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**RECOMMENDATIONS ON THE CONSULTATION PAPER RELEASED BY THE
MINISTRY OF LAW AND JUSTICE, GOVERNMENT OF INDIA ON
THE ARBITRATION & CONCILIATION ACT, 1996**

GLOBAL THINK TANK ON ARBITRATION

COMPRISING

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July 2010

FOREWORD

In an attempt to address the long standing demands of the legal fraternity, foreign investors, academicians and jurists to amend the law relating to alternate dispute resolution (“**ADR**”), the Ministry of Law and Justice, Government of India has rolled out a consultation paper with proposed amendments (“**Consultation Paper**”) to the Arbitration and Conciliation Act, 1996 (“**Act**”). Attending to the needs of restoring the intent behind the Act of providing effective ADR mechanisms, which stood overshadowed in the midst of judicial activism¹, the Consultation Paper proposes radical changes to the present Act.

With India’s exceptional economic growth in the past decade, even in the face of a global recession, numerous foreign and domestic investments and other deals have been struck. Arbitration, over the years, has become the preferred mode of dispute resolution in international commercial disputes. Expectedly, it is the most common form of elective dispute resolution in transactions between foreign and Indian parties. However, the perception of foreign investors regarding India as a venue for International commercial arbitration leaves a lot to be desired. For this reason, amongst others, in order to properly examine the impact of the amendments proposed in the Consultation Paper, it is important to have a truly international approach to the same.

At the initiative of Nishith Desai Associates, this independent Global Think Tank on Arbitration (“**Think Tank**”) has come together in an attempt to create a forum for discussion and deliberation pertaining to the proposed changes in the ADR regime in India, and to explore the way forward. The Think Tank comprises of lawyers, academicians, general counsels, and arbitration institutions from all over the world and makes an effort to provide commentary that will assist the Government of India in bringing the Act in consonance with international laws, standards and practices.

It is pertinent to note that the suggestions under the Consultation Paper are not entirely free of issues. We have compared the proposals under the Consultation Paper with those under the Arbitration and Conciliation Amendment Bill, 2003, the provisions of the UNCITRAL Model Law, and the arbitration statutes prevailing in Singapore.² Our attempt in this Think Tank has been to arrive at viable recommendations, taking into account the principles of justice, securing the interests of international dispute resolution while attending to the needs of global industry and commerce. The commentary first delves into the issues that the Think Tank finds contentious and then presents the proposals that are acceptable in the present context.

Thank you

International Litigation and Dispute Resolution Team, Nishith Desai Associates

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JULY 2010

IMPORTANT: Please read this commentary in conjunction with the consultation paper and comparative table annexed hereto.

¹ Refer Part (A) - Application of Part I- Section 2(2) of the Consultation Paper.

² Please refer to the table attached herewith

THINK TANK ANALYSIS

CONTENTIOUS SECTIONS

SECTION 2

Consultation Paper:

“(2) This part shall apply only where the place of arbitration is in India.

Provided that provisions of Sections 9 and 27 shall also apply to international commercial arbitration where the place of arbitration is not in India if an award made in such place is enforceable and recognized under Part II of this Act.”

Think Tank:

We are of the opinion that the statutory structure of having separate statutes for domestic and international commercial arbitration presently used in certain jurisdictions is the most conducive to safeguarding the interests of both domestic and foreign parties whilst respecting the independence of international commercial arbitration (“ICA”).

The chief advantage of this approach is that there is no confusion, anomalies or ambiguities in the applicability of provisions designed to safeguard local interests with those designed to govern international commercial arbitration. The approach envisaged in the Consultation Paper, extending the applicability of Section 9 of the Act to ICA has the clear effect of diluting the independence of ICA as a standardized format for resolving international commercial disputes. It also has a significant impact on party autonomy and foreign investor confidence.

As per the present position of law, parties to an agreement may choose to exclude the applicability of the derogable provisions of Part I of the Act (dealing with domestic arbitration) so long as the exclusion is unambiguous. The chief benefit of this in ICA is that avoiding interference by Indian courts substantially speeds up the process of dispute resolution. In the case of institutional arbitration, the power granted under Section 9 may duplicate powers already vested in the institution. The Singapore International Arbitration Centre (“SIAC”), the London Court of International Arbitration, India (“LCIA India”) and the International Chamber of Commerce, Paris (“ICC”), for instance, have procedures in place to pass interim orders. Furthermore, the Act, in Section 37, recognizes the appealability of interim awards of the arbitrators. While an appeal is available, it is still unclear as to how an *ad interim* measure passed by the arbitrator (s) would be enforced.

However, heed may be taken from measures that have been envisaged in Clauses 17 to 17J of G.A Resolution No. 61/ 33 of December 4, 2006 (amending the UNCITRAL Model Law) for the enforcement of interim orders passed by an arbitral tribunal. These new sections permit the arbitral tribunal to pass interim measures that must be enforced upon application to any court, regardless of the *situs* of arbitration. While

the new law does permit the court to refuse enforcement in certain circumstances, the overall methodology as stated above has the effect of giving an arbitral tribunal more teeth.

Our primary recommendation would therefore be to have separate statutes for domestic and international commercial arbitration. In the alternative, Section 9 should only be made applicable to international commercial arbitration situated in India. Regardless of the *situs* of arbitration, Section 9 should only be applicable where (a) the arbitral panel has not been constituted; or (b) where the arbitral panel does not have (or has ruled that it does not have) the power to grant interim relief. To the extent that the order of a Court is necessary to enforce the interim relief granted by the arbitral panel, the Court must pass orders in aid of the arbitration. However, in situations where the enforcement of the arbitral award is likely to be enforced in India and with respect to property situated in India, Section 9 provides parties with the benefit of the court's backing with reference to *ad interim* measures. We may also consider specifically excluding reciprocating territories from the applicability of the new provision, since the enforcement of an award from such territories is less cumbersome. With specific reference to the definition of an international party within the definition of 'international commercial arbitration', the same must also account for situations where the status of parties changes between the draft of a contract and its enforcement.

SECTION 11

Consultation Paper

"It is proposed that Section 11 of the Arbitration and Conciliation Act, 1996 may be amended to the limited extent as follows:

(a) In sub-Section (4) in clause (b) for the words, 'by the Chief Justice or any person or institution designated by him' the words "by the High Court or any person or institution designated by it" shall be substituted.

(b) In sub-Section (5) for the words, 'by the Chief Justice or any person or institution designated by him' the words "by the High Court or any person or institution designated by it" shall be substituted.

(c) In sub-Section (6) for the words, 'by the Chief Justice or any person or institution designated by him' the words "by the High Court or any person or institution designated by it" shall be substituted.

(d) For sub-section (7), following sub-section shall be substituted namely:-

(e) "A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the High Court or the person or institution designated by it shall be final and no appeal including a letter patent appeal shall lie against such decision."

(f) In sub-Section (8) for the words, 'by the Chief Justice or any person or institution designated by him' the words "by the High Court or any person or institution designated by it" shall be substituted.

(g) In sub-Section (9) for the words, "the Chief Justice of India or any person or institution designated by him" the words "the Supreme Court or any person or institution designated by it" shall be substituted.

(h) In sub-section (10) for the words, "The Chief Justice", the words, High Court" shall be substituted.

(i) In sub-Section (11), for the words, "the Chief Justice of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made under the relevant sub-section shall alone be", the words, "different High Courts or their designates, the High Court or its designate to which the request has been first made under the relevant subsection shall alone be" shall be substituted.

(j) For sub-section (12) following sub-section shall be substituted, namely:-

"12(a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an international commercial arbitration, the reference to 'High Court' in those sub-sections shall be construed as a reference to the Supreme Court".

"(b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to "High Court" in those sub-sections shall be construed as a reference to the "High Court" within whose local limits the principal civil court referred in clause (e) of sub-Section (1) of Section 2 is situate and, where the High Court itself is the Court referred to in that clause, to that High Court."

(l) After sub-section (12), following sub-sections shall be inserted, namely:-

"(13) Notwithstanding anything contained in foregoing provisions in this Sections, where an application under this Section is made to the Supreme Court or High Court as the case may be for appointment of arbitrator in respect of 'Commercial Dispute of specified value', the Supreme Court or the High Court or their designate, as the case may be shall authorize any arbitration institution to make appointment for the arbitrator.

Explanation:- For the purpose of this sub-section, expression "Commercial Dispute" and "specified value" shall have same meaning assigned to them in the Commercial Division of High Court Act, 2009."

(14) An application made under this Section for appointment of arbitrator shall be disposed of by the Supreme Court or the High Court or their designate, as the case may be as expeditiously as possible and endeavour shall be made to dispose of the matter within sixty days from the date of service of notice on the opposite party."

Think Tank:

"I may state that before introducing ... [the] provision giving power to the Chief Justice of the High Court in domestic arbitrations and the Chief Justice of India in international arbitrations, the Secretary to the Government of India had approached me in my capacity as the Chief Justice of India to ascertain if granting such administrative power would be in order. He told me that the avowed purpose was that in contentious matters if a Chief Justice or his designate would name the arbitrator(s) it would carry the stamp of integrity, independence and impartiality, so vital to infuse confidence in the parties. I saw no

objection to such inclusion. I therefore always thought that the order would be an administrative order, pure and simple, and never imagined it would become the subject matter of such a dingdong judicial process involving two Constitution Bench decisions, apart from those of smaller Benches.”

– The Hon'ble Justice A. M. Ahmadi, Former Chief Justice of India³

Section 11 of the Act has led to substantial debate in the Indian courts as to whether the appointment of an arbitrator under Section 11 by the Chief Justice (or the Chief Justice' designate) is an exercise of administrative power or whether it is an exercise of judicial discretion. The present position is that the exercise of the Chief Justice' power under Section 11 is a judicial one.

The reality is that when the exercise of the Chief Justice's power under Section 11 is a judicial exercise, it permits the Chief Justice to examine the arbitration agreement between the parties prior to appointment.

This leads to the following significant issues:

1. The process can get severely delayed if the Chief Justice delves into the arbitration agreement between the parties, which defeats one of the primary purposes of arbitration, i.e. the speedy resolution of the dispute at hand;
2. The judicial exercise of the power of appointing the arbitrator goes against the internationally accepted principle of *competenz-competenz*, i.e. the power of the arbitrator to determine his own competence in arbitrating the dispute at hand; and
3. In the absence of an appeal provision from orders passed under this section, whether any decision made under this section operates as *fait accompli* on the parties with no remedy available either by way of statutory appeal, special leave petition or curative petition

The amendment presently proposed clearly changes the nature of the authority from the “Chief Justice” to the “High Court”, which in light of existing judicial precedent may be interpreted to mean the judicial exercise of such power. In this context our recommendation is that the power herein be clarified as a purely administrative exercise of power. This may have been the intention of the legislature when the Act was passed as otherwise the Act ought to have introduced an Appeal under Section 11 of the Act *ab initio*.

Further, it is recommended that once the appointment by the Chief Justice is completed, the arbitrator thus appointed must first make a preliminary determination as to the existence and/or enforceability of the arbitration agreement between the parties and the arbitrator's own power to arbitrate the matter in accordance with Section 16 of the Act. This preliminary determination will act as a watershed and may then be made immediately appealable under Section 37 of the Act, with a rider that the judicial determination of such question will be concluded within an established and strict timeline. If the court subsequently determines that the arbitrator's decision under Section 16 is correct, the arbitral proceedings will continue in their normal course.

³ Extract of a speech delivered by Former CJI AM Ahmadi titled “International Arbitration in India: Issues and Pit-Falls” delivered at Malaysia (30 March 2006 – 1 April 2006)

In the alternative, what we may recommend that the power to appoint be granted to an independent institution. We also support the introduction in the Act of the role of arbitration institutions in Section 37A (discussed below) and believe that the same may be extended to Section 11. The identification of one or more independent institutional arbitration centers that may be vested with the power of appointment will ease the burden presently imposed on the courts and assist the parties in obtaining the swift resolution of their dispute. However, India is still at the fledgling stage of institutional arbitration, though new institutions of international repute such as LCIA India have come up in the recent past. In this context, the government should take steps to encourage the setting up as well as development of credible arbitral institutions in India. In the alternative, we recommend creating a pool of registered and trained arbitrators for various types of disputes and various sectors of commerce and industry so as to ensure that even ad hoc arbitration that the Court may choose from swiftly in its administrative capacity.

SECTION 34 AND SECTION 34A

Consultation Paper:

S. 34

Explanation II – For the purposes of this section “an award is in conflict with the public policy of India” only in the following circumstances, namely:-

When the award is contrary to the-

- (i) Fundamental policy of India; or*
- (ii) Interests of India; or*
- (iii) Justice or morality.*

It is proposed to add following sub-clause (iii) in clause (b) of Sub-section (2) of Section 34-

(iii) the application contains a plea questioning the decision of the arbitral tribunal rejecting –

(a) a challenge made by the applicant under sub-section (2) of section 13; or

(b) a plea made under sub-section (2) or sub-section (3) of section 16”

S. 34A

It is proposed to insert a new Section 34A as suggested by the Law Commission with some changes:

“34A. Application for setting aside arbitral award on additional ground of patent and serious illegality. -

(1) Recourse to a Court against an arbitral award made in an arbitration other than an international commercial arbitration, can also be made by a party under subsection

(1) of section 34 on the additional ground that there is a patent and serious illegality, which has caused or is likely to cause substantial injustice to the applicant.

(2) Where the ground referred to in sub-section (1) is invoked in an application filed under sub-section (1) of section 34, while considering such ground, the Court must be satisfied that the illegality identified by the applicant is patent and serious and has caused or is likely to cause substantial injustice to the applicant.”

Think Tank:

The definition of public policy provided herein is very broad indeed and permitting the challenge of an award on these grounds may open the floodgates to the frivolous challenge of awards, as is the case with the proposed Section 34A as well (discussed below). Moreover, Section 34 defines “contrary to public policy” as being contrary to “fundamental policy of India” or “interests of India” or “justice or morality”, terms which are equally ambiguous. It is not clear whether the terms “fundamental policy of India” or “interests of India” or “justice and morality” are to be treated on the same pedestal as public policy, permitting each term to have its own set of appurtenant interpretations. In fact, this observation also stands true for the new ground of “patent illegality” which has been sought to be introduced by way of Section 34A, which only serves to increase the latitude for interpretation. While arbitration statutes in foreign jurisdictions do contain similar provisions, the fact remains that in India, such a provision will be interpreted in accordance with existing judicial precedent, which may lead to a lack of finality in arbitral proceedings as courts may choose to entertain such applications at their own discretion. Such challenges, once again, will seriously affect the efficiency and swiftness of arbitration.

This newly proposed section being Sec. 34A suffers significantly from the same shortcomings as the proposed amendment to Section 34 discussed above. It is quite unclear as to what a patent illegality is and leaving such an open end will require judicial intervention and interpretation. The permissibility of such applications under the Act will once again result in us running the risk of opening the litigation floodgates and hampering the finality of the arbitral award. While it cannot be denied that such illegality may occur in any arbitral award, certain minor illegalities are a risk faced by parties who choose the option of arbitration and a clearer standard is necessary as to what constitutes a ‘patent illegality’ or ‘substantial injustice’ (whether it is merely error of law or whether it is error of law leading to a wrong decision). Such a restriction should, further, only be applicable where the governing law of the agreement is Indian Law. Furthermore, arbitral institutions, through sheer experience and strict internal procedures, will be in a position to avoid such illegalities. We may therefore recommend that institutional arbitration be carved out of Sections 34 and 34A. These provisions therefore remain a grey area, since their necessity cannot be denied in the interests of justice. However, their worst-case impact may be disastrous.

The legislature should clarify by way of explanation itself that (1) the grounds for patent illegality is only in relation to arbitrations where substantive law is Indian laws; and (2) Section 34A will not be applicable to ICA even where seat of arbitration is in India.

It is important to note that under the UNCITRAL Model Law, the grounds for challenge of an award do not envisage “error of law”. Jurisprudence in countries like England and Singapore has also accepted the

proposition that in cases of challenge, the award should be enforced unless the contract itself was for an illegal purpose (or against public policy) and in these jurisdictions, the courts would not look behind an award to investigate any alleged illegality or error of law if challenged. Further, in terms of interpreting “substantial injustice” as a ground for the challenge of arbitral awards, it should be clarified that substantial injustice refers to (1) the procedural aspects of the arbitration; or (2) the legality of the contract, and not merely any error of law present while granting an award.

SECTION 37A

Consultation Paper:

“The insertion of following clause in the Arbitration and Conciliation Act, 1996 has been suggested:

(i) Unless parties expressly and in writing agree otherwise, every commercial contract with a consideration of specified value(Rs. 5 crore or more) shall deemed to have in writing specified arbitration agreement.

(ii) Specified Arbitration Agreement as referred in clause (i) shall contain following clause:

“All disputes (except (here specify the excepted disputes, if any) arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of (here specify the name of the approved arbitral institution) by one or more of the arbitrators appointed in accordance with the said Rules.”

(iii) Any arbitration agreement that differs from the said clause will stand modified along the lines of the specified arbitration agreement.

(iv) Where the parties have failed to mention the Approved Arbitral Institution, High court will authorize to an Approved Arbitral Institution to appoint arbitrator within 30 days of the reference made to it by either party for this purpose.

(v) In this Section “Commercial Contract” shall mean every contract involving exchange of goods or services for money or money’s worth and includes carriage of goods by road, rail, air, waterways, banking, insurance, transactions in stock exchanges and similar exchanges, forward markets, supply of energy, communication of information, postal, telegraphic, fax and Internet services, and the like.”

Think Tank:

The addition of Section 37A gives rise to numerous questions and deals a severe blow to party autonomy. While the object of such a provision is to reduce the burden on the courts, the inclusion of sub-Section (iii) goes against the basic principle of party autonomy and prevents the use of *ad hoc* arbitration in disputes of the nature mentioned in the Section. The “Specified Arbitration Agreement” also differs from the model clauses preferred by respected institutional arbitration centers. This limitation may be also construed to be in restraint of legal proceedings and thus may be struck down as arbitrary.

Furthermore, the determination of the “value” of a contract on the basis of merely the consideration mentioned in the contract seems arbitrary. The true consideration in the contract may exist in another simultaneous contract (as in a simultaneous share purchase agreement and shareholders’ agreement), may have flowed in the past, or may flow in the future (as in a master services agreement, where the consideration is determined by the statements of work that follow the main agreement). It is therefore recommended that such a provision be avoided or, if deemed necessary, be enacted with due consideration to party autonomy. The definition of ‘commercial contracts’ is relatively narrow. It does not explicitly include construction and infrastructure documentation, where most arbitration in India, both in terms of number and value, occurs.

Lastly, there appears to be a conflict between this provision and the *Commercial Division of High Courts Bill, 2009* (the “**Bill**”), as both seek to tackle the same problem. The Bill seeks to tackle commercial disputes of the same threshold value (i.e. Rs. 5,00,00,000) though the definition of ‘commercial dispute’ varies in some respects from the definition in the Consultation Paper. The resultant ambiguity needs to be clarified so that the parties can make an informed choice regarding their preferred mode of dispute resolution. It is also important to note that an effective commercial court system may reduce the need for arbitration itself.

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Nishith Desai Associates (NDA) is a research based international law firm with offices in Mumbai, Bangalore, Silicon Valley, Singapore, Basel and New Delhi specializing in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner.

Core practice areas include International Tax, International Tax Litigation, Litigation & Dispute Resolution, Fund Formation, Fund Investments, Capital Markets, Employment and HR, Intellectual Property, Corporate & Securities Law, Competition Law, Mergers & Acquisitions, JVs & Restructuring, General Commercial Law and Succession and Estate Planning. Our specialized industry niches include financial services, IT and telecom, education, Pharma and life sciences, media and entertainment, real estate and infrastructure.

Nishith Desai is listed in the Lex Witness ‘Hall of fame: Top 50’ individuals who have helped shape the legal landscape of modern India. Asian - Counsel 2010 has honourably mentioned us for Alternative Investment Funds, International Arbitration, Real Estate and Taxation. Chambers and Partners has ranked us # 1 for Tax, Technology-Media-Telecom (TMT) and Real Estate-FDI. We have recently been adjudged the winner of the Indian Law Firm of the Year 2010 for TMT by IFLR. We have won the prestigious “Asian-Counsel’s Social Responsible Deals of the Year 2009” by Pacific Business Press, in addition to being Asian-Counsel Firm of the Year 2009 for the practice areas of Private Equity and Taxation in India. Indian Business Law Journal listed our Tax, PE & VC and Technology-Media-Telecom (TMT) practices in the India Law Firm Awards 2009 as also Legal 500 (Asia-Pacific) that has ranked us #1 in these practices for 2009-2010. We have been ranked the highest for ‘Quality’ in the Financial Times – RSG Consulting ranking of Indian law firms in 2009. The Tax Directors Handbook, 2009 lauded us for our constant and innovative out-of-the-box ideas. Other past recognitions include being named the Indian Law Firm of the Year 2000 and Asian Law Firm of the Year (Pro Bono) 2001 by the International Financial Law Review, a Euromoney publication. In an Asia survey by International Tax Review (September 2003), we were voted as a top-ranking law firm and recognized for our cross-border structuring work.

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Sr NO.	CONSULTATION PAPER	THE ARBITRATION AND CONCILIATION AMENDMENT BILL, 2003	SINGAPORE DOMESTIC ARBITRATION	SINGAPORE INTERNATIONAL ARBITRATION	UNCITRAL MODEL LAW
1.	<p>(2) This part shall apply only where the place of arbitration is in India. Provided that provisions of Sections 9 and 27 shall also apply to international commercial arbitration where the place of arbitration is not in India if an award made in such place is enforceable and recognized under Part II of this Act.</p>	<p>Section 2: Application</p> <p>In section 2 of the principal Act,—</p> <p>(a) in sub-section (1),—</p> <p>(i) after clause (b), the following clause shall be inserted, namely:—</p> <p>“(ba) “Arbitration Division” means an Arbitration Division of a High Court constituted under sub-section (1) of section 37A;”;</p> <p>(ii) for clauses (e) and (f), the following clauses shall be substituted, namely:—</p> <p>“(e) “Court”, in relation to—</p> <p>(i) sections other than sections specified in sub-clause (ii), means—</p> <p>(a) the principal Civil Court of original jurisdiction in a district; or</p> <p>(b) the Court of principal judge of the City Civil Court of original jurisdiction in a city; or</p> <p>(c) any Court of coordinate jurisdiction to which the Court referred to in sub-clause (a) or sub-clause (b) transfers a matter brought before it, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court or Court of principal judge of the City Civil Court, or any Court of Small Causes; and</p> <p>(ii) sections 34, 34A and 36, means the Arbitration Division;</p> <p>(ea) “domestic arbitration” means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, where none of the parties is—</p> <p>(i) an individual who is a national of, or habitually resident in, any country other than India; or</p> <p>(ii) a body corporate which is incorporated in any country other than India; or</p> <p>(iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or</p> <p>(iv) the Government of a foreign country, where the place of arbitration is in India and shall be deemed to include international arbitration and international commercial arbitration where the place of arbitration is in India;</p> <p>(eb) “international arbitration” means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, where at least one of the parties is—</p> <p>(i) an individual who is a national of, or habitually resident in, any country other than India; or</p> <p>(ii) a body corporate which is incorporated in any country</p>	<p>3. This Act shall apply to any arbitration where the place of arbitration is Singapore and where Part II of the International Arbitration Act (Cap. 143A) does not apply to that arbitration.</p>	<p>5. Application of Part II.</p> <p>(1) This Part and the Model Law shall not apply to an arbitration which is not an international arbitration unless the parties agree in writing that this Part or the Model Law shall apply to that arbitration.</p> <p>(2) Notwithstanding Article 1 (3) of the Model Law, an arbitration is international if --</p> <p>(a) at least one of the parties to an arbitration agreement, at the time of the conclusion of the agreement, has its place of business in any State other than Singapore; or</p> <p>(b) one of the following places is situated outside the State in which the parties have their places of business:</p> <p>(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;</p> <p>(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or</p> <p>(c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.</p> <p>(3) For the purposes of subsection (2) --</p> <p>(a) if a party has more than one place of business, the place of business shall be that which has the closest relationship to the arbitration agreement;</p> <p>(b) if a party does not have a place of business, a reference to his place of business shall be construed as a reference to his habitual residence.</p> <p>(4) Notwithstanding anything to the contrary in the Arbitration Act, that Act shall not apply to any arbitration to which this Part applies.</p>	<p>Article 1 - Scope of application</p> <p>1. This Law applies to international commercial ² arbitration, subject to any agreement in force between this State and any other State or States.</p> <p>2. The provisions of this Law, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of this State.</p> <p>3. An arbitration is international if:</p> <p>(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or</p> <p>(b) one of the following places is situated outside the State in which the parties have their places of business:</p> <p>(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;</p> <p>(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or</p> <p>(c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.</p> <p>4. For the purposes of paragraph (3) of this article:</p> <p>(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;</p> <p>(b) if a party does not have a place of business, reference is to be made to his habitual residence.</p> <p>5. This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.</p>

		<p>other than India; or</p> <p>(iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or</p> <p>(iv) the Government of a foreign country;</p> <p>(f) "international commercial arbitration" means an international arbitration considered as commercial under the law in force in India;</p> <p>(fa) "judicial authority" includes any quasi-judicial statutory authority;';</p> <p>(b) for sub-section (2), the following sub-section shall be substituted, namely:—</p> <p>"(2) (a) Save as otherwise provided in clause (b), this Part shall apply where the place of arbitration is in India.</p> <p>(b) Sections 8, 9 and 27 of this Part shall apply to international arbitration (whether commercial or not) where the place of arbitration is outside India or where such place is not specified in the arbitration agreement."</p>			<p>construction of works; consulting; engineering licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business co-operation; carriage of goods or passengers by air, sea, rail or road.</p>
	No Corresponding provision	<p>After section 2 of the principal Act, the following section shall be inserted, namely:—</p> <p>"2A. The principal Civil Court of original jurisdiction in a district or the Court of principal judge of the City Civil Court of original jurisdiction in a city, as the case may be, may, from time to time, transfer any matter relating to any proceedings under this Act which is pending before it, to any Court of coordinate jurisdiction in the district or the city, as the case may be, for decision."</p>			
2.	Section 5				
	No Corresponding provision	<p>In section 5 of the principal Act, the following <i>Explanation</i> shall be inserted at the end, namely:—</p> <p><i>'Explanation.—</i> For the removal of doubts, it is hereby declared that the expression "any other law for the time being in force" shall be deemed to include—</p> <p>(a) the Code of Civil Procedure, 1908;</p> <p>(b) any law which provides for internal appeals within the High Court;</p> <p>(c) any enactment which provides for intervention by a judicial authority in respect of orders passed by any other judicial authority.'</p>			
3.	Section 6				
	No Corresponding provision	In section 6 of the principal Act, the words, " , or the			

		arbitral tribunal with the consent of the parties," shall be omitted.			
4.	Section 7				
	No Corresponding provision	In section 7 of the principal Act, in sub-section (4), in clause (b), for the words "an exchange of letters", the words "any written communication by one party to another and accepted expressly or by implication by the other party, exchange of letters" shall be substituted.			
5.	Section 8				
	No Corresponding provision	<p>In section 8 of the principal Act,—</p> <p>(a) for sub-section (1), the following sub-sections shall be substituted, namely:—</p> <p>“(1) Subject to the provisions of sub-sections (4) and (5), a judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute unless such judicial authority has to decide any question referred to in sub-section (4) as a preliminary issue, refer the parties to arbitration.</p> <p>(1A) The judicial authority before which an action is brought shall stay the action before it for the purpose of deciding any question raised before it under sub-section (4) and such stay shall be subject to the outcome of the order that may be made under sub-section (4) or sub-section (5).”;</p> <p>(b) in sub-section (3), the following proviso shall be inserted at the end, namely:—</p> <p>“Provided that the arbitration proceeding so commenced shall stand terminated if the judicial authority, after hearing all the parties, makes an order under subsection (4) to the effect that—</p> <p>(i) a reference to arbitration cannot be made by virtue of its finding on any question referred to in clauses (a) to (d) of that sub-section; or</p> <p>(ii) though a reference to arbitration has to be made, the proceedings are required to be conducted by a different arbitral tribunal.”;</p> <p>(c) after sub-section (3), the following sub-sections shall be inserted, namely:—</p> <p>“(4) Where an application is made to the judicial authority by a party raising any question that—</p> <p>(a) there is no dispute in existence; or</p> <p>(b) the arbitration agreement or any clause thereof is null and void or inoperative; or</p>			

		<p>(c) the arbitration agreement is incapable of being performed; or</p> <p>(d) the arbitration agreement is not in existence, the judicial authority may, subject to the provisions of sub-section (5), decide the same and pass appropriate orders thereon.</p> <p>(5) Where the judicial authority finds that any question specified in sub-section (4) cannot be decided for the reason that—</p> <p>(a) the relevant facts or documents and the question are in dispute; or</p> <p>(b) there is a need for adducing oral evidence from the question; or</p> <p>(c) the inquiry into any such question is likely to delay reference to arbitration; or</p> <p>(d) the request for deciding the question was unduly delayed; or</p> <p>(e) the decision on the question is not likely to produce substantial savings in the costs of arbitration; or</p> <p>(f) there is no good reason for deciding the question at that stage, it shall refuse to decide the question and refer the same to the arbitral tribunal for decision.</p> <p>(6) If the judicial authority holds that though the arbitration agreement is in existence but it is null and void or inoperative or incapable of being performed and refuses to stay the legal proceedings, any provision in the arbitration agreement which provides that the award is a condition precedent for the initiation of legal proceedings in respect of any matter, shall be of no effect in relation to the proceedings.”.</p>			
	<p>No Corresponding provision</p>	<p>After section 8 of the principal Act, the following section shall be inserted, namely:—</p> <p>‘8A. Without prejudice to the provisions of section 89 of the Code of Civil Procedure, 1908, where, at any stage of a legal proceeding in the Supreme Court or the High Court or the principal Civil Court of original jurisdiction in a district or the Court of principal judge of the City Civil Court of original jurisdiction in a city or any Court of coordinate jurisdiction or inferior in grade to the aforesaid Courts, as the case may be, all the parties to such proceeding enter into an arbitration agreement to resolve their disputes, then the Court in which the said legal proceeding is pending shall, on an application made by any party to the arbitration agreement, refer the dispute in relation to the subject-matter of the legal proceeding, to arbitration.</p> <p><i>Explanation.</i>— For the purposes of this section, “legal proceeding” means any proceeding involving civil rights of parties pending in any of the aforesaid Courts whether at the stage of institution or appeal or revision and includes proceeding involving civil rights instituted in a High Court under article 226 or article 227 of the Constitution or on further appeal to the Supreme Court.’</p>			

6.	Section 9				
	No Corresponding provision	<p>For section 9 of the principal Act, the following section shall be substituted, namely:—</p> <p>“9. (1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before application is filed for its enforcement in accordance with section 36, apply to a Court for interim measures.</p> <p>(2) The Court shall have the same power for making orders under sub-section (1) as it has for the purpose of, and in relation to, any proceedings before it.</p> <p>(3) In particular and without prejudice to sub-section (1), a party may apply to a Court—</p> <p>(a) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or</p> <p>(b) for an interim measure of protection in respect of any of the following matters, namely:—</p> <p>(i) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;</p> <p>(ii) securing the amount in dispute in the arbitration;</p> <p>(iii) the detention, preservation or inspection of any property or thing which is the subject-matter or the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;</p> <p>(iv) interim injunction or the appointment of a receiver; or</p> <p>(v) such other interim measure of protection as may appear to the Court to be just and convenient.</p> <p>(4) Where a party makes an application under sub-section (1) for the grant of interim measures before the commencement of arbitration, the Court shall direct the party in whose favour the interim measure is granted, to take effective steps for the appointment of the arbitral tribunal in accordance with the procedure specified in section 11, within a period of thirty days from the date of such direction.</p> <p>(5) The Court may direct that if the steps referred to in sub-section (1) are not taken within the period specified in sub-section (4), the interim measure granted under sub-section (2), shall stand vacated on the expiry of the said period:</p> <p>Provided that the Court may, on sufficient cause being shown for the delay in taking such steps, extend the said period.</p> <p>(6) Where an interim measure granted stands vacated under sub-section (5), the Court may pass such further direction as to restitution as it may deem fit against the</p>			

		party in whose favour the interim measure was granted under this section.”.			
7.	Section 11				
	<p>It is proposed that Section 11 of the Arbitration and Conciliation Act, 1996 may be amended to the limited extent as follows:</p> <p>(a) In sub-Section (4) in clause (b) for the words, ‘by the Chief Justice or any person or institution designated by him’ the words “by the High Court or any person or institution designated by it” shall be substituted.</p> <p>(b) In sub-Section (5) for the words, ‘by the Chief Justice or any person or institution designated by him’ the words “by the High Court or any person or institution designated by it” shall be substituted.</p> <p>(c) In sub-Section (6) for the words, ‘by the Chief Justice or any person or institution designated by him’ the words “by the High Court or any person or institution designated by it” shall be substituted.</p> <p>(d) For sub-section (7), following sub-section shall be substituted namely:-</p> <p>(e) “A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the High Court or the person or institution designated by it shall be final and no appeal including a letter patent appeal shall lie against such decision.”</p> <p>(f) In sub-Section (8) for the words, ‘by the Chief Justice or any person or institution designated by him’ the words “by the High Court or any person or institution designated by it” shall be substituted.</p> <p>(g) In sub-Section (9) for the words, “the Chief Justice of India or any person or institution designated by him” the words “ the Supreme Court or any person or institution designated by it” shall be</p>	<p>In section 11 of the principal Act,—</p> <p>(a) in sub-section (4),—</p> <p>(i) in clauses (a) and (b), for the words “thirty days”, the words “sixty days” shall be substituted;</p> <p>(ii) for the words “the appointment shall be made, upon request of a party by the Chief Justice or any person or institution designated by him”, the words “the right to make such appointment shall be deemed to have been waived, and the appointment shall be made, upon request of a party by the High Court or any person or institution designated by it” shall be substituted;</p> <p>(b) for sub-section (5), the following sub-section shall be substituted, namely:—</p> <p>“(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within sixty days from receipt of a request by one party from the other party to so agree, then the right to make such appointment shall be deemed to have been waived if such appointment is not made within the said period and, the appointment shall be made by the High Court or any person or institution designated by it.”;</p> <p>(c) in sub-section (6), for the words “ a party may request the Chief Justice or any person or institution designated by him”, the words “and where no measures are taken for appointment of an arbitrator in accordance with the appointment procedure agreed upon by the parties, the right to take such measures shall be deemed to have been waived and a party may request the High Court or any person or institution designated by it” shall be substituted;</p> <p>(d) in sub-section (7), for the words “the Chief Justice or the person or institution designated by him”, the words “the High Court or any person or institution designated by it” shall be substituted;</p> <p>(e) in sub-section (8), for the words “The Chief Justice or the person or institution designated by him”, the words “The High Court or any person or institution designated by it” shall be substituted;</p> <p>(f) in sub-section (9), for the words “international commercial arbitration, the Chief Justice of India or the person or institution designated by him”, the words and brackets “international arbitration (whether commercial or not), the Supreme Court or any person or institution designated by it” shall be substituted;</p> <p>(g) in sub-section (10), for the words “The Chief Justice</p>	<p>Appointment of arbitrators</p> <p>13. —(1) Unless otherwise agreed by the parties, no person shall be precluded by reason of his nationality from acting as an arbitrator.</p> <p>(2) The parties are free to agree on a procedure for appointing the arbitrator or arbitrators.</p> <p>(3) Where the parties fail to agree on a procedure for appointing the arbitrator or arbitrators —</p> <p>(a) in an arbitration with 3 arbitrators, each party shall appoint one arbitrator, and the parties shall by agreement appoint the third arbitrator; or</p> <p>(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, the arbitrator shall be appointed, upon the request of a party, by the appointing authority.</p> <p>(4) Where subsection (3) (a) applies —</p> <p>(a) if a party fails to appoint an arbitrator within 30 days of receipt of a first request to do so from the other party; or</p> <p>(b) if the 2 parties fail to agree on the appointment of the third arbitrator within 30 days of the receipt of the first request by either party to do so, the appointment shall be made, upon the request of a party, by the appointing authority.</p> <p>(5) If, under an appointment procedure agreed upon by the parties —</p> <p>(a) a party fails to act as required under such procedure;</p> <p>(b) the parties are unable to reach an agreement expected of them under such procedure; or</p> <p>(c) a third party, including an arbitral institution, fails to perform any function entrusted to it under such procedure, any party may apply to the appointing authority to take the necessary measure unless the agreement on the appointment procedure provides other means for securing the appointment.</p> <p>(6) Where a party makes a request or makes an application to the appointing authority under subsection (3), (4) or (5),</p>	<p>8. Authorities specified for purposes of Article 6 of Model Law.</p> <p>(1) The High Court in Singapore shall be taken to have been specified in Article 6 of the Model Law as courts competent to perform the functions referred to in that Article except for Article 11 (3) and (4) of the Model Law.</p> <p>(2) The Chairman for the time being of the Singapore International Arbitration Centre, or such other person as the Chief Justice may by notification published in the Gazette appoint, shall be taken to have been specified as the authority competent to perform the function under Article 11 (3) and (4) of the Model Law.</p>	<p>Article 11 - Appointment of arbitrators</p> <p>1. No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.</p> <p>2. The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.</p> <p>3. Failing such agreement,</p> <p>(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;</p> <p>(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.</p> <p>4. Where, under an appointment procedure agreed upon by the parties,</p> <p>(a) a party fails to act as required under such procedure, or</p> <p>(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or</p> <p>(c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,</p> <p>any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.</p> <p>5. A decision on a matter entrusted by</p>

<p>substituted.</p> <p>(h) In sub-section (10) for the words, "The Chief Justice", the words, High Court" shall be substituted.</p> <p>(i) In sub-Section (11), for the words, "the Chief Justice of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made under the relevant sub-section shall alone be", the words, "different High Courts or their designates, the High Court or its designate to which the request has been first made under the relevant subsection shall alone be" shall be substituted.</p> <p>(j) For sub-section (12) following sub-section shall be substituted, namely:-</p> <p>"12(a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an international commercial arbitration, the reference to 'High Court' in those sub-sections shall be construed as a reference to the "Supreme Court".</p> <p>(b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to "High Court" in those sub-sections shall be construed as a reference to the "High Court" within whose local limits the principal civil court referred in clause (e) of sub-Section (1) of Section 2 is situate and, where the High Court itself is the Court referred to in that clause, to that High Court."</p> <p>(l) After sub-section (12), following sub-sections shall be inserted, namely:-</p> <p>"(13) Notwithstanding anything contained in foregoing provisions in this Sections, where an application under this Section is made to the Supreme Court or High Court as the case may be for appointment of arbitrator in respect of 'Commercial Dispute of</p>	<p>may make such scheme as he may deem appropriate ", the words "The High Court may make such scheme as it may deem appropriate" shall be substituted;</p> <p>(h) in sub-section (11), for the words "the Chief Justice of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made under the relevant sub-section shall alone be", the words "different High Courts or their designates, the High Court or its designate to which the request has been first made under the relevant subsection shall alone be" shall be substituted;</p> <p>(i) for sub-section (12), the following sub-sections shall be substituted, namely:—</p> <p>'(12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an international arbitration (whether commercial or not) the reference to "High Court" in those sub-sections shall be construed as a reference to the "Supreme Court".</p> <p>(b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to "High Court" in those sub-sections shall be construed as a reference to the "High Court" within whose local limits the principal Civil Court or the Court of principal judge of the City Civil Court, as the case may be, referred in sub-clause (i) of clause (e) of sub-section (1) of section 2, is situate and, where the High Court itself is the Court referred to in that sub-clause, to that High Court.</p> <p>(13) Where an application under this section is made to the Supreme Court or the High Court by a party raising any question specified to in sub-section (4) of section 8, the Supreme Court or the High Court, as the case may be, may, subject to the provisions of sub-section (14), decide the same.</p> <p>(14) If the Supreme Court or the High Court, as the case may be, considers that the questions referred to in sub-section (13) cannot be decided having regard to the reasons specified in sub-section (5) of section 8, it shall refuse to decide the said question and refer the same to the arbitral tribunal.</p> <p>(15) The Central Government may, after consultation with the Chief Justice of India, prescribe by rules made under this Act the manner in which fee of members of an arbitral</p>	<p>the appointing authority shall, in appointing an arbitrator, have regard to the following:</p> <p>(a) the nature of the subject-matter of the arbitration;</p> <p>(b) the availability of any arbitrator;</p> <p>(c) the identities of the parties to the arbitration;</p> <p>(d) any suggestion made by any of the parties regarding the appointment of any arbitrator;</p> <p>(e) any qualifications required of the arbitrator by the arbitration agreement; and</p> <p>(f) such considerations as are likely to secure the appointment of an independent and impartial arbitrator.</p> <p>(7) No appointment by the appointing authority shall be challenged except in accordance with this Act.</p> <p>(8) For the purposes of this Act, the appointing authority shall be the Chairman of the Singapore International Arbitration Centre.</p> <p>(9) The Chief Justice may, if he thinks fit, by notification published in the <i>Gazette</i>, appoint any other person to exercise the powers of the appointing authority under this section.</p>		<p>paragraph (3) and (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.</p>
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	<p>value', the Supreme Court or the High Court or their designate, as the case may be shall authorize any arbitration institution to make appointment for the arbitrator. Explanation:- For the purpose of this sub-section, expression 'Commercial Dispute' and "specified value" shall have same meaning assigned to them in the Commercial Division of High Court Act, 2009."</p> <p>(14) An application made under this Section for appointment of arbitrator shall be disposed of by the Supreme Court or the High Court or their designate, as the case may be as expeditiously as possible and endeavour shall be made to dispose of the matter within sixty days from the date of service of notice on the opposite party."</p>	tribunal be fixed and the procedure to be followed in relation to fixation of such fee.'.			
8.	Section 12				
	<p>Sub- Section (1) of Section 12 is proposed to be substituted as follows: “(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances- (i) such as the existence of any past or present relationship, either direct or indirect, with any of the parties or any of their counsel, whether financial, business, professional, social or other kind or in relation to the subject matter in dispute, which are likely to give rise to justifiable doubts as to his independence or impartiality; and (ii) such other circumstances as may be provided in the Rules made by the Central Government in this behalf.”</p>	<p>In section 12 of the principal Act, in sub-section (1), for the words “any circumstances likely”, the words “the existence of any past or present relationship, either direct or indirect, with any of the parties or any of their counsel, whether financial, business, professional, social or other kind or in relation to the subject-matter in dispute, which is likely” shall be substituted.</p>	<p>14. —(1) Where any person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstance likely to give rise to justifiable doubts as to his impartiality or independence. (2) An arbitrator shall, from the time of his appointment and throughout the arbitration proceedings, disclose without delay any such circumstance as is referred to in subsection (1) to the parties unless they have already been so informed by him.</p>		<p>Article 12 - Grounds for challenge</p> <p>1. When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.</p> <p>2. An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.</p>
9.	Section 14				
	No Corresponding provision	In section 14 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—			

		“(4) Where the mandate of the arbitrator is terminated, the Court may decide the quantum of fee payable to such arbitrator.”			
10.	Section 15				
	No Corresponding provision	In section 15 of the principal Act,— (a) in sub-section (2), for the words “a substitute arbitrator shall be appointed”, the words “a substitute arbitrator shall be appointed within a period of thirty days” shall be substituted; (b) after sub-section (4), the following sub-section shall be inserted, namely:— “(5) Where the mandate of an arbitrator is terminated, the Court may decide the quantum of fee payable to such arbitrator.”			
11.	Section 17				
	No Corresponding provision	For section 17 of the principal Act, the following section shall be substituted, namely:— “17. The arbitral tribunal may, pending arbitral proceedings,— (a) direct the other party, at the request of a party, to take steps for the protection of the subject-matter of the dispute in the manner considered necessary by it; or (b) direct a party to provide appropriate security in connection with the directions issued under clause (a); or (c) direct a party, making any claim, to furnish security for the costs of the arbitration; or (d) give directions in relation to any property which is the subject-matter of the arbitral proceedings and which is owned by or is in possession of a party to the proceedings — (i) for the inspection, photographing, preservation, custody or detention of the property by the arbitral tribunal, by an expert or by a party; or (ii) for samples to be taken from, or any observation to be made of, or experiment conducted upon, the property; or (e) direct that a party or witness shall be examined on oath or affirmation, and may for that purpose administer any necessary oath or take any necessary affirmation; or (f) give directions to a party for the preservation of any evidence in his custody or control for the purposes of the proceedings.”.			
12.	Section 20				
	No Corresponding provision	For section 20 of the principal Act, the following section shall be substituted, namely:— “20. Where the arbitration is one under this Part, the place of arbitration shall be within India and in other cases the parties are free to agree on the place of arbitration: Provided that where the parties fail to agree, the place of arbitration shall be determined			

		by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties: Provided further that the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.”.			
13.	Section 23				
	No Corresponding provision	In section 23 of the principal Act, for sub-section (1), the following sub-sections shall be substituted, namely:— “(1) Within the period of time that may be determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars and the claimant may file his rejoinder, if any, and the parties shall abide by the time schedule so determined by the arbitral tribunal, unless the tribunal extends such time schedule. (1A) The arbitral tribunal shall endeavour to expedite the arbitral process subject to such rules as may be made by the High Court in this behalf.”.			
14.	Section 24				
	No Corresponding provision	In section 24 of the principal Act, for sub-section (1), the following sub-sections shall be substituted, namely:— “(1) Subject to such rules as may be made by the High Court in this behalf, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral arguments, or whether the proceedings shall be conducted on the basis of documents and other materials, or to receive affidavit in lieu of oral evidence subject to the witness being examined orally: Provided that the arbitral tribunal may, at an appropriate stage of the proceedings, hold oral hearings for the purpose of calling for such oral evidence as it may deem necessary. (1A) Subject to the provisions of sub-section (1), the arbitral tribunal shall pass orders regarding following the procedure before it. (1B) Without prejudice to the provisions of sub-section (1A), the power of the arbitral tribunal to pass orders shall include— (a) the fixing of the time schedule for the parties to adduce oral evidence, if any; (b) the fixing of the time schedule for oral arguments; (c) the manner in which oral evidence is to be adduced; (d) the decision as to whether the proceedings shall be conducted only on the basis of documents and other			

		<p>materials, or in any other manner. <i>(1C)</i> The procedure determined by the arbitral tribunal under sub-section <i>(1A)</i> and the time schedule fixed under sub-section <i>(1B)</i> shall be binding on the parties.”</p>			
	<p>No Corresponding provision</p>	<p>After section 24 of the principal Act, the following sections shall be inserted, namely:— “24A. <i>(1)</i> If a party fails, without showing sufficient cause, to comply with a directions made under section 17, or time schedule determined under section 23 or orders passed under section 24, as the case may be, the arbitral tribunal may make a peremptory order to the same effect, prescribing such time for compliance as it considers appropriate. <i>(2)</i> If a claimant fails to comply with a peremptory order made under sub-section <i>(1)</i> in relation to a direction specified in clause <i>(c)</i> of section 17, the arbitral tribunal may dismiss his claim and make an award accordingly. <i>(3)</i> If a party fails to comply with any peremptory order made under sub-section <i>(1)</i>, other than the peremptory order in relation to a direction specified in clause <i>(c)</i> of section 17, then the arbitral tribunal may— <i>(a)</i> make such order as it thinks fit as to payment of costs of the arbitral proceedings incurred in consequence of the non-compliance; <i>(b)</i> direct that the party in default shall not be entitled to rely upon any allegations in his pleadings or upon any material which was the subject matter of the order; <i>(c)</i> draw such adverse inference from the act of non-compliance as the circumstances may justify; <i>(d)</i> proceed to make an award on the basis of such materials as have been provided to it, without prejudice to any action that may be taken under section 25. 24 B. <i>(1)</i> Without prejudice to the power of the Court under section 9, the Court may, on an application made to it by a party, make an order requiring the party to whom the order of the arbitral tribunal was directed, to comply with the peremptory orders of the arbitral tribunal made under sub-section <i>(1)</i> of section 24A. <i>(2)</i> An application under sub-section <i>(1)</i> may be made by— <i>(a)</i> the arbitral tribunal, after giving notice to the parties; or <i>(b)</i> a party to the arbitral proceedings with the permission of the arbitral tribunal, after giving notice to the other parties. <i>(3)</i> No order shall be made by the Court under sub-section <i>(1)</i>, unless it is satisfied that the party to whom the order of the arbitral tribunal was directed, has failed to comply with it within the time fixed in the order of the arbitral tribunal or, if no time was fixed, within a reasonable time. <i>(4)</i> Any order made by the Court under sub-section <i>(1)</i> shall be subject to such</p>			

		orders, if any, as may be made by the Court on appeal under clause (b) of sub-section (2) of section 37.”.			
15.	Section 28				
	It is proposed to substitute Sub-section (3) of Section 28 as follows: (3) In all cases, the arbitral tribunal shall take into account the terms of the contract and trade usage applicable to the transaction.	In section 28 of the principal Act, for sub-section (1), the following sub-sections shall be substituted, namely:— “(1) In an arbitration other than international arbitration (whether commercial or not), the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India. (1A) In an international arbitration (whether commercial or not), where the place of arbitration is situate in India,— (i) the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute; (ii) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules; (iii) failing any designation of the law under clause (i) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.”.			
16.	Section 29				
	No Corresponding provision	In section 29 of the principal Act,— (a) for sub-section (1), the following sub-section shall be substituted, namely:— “(1) Any decision of the arbitral tribunal in arbitral proceedings with more than one arbitrator shall be made by a majority of all its members: Provided that where there is no majority, the award shall be made by the Presiding arbitrator of the arbitral tribunal.” (b) after sub-section (2), the following sub-section shall be inserted, namely:— “(3) The minority decision shall, if made available within thirty days of the receipt of the decision of the majority, be appended to the award.”			
	No Corresponding provision	After section 29 of the principal Act, the following section shall be inserted, namely:— 29A. (1) The arbitral tribunal shall make its award within a period of one year from the commencement of arbitral proceedings, or within such extended period specified in sub-sections (2) to (4). (2) The parties may, by consent extend the period, specified in sub-section (1) for making award, for a further period not exceeding one year.			

(3) If the award is not made, within the period specified in sub-section (1) or the extended period under sub-section (2), the arbitral proceedings shall, subject to the provisions of sub-sections (4) to (6), stand suspended until an application for extension or further extension of the period is made to the Court by any party to the arbitration, or where none of the parties makes an application as aforesaid, until such an application is made by the arbitral tribunal.

(4) Upon filing of the application for extension or further extension of the period under sub-section (3), the suspension of the arbitral proceedings shall stand revoked and pending consideration of the application by the Court under subsection

(5), the arbitral proceedings shall continue before the arbitral tribunal and the Court shall not grant any stay of the arbitral proceedings.

(5) The Court shall, upon application for extension of the period being made under sub-section (3), whether the time for making the award as aforesaid has expired or not and whether the award has been made or not, extend the period for making the award beyond the period referred to in sub-section (1) or sub-section (2).

(6) The Court shall, while extending the time under sub-section (5), after taking into account,—

- (a) the extent of work already completed;
- (b) the reasons for delay;
- (c) the conduct of the parties or of any person representing the parties;
- (d) the manner in which proceedings were conducted by the arbitral tribunal;
- (e) the further work involved;
- (f) the amount of money already spent by the parties towards fee and expenses of arbitration;
- (g) any other relevant circumstances which the Court may consider necessary,

make such order as to costs and as to the future procedure to be followed by the arbitral tribunal with a view to speed up the arbitral process till the award is made:
Provided that any order made by the Court as to the future arbitral proceedings shall be subject to such rules as may be made by the High Court for expediting the arbitral proceedings.

(7) The parties shall not by consent extend the period for making award beyond the period specified in sub-section (2) and save as otherwise provided in that subsection, any provision in an arbitration agreement whereby the arbitral tribunal may further extend the time for making the award, shall be void and be of no effect.

(8) The first of the orders of extension under sub-section (5) together with directions if any, under sub-section (6), shall be made by the Court, within a period of thirty days from the date of service of notice on the opposite party.”.

17.	<p align="center">Section 31</p> <p>It is proposed to substitute clause (b) of Sub-Section (7) of Section 31 as follows: “(b) A sum directed to be paid by arbitral award shall carry interest at the rate of one percent higher than the current rate of interest from the date of award to the date of payment. Explanation- The expression “Current rate of interest” shall have same meaning as assigned to it under clause (b) of Section 2 of the Interest Act, 1978.”</p>	<p>In section 31 of the principal Act, in sub-section (7), for clause (b), the following clause shall be substituted, namely:— “(b) A sum directed to be paid by an arbitral award shall carry interest at such rate as the arbitral tribunal deems reasonable from the date of award to the date of payment.”</p>	<p>Interest 35. —(1) The arbitral tribunal may award interest, including interest on a compound basis, on the whole or any part of any sum that — (a) is awarded to any party; or (b) is in issue in the arbitral proceedings but is paid before the date of the award, for the whole or any part of the period up to the date of the award or payment, whichever is applicable. (2) A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.</p>	<p>20. Interest on awards. Where an award directs a sum to be paid, that sum shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.</p>	
18.	<p>No Corresponding provision</p>	<p>Section 33 After section 33 of the principal Act, the following section shall be inserted, namely:— '33A. (1) A photocopy of the arbitral award duly signed on each page by the members of the arbitral tribunal together with the original arbitral records shall be filed by the arbitral tribunal in the Court within sixty days of the making of the award along with a list of the papers comprising the arbitral record: Provided that where the High Court is the Court within the meaning of sub-clause (i) of clause (e) of sub-section (1) of section 2, then the award shall be filed in the principal Civil Court of original jurisdiction in a district or in the Court of principal judge of the City Civil Court of original jurisdiction in a city within whose local jurisdiction the subject-matter of arbitration is situate (hereafter in this section referred to as the said Court). <i>Explanation 1.</i>— For the removal of doubts, it is hereby declared that for the purposes of this section, “arbitral award” means the arbitral award whether passed pursuant to a reference made by a judicial authority under section 8, or by any of the Courts referred to in section 8A, or by the parties or by the High Court or by the Supreme Court under section 11, or by the parties to a Fast Track Arbitration under section 43C. <i>Explanation 2.</i>— For the purposes of this section, “arbitral records” shall include the pleadings in the claim filed by the parties, documentary evidence, oral evidence if recorded, pleadings in interlocutory applications, pleadings and orders on interlocutory applications, proceedings of the arbitral tribunal and all other papers relating to the arbitral proceedings. (2) Where the arbitral tribunal fails to file photocopy of the arbitral award and the arbitral records under sub-section (1), any of the parties may give notice to the arbitral</p>			

		<p>tribunal to do so within a period of sixty days from the date of receipt of the award failing which, the party may request the said Court to direct the arbitral tribunal to file photocopy of the arbitral award and the arbitral records in the said Court.</p> <p>(3) Upon filing of photocopy of the arbitral award and the arbitral records under subsection (1) or sub-section (2), the presiding officer of the said Court or a ministerial officer of the said Court designated by such presiding officer, shall affix his signature with date and seal of the said Court on each page of the photocopy of the arbitral award and shall acknowledge receipt of the arbitral award and the arbitral records, after verification with the list referred to in sub-section (1).</p> <p>(4) The said Court shall maintain a register containing –</p> <p>(a) the names and addresses of the parties to the award;</p> <p>(b) the date of the award;</p> <p>(c) the names and addresses of the arbitrators;</p> <p>(d) the relief granted;</p> <p>(e) the date of filing of the award into the said Court; and</p> <p>(f) such other particulars as may be prescribed by rules made by the Central Government in this behalf.</p> <p>(5) If any party makes an application for a copy, the Court may grant a certified copy of photocopy of the arbitral award or of the arbitral records or of the arbitral proceedings, as the case may be, in accordance with the rules of the Court.</p> <p>(6) The Court may transmit the arbitral records for use in any proceedings for setting aside the arbitral award or for enforcement thereof.</p> <p>(7) The procedure for return of original documents or for preservation of the arbitral records so filed shall be subject to such rules as may be applicable to the said Court from time to time.</p> <p>(8) The filing of photocopy of the award under this section shall be only for the purposes of record.’</p>			
19.	Section 34				
	<p>It is proposed to add following sub-clause (iii) in clause (b) of Sub-section (2) of Section 34-</p> <p>(iii) the application contains a plea questioning the decision of the arbitral tribunal rejecting –</p> <p>(a) a challenge made by the applicant under sub-section (2) of section 13; or</p> <p>(b) a plea made under sub-section (2) or sub-section (3) of section 16</p>	<p>In section 34 of the principal Act, –</p> <p>(a) for sub-section (1), the following sub-sections shall be substituted, namely:—</p> <p>“(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award –</p> <p>(a) in accordance with sub-sections (2) and (3); and</p> <p>(b) in the case of an award made in an arbitration other than an international arbitration (whether commercial or not) in accordance with sub-sections (2) and (3), and section 34A.</p> <p>(1A) An application for setting aside an award under sub-section (1) shall be accompanied by the original award: Provided that where the parties have not been given the original award, they may file a photocopy of the award</p>	<p>Court may set aside award</p> <p>48. —(1) An award may be set aside by the Court —</p> <p>(a) if the party who applies to the Court to set aside the award proves to the satisfaction of the Court that —</p> <p>(i) a party to the arbitration agreement was under some incapacity;</p> <p>(ii) the arbitration agreement is not valid under the law to which the parties have subjected it, or failing any indication thereon, under the laws of Singapore;</p> <p>(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitration</p>	<p>24. Court may set aside award.</p> <p>Notwithstanding Article 34 (1) of the Model Law, the High Court may, in addition to the grounds set out in Article 34 (2) of the Model Law, set aside the award of the arbitral tribunal if --</p> <p>(a) the making of the award was induced or affected by fraud or corruption; or</p> <p>(b) a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced.</p>	<p>Article 34 - Application for setting aside as exclusive recourse against arbitral award</p> <p>1. Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.</p> <p>2. An arbitral award may be set aside by the court specified in article 6 only if:</p> <p>(a) the party making the application furnishes proof that:</p> <p>(i) a party to the arbitration agreement</p>

		<p>signed by the arbitrators.” <i>(b)</i> in sub-section (2),— <i>(i)</i> in clause <i>(b)</i>, after sub-clause <i>(ii)</i>, the following sub-clause shall be inserted, namely:— <i>“(iii)</i> the arbitral award is such which does not state the reasons as required under sub-section (3) of section 31.”; <i>(ii)</i> The <i>Explanation</i> shall be renumbered as <i>Explanation 1</i> and after <i>Explanation 1</i> as so renumbered, the following <i>Explanation</i> shall be inserted, namely:— <i>“Explanation 2.—</i> For the removal of doubts, it is hereby declared that while seeking to set aside an arbitral award under sub-section (1), the applicant may include the pleas questioning the decision of the arbitral tribunal rejecting— <i>(i)</i> a challenge made under sub-section (2) of section 13; <i>(ii)</i> a plea made under sub-section (2) or sub-section (3) of section 16.”; <i>(c)</i> after sub-section (4), the following sub-sections shall be inserted, namely:— <i>“(5)</i> Where the Court adjourns the proceedings under sub-section (4) granting the arbitral tribunal an opportunity to resume its proceedings or take such other action and eliminate the grounds referred to in this section or in section 34A for setting aside the award, the arbitral tribunal shall pass appropriate orders within sixty days from the receipt of the request made under sub-section (4) by the Court and send the same to the Court for its consideration. <i>(6)</i> Any party aggrieved by the orders of the arbitral tribunal under sub-section (5), shall be entitled to file its objections thereto within thirty days from the receipt of the said order from the arbitral tribunal and the application made under sub-section (1) to set aside the award shall, subject to the provisions of sub-sections (2) and (3) of section 37C, be disposed of by the Court, after taking into account the orders of the arbitral tribunal made under sub-section (5) and the objections filed under that sub-section. <i>Explanation 1.—</i> Subject to clause <i>(i)</i> of sub-section (4) of section 42, for the purposes of this section and sections 34A and 36, the word “Court” means the Arbitration Division. <i>Explanation 2.—</i> For the purposes of this section, clause <i>(b)</i> of sub-section (2) of section 48 and clause <i>(e)</i> of sub-section (1) of section 57, “public policy of India” or “Contrary to public policy of India” means contrary to <i>(i)</i> fundamental policy of India, or <i>(ii)</i> interests of India, or <i>(iii)</i> justice or morality.’.</p>	<p>proceedings or was otherwise unable to present his case; <i>(iv)</i> the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, except that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; <i>(v)</i> the composition of the arbitral tribunal or the arbitral procedure is not in accordance with the agreement of the parties, unless such agreement is contrary to any provisions of this Act from which the parties cannot derogate, or, in the absence of such agreement, is contrary to the provisions of this Act; <i>(vi)</i> the making of the award was induced or affected by fraud or corruption; <i>(vii)</i> a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced; or (b) if the Court finds that — <i>(i)</i> the subject-matter of the dispute is not capable of settlement by arbitration under this Act; or <i>(ii)</i> the award is contrary to public policy. (2) An application for setting aside an award may not be made after the expiry of 3 months from the date on which the party making the application had received the award, or if a request has been made under section 43, from the date on which that request had been disposed of by the arbitral tribunal. (3) When a party applies to the Court to set aside an award under this section, the Court may, where appropriate and so requested by a party, suspend the proceedings for setting aside an award, for such period of time as it may determine, to allow the arbitral tribunal to resume the arbitration proceedings or take such other action as may eliminate the grounds for setting aside an award.</p>		<p>referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or <i>(ii)</i> the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or <i>(iii)</i> the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or <i>(iv)</i> the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or (b) the court finds that: <i>(i)</i> the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or <i>(ii)</i> the award is in conflict with the public policy of this State. 3. An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received that award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal. 4. The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in</p>
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					the arbitral tribunal's opinion will eliminate the grounds for setting aside.
	<p>It is proposed to insert a new Section 34A as suggested by the Law Commission with some changes: “34A. Application for setting aside arbitral award on additional ground of patent and serious illegality.- (1) Recourse to a Court against an arbitral award made in an arbitration other than an international commercial arbitration, can also be made by a party under subsection (1) of section 34 on the additional ground that there is a patent and serious illegality, which has caused or is likely to cause substantial injustice to the applicant. (2) Where the ground referred to in sub-section (1) is invoked in an application filed under sub-section (1) of section 34, while considering such ground, the Court must be satisfied that the illegality identified by the applicant is patent and serious and has caused or is likely to cause substantial injustice to the applicant.”</p>	<p>After section 34 of the principal Act, the following section shall be inserted, namely:— “34A. (1) In the case of an arbitral award made in an arbitration other than an international arbitration (whether commercial or not), recourse to a court against an arbitral award on the additional ground that there is an error which is apparent on the face of the arbitral award giving rise to a substantial question of law can be had in an application for setting aside an award referred to in sub-section (1) of section 34. (2) Where the ground referred to in sub-section (1) is invoked in an application filed under sub-section (1) of section 34, the applicant shall file a separate application seeking leave of the Court to raise the said ground: Provided that the Court shall not grant leave unless it is <i>prima facie</i> of the opinion that all the following conditions are satisfied, namely:— (a) that the determination of the question will substantially affect the rights of one or more parties; (b) that the substantial question of law was one which the arbitral tribunal was asked to decide or has decided on its own; and (c) that the application made for leave identifies the substantial question of law to be decided and states relevant grounds on which leave is sought. (3) Where a specific question of law has been referred to the arbitral tribunal, an award shall not be set aside on the ground referred to in sub-section (1).”</p>			
20.	Section 36				
	<p>It is proposed to substitute Section 36 as follows: “36. Enforcement of award.- (1) Where the time for making an application to set aside the arbitral award under sub-section (1) of section 34 has expired, then, subject to the provisions of subsections (2) to (4), the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. (2) Where an application is filed in the Court under sub-section (1) of section 34 to set aside an arbitral award, the filing of such an application shall not by itself operate as a stay of the award</p>	<p>For section 36 of the principal Act, the following section shall be substituted, namely :— “36. (1) Where the time for making an application to set aside the arbitral award under sub-section (1) of section 34 has expired, then, subject to the provisions of subsections (2) to (4), the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. (2) Where an application is filed in the Court under sub-section (1) of section 34 to set aside an arbitral award, the filing of such an application shall not by itself operate as a stay of the award unless, upon a separate application made for that purpose, the Court grants stay of the operation of the award in accordance with the provisions of sub-section (3). (3) Upon filing of the separate application under sub-section (2) for stay of the operation of the award, the Court may, without prejudice to any action it may take under sub-section (1) of section 37C and subject to such conditions as it may deem fit to impose, grant stay of the</p>	<p>Enforcement of award 46. —(1) An award made by the arbitral tribunal pursuant to an arbitration agreement may, with leave of the Court, be enforced in the same manner as a judgment or order of the Court to the same effect. (2) Where leave of the Court is so granted, judgment may be entered in the terms of the award. (3) Notwithstanding section 3, subsection (1) shall apply to an award irrespective of whether the place of arbitration is Singapore or elsewhere.</p>	<p>19. Enforcement of awards. An award on an arbitration agreement may, by leave of the High Court or a Judge thereof, be enforced in the same manner as a judgment or order to the same effect and, where leave is so given, judgment may be entered in terms of the award.</p>	<p>Article 35 - Recognition and enforcement 1. An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36. 2. The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.</p>

	<p>unless, upon a separate application made for that purpose, the Court grants stay of the operation of the award in accordance with the provisions of sub-section (3). (3) Upon filing of the separate application under sub-section (2) for stay of the operation of the award, the Court may, subject to such conditions as it may deem fit to impose, grant stay of the operation of the arbitral award for reasons in brief to be recorded in writing: Provided that the Court shall, while considering the grant of stay, keep in mind the grounds for setting aside the award. (4) The power to impose conditions referred to in sub-section (3) includes the power to grant interim measures not only against the parties to the award or in respect of the property which is the subject-matter of the award but also to issue ad interim measures against third parties or in respect of property which is not the subject matter of the award, in so far as it is necessary to protect the interests of the party in whose favour the award is passed. (5) The ad interim measures granted under sub-section (4) may be confirmed, modified, or vacated, as the case may be, by the Court subject to such conditions, if any, as it may, after hearing the affected parties, deem fit.</p>	<p>operation of the arbitral award for reasons in brief to be recorded in writing: Provided that the Court shall, while considering the grant of stay, keep the grounds for setting aside the award in mind. (4) The power to impose conditions referred to in sub-section (3) includes the power to grant interim measures not only against the parties to the award or in respect of the property which is the subject-matter of the award but also to issue <i>ad interim</i> measures against third parties or in respect of property which is not the subject matter of the award, in so far as it is necessary to protect the interests of the party in whose favour the award is passed. (5) The <i>ad interim</i> measures granted under sub-section (4) may be confirmed, modified or vacated, as the case may be, by the Court subject to such conditions, if any, as it may, after hearing the affected parties, deem fit.”.</p>			
21.	Section 37				
	No Corresponding provision	<p>In section 37 of the principal Act,— (i) in sub-section (1), clause (b) shall be omitted; (ii) after sub-section (3), the following sub-section shall be inserted, namely:— “(4) The procedure specified in sections 37C, 37D, 37E and 37F shall, in so far as may be, apply to appeals under sub-section (1) or sub-section (2).”</p>			
22.	Provisions relating to commercial disputes of specified value				
	insertion of following clause in the Arbitration and Conciliation Act, 1996 has been suggested:	In the Amendment Bill of 2003 it was proposed to insert a new chapter IXA, comprising sections 37A to 37F, to provide that every High Court shall, constitute an			

	<p>(i) Unless parties expressly and in writing agree otherwise, every commercial contract with a consideration of specified value(Rs. 5 crore or more) shall deemed to have in writing specified arbitration agreement.</p> <p>(ii) Specified Arbitration Agreement as referred in clause (i) shall contain following clause: “All dispute s(except (here specify the excepted disputes, if any) arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of (here specify the name of the approved arbitral institution) by one or more of the arbitrators appointed in accordance with the said Rules.”</p> <p>(iii) Any arbitration agreement that differs from the said clause will stand modified along the lines of the specified arbitration agreement.</p> <p>(iv) Where the parties have failed to mention the Approved Arbitral Institution, High court will authorize to an Approved Arbitral Institution to appoint arbitrator within 30 days of the reference made to it by either party for this purpose.</p> <p>(v) In this Section “Commercial Contract” shall mean every contract involving exchange of goods or services for money or money’s worth and includes carriage of goods by road, rail, air, waterways, banking, insurance, transactions in stock exchanges and similar exchanges, forward markets, supply of energy, communication of information, postal, telegraphic, fax and Internet services, and the like.”</p>	<p>Arbitration Division in the High Court to deal, irrespective of pecuniary value, with the applications under sub-section (1) of section 34 to set aside awards under the principal Act, new and pending, and enforcement of awards under the principal Act, new and pending.</p>			
23.	Section 42				
	No Corresponding provision	<p>For section 42 of the principal Act, the following sections shall be substituted, namely :— ‘42. (1) Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any</p>			

application under this Part is made in any of the Courts referred to in sub-sections (2) to (7) or in the Court referred to in section 43E, then all subsequent applications [other than the applications referred to in sub-section (2) of section 33A] arising out of that agreement and the arbitral proceedings (hereafter in this section referred to as the subsequent application) shall be made in the same Court in which the application was made and in no other Court.

(2) Where an application is made in a Court within the meaning of sub-clause (i) of clause (e) of sub-section (1) of section 2, the subsequent applications shall be made in that Court and in no other Court.

(3) Where, in an action under section 8 pending before a judicial authority, an application is made seeking reference to arbitration with respect to an agreement, then the subsequent applications shall be made in the following manner, namely:—

(i) if the judicial authority is a Court within the meaning of sub-clause (i) of clause (e) of sub-section (1) of section 2, the subsequent application shall be made in the Court in which the application is made and in no other Court;

(ii) if the judicial authority is a Court which is inferior in grade to the principal Civil Court of original jurisdiction in a district or the Court of principal judge of the City Civil Court exercising original jurisdiction in a city (hereinafter referred to as the principal Courts), as the case may be, the subsequent application shall be made in the said principal Court to which the Court where the application is made is subordinate and in no other Court;

(iii) if the judicial authority is a quasi-judicial statutory authority, the subsequent application shall be made in the principal Court within whose local limits the judicial authority is situate and in no other Court.

(4) Where, in a legal proceeding under section 8A before any of the Courts referred to in that section, an application is made seeking reference to arbitration with respect to an agreement, then the subsequent application shall be made in the following manner, namely:—

(i) if the application is made in the Supreme Court or in the High Court or in the principal Courts referred to in clause (ii) of sub-section (3), as the case may be, the subsequent application shall be made in the Court which made the reference and in no other Court;

(ii) if the application is made in a Court of coordinate jurisdiction or inferior in grade to the principal Courts referred to in clause (ii) of sub-section (3), as the case may be, the subsequent application shall be made in the principal Court from where the legal proceeding was transferred to such Court of coordinate jurisdiction or to which the said Court is subordinate, as the case may be, and in no other Court.

Explanation 1.—In this sub-section, the expression “legal

		<p>proceeding” shall have the same meaning as assigned to it in the <i>Explanation</i> to section 8A.</p> <p><i>Explanation 2.</i>—For the removal of doubts, it is hereby declared that in the case of arbitral proceedings which have commenced pursuant to a reference made by the Supreme Court or the High Court under section 8A and award passed pursuant thereto, the reference to “Court” in this Part shall, except in sections 27 and 33A, be construed as reference to the Supreme Court or the High Court, as the case may be.</p> <p>(5) Where an application, seeking a reference to arbitration with respect to an agreement, is made under section 11 in the Supreme Court or in the High Court, as the case may be, the subsequent application shall be made in the Court within the meaning of sub-clause (i) of clause (e) of sub-section (1) of section 2 and in no other Court.</p> <p>(6) Where an application is made to the High Court in accordance with section 34, section 34A, section 36 or sub-section (4) of section 37A or where an appeal is preferred in the High Court in accordance with sub-section (5) of section 37A, the subsequent application shall be made in that High Court and in no other Court.</p> <p>(7) Where application or appeal transferred to the High Court pursuant to section 37B, all subsequent applications shall be made in that High Court and in no other Court.</p>			
		42A. The Chief Justice of India may prepare a scheme, for constituting a panel of arbitrators to enable either the parties, or the Supreme Court or the High Court under section 11, or the judicial authority under section 8, or the Courts referred to in section 8A, or the parties under section 43A, as the case may be, to appoint arbitrators from such panel and subject to such conditions as may be specified by the Chief Justice of India in that scheme.			
		42B. Notwithstanding anything contained in any other law for the time being in force, it shall be permissible to initiate any proceedings under this Act, for the purpose of enforcement of any right under sub-section (3) of section 69 of the Indian Partnership Act, 1932 to seek— (a) the dissolution of a firm; (b) the settlement of the accounts of a dissolved firm; or (c) the realisation of the property of a dissolved firm.’.			
24.	Section 44				
	No Corresponding provision	In section 44 of the principal Act, in clause (a), for the words “First Schedule”, the words “Second Schedule” shall be substituted.			
25.	Section 47				
	No Corresponding provision	In section 47 of the principal Act, for the <i>Explanation</i> , the following <i>Explanation</i> shall be substituted, namely:— ‘ <i>Explanation.</i> — In this section and in all the following sections of this Chapter, “Court” means the Arbitration Division.’.			

26.	Section 50				
	No Corresponding provision	In section 50 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:— “(1) An appeal shall lie from the order refusing to refer the parties to arbitration under section 45 to the High Court referred to in sub-section (4) of section 37A, and the said appeal shall thereafter be allocated to the Arbitration Division for disposal.”.			
27.	Section 53				
	No Corresponding provision	In section 53 of the principal Act,— (i) in clause (a), for the words “Second Schedule”, the words “Third Schedule” shall be substituted; (ii) in clause (b), for the words “Third Schedule”, the words “Fourth Schedule” shall be substituted.			
28.	Section 56				
	No Corresponding provision	In section 56 of the principal Act, for the <i>Explanation</i> , the following <i>Explanation</i> shall be substituted, namely:— ‘ <i>Explanation.</i> — In this section and the following sections of this Chapter, “Court” means the Arbitration Division.’.			
29.	Section 59				
	No Corresponding provision	In section 59 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:— “(1) An appeal shall lie from the order refusing to refer the parties to arbitration under section 54 to the High Court referred to in sub-section (4) of section 37A, and the said appeal shall thereafter be allocated to the Arbitration Division for disposal.”.			
30.	Inclusion of new chapter				
	No Corresponding provision	After section 60 of the principal Act, the following Chapter shall be inserted, namely:— “CHAPTER IIA JURISDICTION OF ARBITRATION DIVISION OF HIGH COURT AND SPECIAL PROCEDURE FOR ENFORCEMENT OF FOREIGN AWARDS”			
31.	Section 82				
	No Corresponding provision	Section 82 of the principal Act shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:— “(2) Without prejudice to the generality of the provisions of sub-section (1), rules may be made in respect of the following matters, namely:— (a) the manner in which arbitral proceedings shall be conducted; (b) the number of days for which the arbitral proceedings have to be conducted continuously on each occasion when			

		<p>an arbitral tribunal meets;</p> <p>(c) the time schedule and the number of hours for which the arbitral proceedings have to be conducted on each day;</p> <p>(d) the time schedule for the filing of the pleadings for purposes of sub-section (1A) of section 23;</p> <p>(e) the time schedule in regard to the recording of evidence and submission of arguments for purposes of sub-section (1) of section 24;</p> <p>(f) the time schedule as to the future procedure to be followed by the arbitral tribunal, referred to in sub-section (6) of section 29A.</p> <p>(3) The Chief Justice of India may issue guidelines to the High Courts in relation to the matters referred in sub-section (2) and other procedure to be followed by the arbitral tribunal so that uniform rules may be made by all the High Courts.”</p>			
32.	Section 84				
	No Corresponding provision	<p>In section 84 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—</p> <p>“(1A) Without prejudice to the generality of the provisions of sub-section (1), rules may be made in respect of the following, namely:—</p> <p>(a) the manner in which fee of the members of an arbitral tribunal may, after consultation with the Chief Justice of India, be fixed and the procedure relating thereto under sub-section (15) of section 11;</p> <p>(b) the other particulars required to be entered in the register under clause (f) of sub-section (4) of section 33A.”.</p>			
33.	Schedules				
	No Corresponding provision	<p>The First Schedule, Second Schedule and Third Schedule to the principal Act shall be renumbered as the Second Schedule, Third Schedule and Fourth Schedule and before the Second Schedule as so renumbered, the new Schedule shall be inserted which refers to fast track arbitration.</p>			