

AN OVERVIEW OF INDIA'S FIRST INSTITUTIONAL MECHANISM: MUMBAI CENTRE OF INTERNATIONAL ARBITRATION (MCIA)

I. Introduction: *Why Institutional Arbitration?*

The resolution mechanism of “Arbitration” which allows disputes between the parties to be resolved outside of the conventional court has gained significant prevalence and is often used to resolve commercial disputes, particularly in the context of international commercial transactions, cross border and domestic M&A deals, by incorporating a clause on reference to arbitration in case of any dispute between the parties in the transaction documents. The players opting for arbitration mechanism have an option to choose between “*ad hoc arbitration*” and “*institutional arbitration*”.

In the context of international commercial disputes, it is a popular opinion that irrespective of the higher cost element, institutional arbitration has an edge over the ad-hoc arbitration mechanism as it provides established & updated arbitration rules, support, direction & monitoring of the arbitration, review of awards thereby ensuring fairness, efficient trial, impartial, process and most importantly, strengthens the credibility of the awards.

II. MCIA: *Why we need our own domestic forum?*

The first set of institutional rules established were ICC Rules in 1922. Most of the existing institutional rules today share a common procedural framework for arbitral proceedings which are traceable to the said ICC rules. However, there are still considerable differences in these arbitral institutions which make one institution preferable over the other in some or the other aspects. Till now ICC International Court of Arbitration, Singapore International Arbitration Centre (SIAC) and London Court of International Arbitration (LCIA) were the prominently chosen institutional forums by the parties all over the world including Indian parties. Although the parties have a choice to agree on a domestic “venue” for the arbitration, needless to say, the high cost and logistic issues with these institutional mechanisms were the major deterrent to otherwise efficient and impartial dispute resolution mechanism.

Finally almost after nine decades, as a further “*Make in India*” initiative and a big step forward in establishing our own domestic institutional arbitration mechanism with a view to provide a convenient forum to Indian M&A players as well as attracting more global investments, the Government of Maharashtra long with the domestic and international business and legal communities announced the launch of “MCIA Rules” on June 15, 2016, as a first-of-its-kind arbitral institution in India.

III. MCIA: *Distinguishing Features*

MCIA, although established and framed largely in lines of arbitration institutions like SIAC and LCIA, it has certain distinguishing features which promises a more efficient and robust mechanism than any other existing forums. Set out below are few of these features:

1. Arbitral rules have been drawn on the latest innovations in international arbitration best practice and are also attuned to the Indian market;

2. Scrutiny of awards by the MCIA as a “sanity check”, to ensure that the award is sound and therefore less likely to be challenged in Indian courts.
3. Presence of a dedicated secretariat which facilitates the efficient, flexible, cost-effective and impartial administration of arbitration proceedings;
4. A good mix of both domestic and international arbitration practitioners in the MCIA council; and
5. World-class premises specifically designed for the conduct of arbitration hearings equipped with dedicated hearing rooms, break-out rooms and transcription facilities.

Additionally, the MCIA Rules and process have been designed in such a manner so as to ensure that expedited trials are available in more cases than as allowed under SIAC or other mechanisms. Under MCIA Rules, expedited trial is available, at a significantly lower cost, in cases where the amount in dispute at the time of application is lesser or the equivalent to INR 10 crore or for any dispute where in parties agree in writing for an expedited process.

MCIA’s fee structure has been structured to be cheaper than other international institutional arbitrations named above. MCIA shall also have a power to administer any arbitration where the seat of arbitration is not Mumbai and can administer arbitrations where the governing law of the parties’ contract is a law other than Indian law.

IV. MCIA: Where are we?

Till now, in the absence of an international arbitration centre, the majority of global disputes land at the SIAC or other forums. It has not only resulted in loss of revenue to Indian economy but also has been one of the concerns for global investors looking for a robust and impartial dispute resolution mechanism for their investments in India. The MCIA thus is focused on administering India-related arbitrations to international standards. Undoubtedly it is a remarkable step to establish India’s premier forum for commercial dispute resolution, but there are reservations and concerns being expressed by market players on MCIA’s future and acceptability as an alternative to established forums like SIAC and ICC which already enjoy the confidence of global investors and have surpassed the tests of “unbiased and efficient mechanism” with time. Bureaucracy from within the institution, which can lead to delays and additional costs, is another factor which raises a serious concern over the efficacy of an arbitration institutional mechanism in India.

All said and done, like any new and nascent institution, MCIA will also be required to pass the test of time and confidence of both global and domestic players. At this juncture, the structure, process and defined rules of MCIA appear to be more than promising and a well taken step towards “Make in India” initiatives!

The MCIA Rules are effective from the date of its notification. MCIA is all likelihood to be in operation from October 2016.