., society, trust etc.) of your institution?

- c. Please describe briefly the organisational structure of your institution (members, their tenure, manner of selection and tenure restrictions, if any).

B. Arbitration rules

- a. What rules do you follow in administering arbitrations? Please provide a copy of the rules followed by your institution.

- b. Do you have any mechanism for (i) review, and (ii) providing feedback on your arbitration rules? If so, please elaborate.

- | | | | | | |
|-----|----------|-----|--------------------------|----|--------------------------|
| i. | Review | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| ii. | Feedback | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |

- c. How often are your arbitration rules updated?

- d. Do your arbitration rules provide for any of the following:

- i. e-filing

Yes No

- ii. e-discovery

Yes No

- iii. multi-party and multi-contract arbitrations

Yes No

- iv. joinder of additional parties to an arbitration

Yes No

- v. consolidation of arbitrations

Yes No

vi. emergency arbitrators

Yes

No

C. Caseload

a. What is the total number of references that you have received from inception till date?

b. How many new references did you receive in 2016?

c. As of 28 February 2017, what is the active caseload of your institution? By active caseload, we refer to the number of cases in which pleadings / evidence has been filed in the past year or hearings, excluding adjournment hearings, have taken place in the past year.

d. What is the total number of awards rendered by your institution since inception?

D. Infrastructure and secretarial assistance

a. Please provide a general description of the facilities provided by your institution for conducting arbitration proceedings.

b. If parties wish to resort to mediation or conciliation during the course of arbitration proceedings, do you provide these services? If yes, how often are these services used?

Yes

No

E. Fees

- a. Please provide a brief description of (i) the fees charged by your institution for the administration of an arbitration, (ii) the basis for the same, and (iii) a breakdown of its components.

- b. How are the fees payable to the arbitral tribunal determined? For example, *ad valorem*, hourly rate etc.

- c. Is there any cap on the fees payable to an arbitrator? If yes, what is the cap?

Yes No

F. Panel of arbitrators

- a. Do you maintain a panel / database of arbitrators?

Yes No

- b. What is the composition of the panel of arbitrators?

- c. Please explain the criteria for inclusion as an arbitrator on your panel.

G. Appointment of arbitrators

a. What is the process that you follow for the appointment of arbitrators?

b. Have you acted as an appointing authority for arbitrators in any ad hoc arbitrations? If yes, how many such appointments have you made till date?

Yes No

c. Is there a mechanism in place for providing feedback on appointment of arbitrators and the performance of arbitrators?

Yes No

H. Timelines

a. Does your institution provide for standard timelines for different stages of an arbitration proceeding? If yes, please elaborate.

b. Do you provide for any expedited procedure for conducting an arbitration?

Yes No

c. What is the average time taken for an arbitration administered by you to be completed, starting from the date on which a request for arbitration is received to the date on which the award is made? Please provide relevant statistics to support your response.

d. What is the average time taken for an award to be rendered once the hearings are completed? Please provide relevant statistics to support your response.

- e. What procedure do you follow for monitoring the progress of an arbitration and ensuring adherence to timelines?

- f. Do you impose penalties for delays in the making of awards? If yes, please elaborate.

Yes No

I. Scrutiny of awards

- a. Are draft awards scrutinized before the final award is rendered? If yes, please elaborate on the procedure for the same.

Yes No

- b. If your answer to (a) above is yes, is there a time limit within which draft awards are scrutinised? Please specify the same.

Yes No

- c. How many awards rendered in arbitrations administered by your institution have been challenged to date?

- d. Do you monitor the progress of such challenge proceedings?

Yes No

J. Comments

a. Any other comments?

ANNEXURE 2 - QUESTIONNAIRE FOR PARTIES / IN-HOUSE COUNSEL, LAWYERS AND ARBITRATORS

Thank you for taking the time to respond to this questionnaire.

This questionnaire has been sent to you by the High Level Committee constituted by the Ministry of Law and Justice, Government of India to review the institutionalisation of arbitration mechanisms in India.

The purpose of this questionnaire is to gather information about (a) preferences amongst various stakeholders between ad hoc and institutional arbitration; and (b) their assessment of the working of Indian and foreign arbitral institutions, with a view to suggest measures to promote the growth of institutional arbitration in India.

Your responses will be kept confidential and will only be used to generate anonymous and aggregated data for analysis.

Please print this form in hard copy, complete it and then scan and email the completed form to hlcarbitration@gmail.com by 7 April 2017. Please feel free to use additional sheets or provide attachments, wherever necessary or relevant.

Role: Party / party's in-house counsel Lawyer Arbitrator

A. Introductory questions

1. If you are an arbitrator, what percentage of your work time do you devote to practice as an arbitrator?

0 - 25% 25 - 50% 50 - 75% 75 - 100%

If you are an arbitrator, please proceed to question 4. Otherwise, please proceed to question 2.

2. Please rank the following dispute resolution mechanisms in order of preference, with 1 being most preferred and 4 being least preferred.

a. domestic disputes

Litigation ____ Arbitration ____ Mediation ____ Expert determination ____

b. cross-border disputes

Litigation ____ Arbitration ____ Mediation ____ Expert determination ____

3. Have you had any previous involvement in any arbitration?

Yes No

If your answer to question 3 is Yes, please proceed to question 4. If your answer is No, please proceed to question 6.

4. In the last 5 years, how many arbitrations have you been involved in?

5. How many of such arbitrations have been:

	Ad hoc	Institutional	Total
Domestic			
International ⁹³			

6. Which of the following types of arbitration do you prefer? Please give the reasons for your preference.

Ad hoc arbitration Institutional arbitration

B. Indian arbitral institutions

7. Have you participated as a party or its counsel / acted as an arbitrator in an arbitration administered by an Indian arbitral institution?⁹⁴ If your answer is No, please give reasons for the same.

Yes No

⁹³ For the purpose of this questionnaire, an international arbitration is an arbitration in which at least one of the parties is (a) an individual who is a national of, or habitually resident in, any country other than India; (b) a body corporate which is incorporated in any country other than India; (c) a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or (d) the Government of a foreign country.

⁹⁴ For the purpose of this questionnaire, an Indian arbitral institution is an arbitral institution which has its headquarters in India.

If your answer to question 7 is Yes, please proceed to question 8. If your answer is No, please proceed to question 10.

8. Please list the names of the Indian arbitral institutions you have used and a description of the dispute (subject to any applicable confidentiality requirements) in the table below.

Very low value - less than INR 50 lakhs; Low value - INR 50 lakhs to 2.5 crores; Medium value - INR 2.5 crores to 20 crores; High value - above INR 20 crores

Arbitral institution	Parties (whether individual / corporate / Government)	Sector involved (e.g. construction, shipping)	Nature of dispute (e.g. joint venture, commercial)	Value of claim (whether high, medium, low or very low)

9. Please assess the performance of such arbitral institutions by rating the institution on a scale of 1 to 5 and providing comments against the criteria listed below. Please feel free to attach a supplemental sheet with additional responses if you are rating more than 2 institutions.

Scale: 1 - Very satisfied, 2 - Satisfied, 3 - Average, 4 - Dissatisfied, 5 - Very dissatisfied

Institution 1	Institution 2
Name of Institution:	Name of Institution:
Size of the arbitral tribunal:	Size of the arbitral tribunal:
Rules of procedure Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> Comments: _____ _____	Rules of procedure Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> Comments: _____ _____

<p>Constitution of arbitral tribunal</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>	<p>Constitution of arbitral tribunal</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>
<p>Completion of pleadings and exchange of evidence</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>	<p>Completion of pleadings and exchange of evidence</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>
<p>Hearings</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>	<p>Hearings</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>
<p>Awards</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>	<p>Awards</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>
<p>Adequate infrastructure</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>	<p>Adequate infrastructure</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>
<p>Fees and expenses</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>	<p>Fees and expenses</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>

<p>Any other</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>	<p>Any other</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>
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10. In your opinion / experience, what are the challenges facing Indian arbitral institutions?

11. What measures would you suggest to improve the performance of Indian arbitral institutions?

C. India as a seat for international arbitrations

12. Would you choose / suggest India as a seat for international arbitrations? Please state your reasons for the same below.

Yes No

13. If India is chosen as a seat for an international arbitration, would you prefer to use a foreign arbitral institution or an Indian arbitral institution? Please give the reasons for your preference.

Foreign arbitral institution Indian arbitral institution

D. Foreign arbitral institutions

14. Have you participated as a party or its counsel / acted as an arbitrator in arbitration proceedings administered by any foreign arbitral institution?

Yes No

If your answer to question 14 is Yes, please continue with the rest of the questionnaire. If your answer is No, please proceed to question 17.

15. Please list the names of the foreign arbitral institutions you have used and a description of the dispute (subject to any applicable confidentiality requirements) in the table below.

Very low value - less than USD 75,000; Low value - USD 75,000 to 375,000; Medium value - USD 375,001 to 3,000,000; High value - above USD 3,000,000

Arbitral institution	Parties (whether individual / corporate / Government)	Sector involved (e.g. construction, shipping)	Nature of dispute (e.g. joint venture, commercial)	Value of claim (whether high, medium, low or very low)

16. Please assess the performance of such arbitral institutions by rating the institution on a scale of 1 to 5 and providing comments against the criteria listed in the table below. Please feel free to attach a supplemental sheet with additional responses if you are rating more than 2 institutions.

Scale: 1 - Very satisfied, 2 - Satisfied, 3 - Average, 4 - Dissatisfied, 5 - Very dissatisfied

Institution 1	Institution 2
Name of Institution:	Name of Institution:
Size of the arbitral tribunal:	Size of the arbitral tribunal:
Rules of procedure Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> Comments: _____ _____	Rules of procedure Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> Comments: _____ _____

<p>Constitution of arbitral tribunal</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>	<p>Constitution of arbitral tribunal</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>
<p>Completion of pleadings and exchange of evidence</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>	<p>Completion of pleadings and exchange of evidence</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>
<p>Hearings</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>	<p>Hearings</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>
<p>Awards</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>	<p>Awards</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>
<p>Adequate infrastructure</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>	<p>Adequate infrastructure</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>
<p>Fees and expenses</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>	<p>Fees and expenses</p> <p>Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/></p> <p>Comments: _____ _____</p>

Any other Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> Comments: _____ _____	Any other Rating: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> Comments: _____ _____
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E. Comments

17. Any other comments?

To complete the Questionnaires using Google Forms, please visit the following links:

1. Questionnaire for Arbitral Institutions- https://docs.google.com/forms/d/e/1FAIpQLSel-7n4DMChsVzMh9NZIgyu20fww22lt5-8mwJbA3aZbz6Mg/viewform?usp=sf_link
2. Questionnaire for Parties / In-House Counsel, Lawyers and Arbitrators - https://docs.google.com/forms/d/e/1FAIpQLSdOP2TquwPKF-6M7ZPjy1LlOnMQPawTu3fU71fk4UeSFFLQhQ/viewform?usp=sf_link