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Arbitration and Conciliation Act (Amendment) Bill

The new Arbitration and Conciliation (Amendment) Act, 2019 (the "2019 Act") will amend the Indian Arbitration and Conciliation Act, 1996 (the "1996 Act"), implementing the recommendations of the High-Level Committee Report issued in 2017 under the chairmanship of Justice BN Srikrishna. The Arbitration and Conciliation Bill, 2019 (the "Bill") was passed by both houses of the Indian Parliament, and on August 9, 2019, the President of India gave his assent.

Significant modifications made by the 2019 Act

Under the direction of Justice BN Srikrishna, the High-Level Committee Report from 2017 will be implemented through the new Arbitration and Conciliation (Amendment) Act, 2019 (the "2019 Act"), which would change the Indian Arbitration and Conciliation Act, 1996 (the "1996 Act"). The Indian Parliament enacted the Arbitration and Conciliation Bill, 2019 (the "Bill"), and on August 9, 2019, the President of India granted his assent. The Indian Arbitration Council: The 2019 Act's most notable modification is the creation of the Arbitration Council of India (the "Council"), an independent organization. A judge of the Supreme Court, a judge or chief justice of the High Court, or a distinguished individual with extensive training and experience in arbitration will serve as the Council's chairperson. Prominent academicians, eminent arbitration practitioners with experience in institutional arbitration, and the Secretary to the Government of India in the Department of Legal Affairs would be among the other members of the Council. Promoting and encouraging arbitration, mediation, conciliation, and other alternative conflict resolution procedures is the responsibility of the Council. In addition, the Council will be in charge of upholding consistent professional standards for arbitration-related cases. The Council will also be in charge of grading arbitral institutions according to standards like the caliber and performance of arbitrators, as well as adherence to deadlines for concluding arbitral proceedings, with the declared aim of enhancing the standard of institutional arbitration in the nation. The 2019 Act also specifies the prerequisites for arbitrators to be accredited in India. In addition, the Council will examine arbitrator grading and, working with legal companies, conduct training sessions and seminars.

Confidentiality: According to the 2019 Act, the arbitrator, the arbitral institution, and the parties are responsible for maintaining the confidentiality of the arbitral proceedings. However, the 2019 Act stipulates that secrecy requirements will not be applicable in cases where the execution and enforcement of an arbitral ruling require the revelation of the award.

Protection for arbitrators: The 2019 Act seeks to offer additional comfort and protection to arbitrators and provides that no suit or legal proceedings can be brought against an arbitrator for anything which is done in good faith.

Time limits for pleadings and awards: Under the 1996 Act (modified in 2015), arbitral tribunals had to render decisions for all arbitration procedures within a 12-month window. This limitation for international business arbitrations is lifted by the 2019 Act, which also mandates that tribunals "must endeavor" to conclude international arbitration cases in a year. The 2019 Act establishes new deadlines for statements of claim and defense in domestic arbitrations, stating that they must be finished within six months of the arbitrator receiving the notice of appointment.

Arbitrators' appointments: Prior to the 1996 Act, the process for selecting arbitrators in the event of a dispute between parties frequently caused delays in the arbitration process. The 2019 Act gives the High Courts and the Supreme Court the authority to name arbitral institutions for the appointment of arbitrators that have been accredited by the Council. The goal of this is to have arbitrators appointed as soon as possible. Should there be no recognized establishments within the applicable area, the High Court will uphold a group of mediators to carry out the duties of the arbitral institutions.

Restrictions on setting aside an award: Previously, an award made in India could be set aside based on the proof provided by the parties on a limited number of grounds (such as the incapacity of the parties, the invalidity of the arbitration agreement, the lack of proper notice of arbitration, the tribunal acting outside the scope of its jurisdictions, etc.). These grounds were listed under Section 34(2)(a) of the 1996 Act. The 2019 Act limits the extent to which Indian courts may meddle, stating that they may only use the materials submitted to the appropriate arbitral tribunal in their motion to set aside an award.

The 2019 Act represents a significant shift in India's arbitration environment, and professionals should monitor any corresponding changes.