REPORT OF THE EXPERT COMMITTEE

FOR DRAFTING INSTITUTIONAL ARBITRAL RULES

FOR THE PROPOSED

INTERNATIONAL ARBITRATION CENTRE AT GIFT IFSC

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY

JULY 2024

SUBMISSION OF REPORT

Expert Committee for Drafting Institutional Arbitral Rules for the proposed International Arbitration Centre at GIFT IFSC and matters incidental thereto

16th July, 2024

To
Shri K. Rajaraman, Chairperson
International Financial Services Centre Authority
GIFT SEZ, GIFT City
Gandhinagar, Gujarat - 382 355

Dear Chairperson,

We, the Expert Committee constituted, vide Office Memorandum dated May 25, 2023, by the International Financial Services Centres Authority, are pleased to submit this Report in accordance with its mandate.

There are several International Arbitration Centres in the world. There are also arbitration centres in India under Indian laws. Replication of either model may not be entirely suitable for the International Arbitration Centre in the GIFT-IFSC. We have accordingly proposed an architecture that gels well with the relevant Indian statutes while emulating the global best practices in terms of technology as well as rules and procedures. Further, the provision of a standalone arbitration centre may not be adequate to meet the varying needs of the users, who may like to have various options for dispute resolution, including mediation. Therefore, we have proposed a framework for the Alternative Dispute Resolution Centre.

We thank you for providing us with this opportunity to put our thoughts together for building an important institution at GIFT-IFSC and sincerely believe that you will find it useful.

Sincerely,

(Bahram Vakil) Member	(J. Ranganayakulu) Member	(Shaneen Parikh) Member
(Naresh Thacker) Member	(Praveen Trivedi) Member	(Shreyas Jayasimha) Special Invitee

(M. S. Sahoo)
Chairperson

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LIST OF ABBREVIATIONS

ACI	Arbitration Council of India
ADGM	Abu Dhabi Global Market
ADR	Alternative Dispute Resolution
ADRC	Alternative Dispute Resolution Centre
AED	United Arab Emirates Dirham
A&C Act	Arbitration and Conciliation Act, 1996
BCI	Bar Council of India
BLRC	Bankruptcy Law Reforms Committee
CADR	Centre for Alternate Dispute Resolution
CEO	Chief Executive Officer
CIArb	Charted Institute of Arbitrators
CMO	Case Management Officers
CMC	Case Management Conference
COO	Chief Operating Officer
DIAC	Dubai International Arbitration Centre
DIFC Courts	Dubai International Financial Centre Courts
DIFC	Dubai International Financial Centre
DTS	Digital Transcription System
ESG	Environmental, Social, and Corporate Governance
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
FDRC	Financial Dispute Resolution Centre
FEMA	Foreign Exchange Management Act, 1999
FFZ	Financial Free Zone
FPE	Foreign Practitioner Examinations
GDP	Gross Domestic Product
GCC	Gulf Cooperation Council
GFC	Global Financial Centres
GIFT City	Gujarat International Finance Tec-City
HK Code	Hong Kong Code of Practice for Third-Party Funding
HKIAC	Hong Kong International Arbitration Centre
HKAO	Hong Kong Arbitration Ordinance
HKMA	Hong Kong Monetary Authority
IAC	International Arbitration Centre
ICAC	International Commercial Arbitration Centre
ICC	International Chamber of Commerce; International Commercial Court
IFCs	International Financial Centres
IFSC	International Financial Services Centre
IFSCA	International Financial Services Centres Authority
ICSID	International Centre for Settlement of Investment Disputes
IRDA	Insurance Regulatory and Development Authority
LCIA	London Court of International Arbitration
LLP	Limited Liability Partnership

MAS	Monetary Authority of Singapore
MCI	Mediation Council of India
MOU	Memorandum of Understanding
NCLT	National Company Law Tribunal
ODR	Online Dispute Resolution
OFCs	Offshore Financial Centres
PD	Practice Direction
PFRDA	Pension Fund Regulatory and Development Authority
PRI	Person Resident in India
PROI	Persons Resident Outside India
PTR	Pre-Trial Review
QIC	Qatar International Court
RBI	Reserve Bank of India
RHC	Hong Kong Rules of the High Court
RFC	Regional Financial Centres
SAR	Special Administrative Region
SCC	Stockholm Chamber of Commerce
SCT	Small Claims Tribunal
SEBI	Securities Exchange Board of India
SEZ	Special Economic Zone
SFC	Securities and Future Commission
SIAC Court	The Court of Arbitration of SIAC
SIAC	Singapore International Arbitration Centre
SICC	Singapore International Commercial Court
SILE	Singapore Institute of Legal Education
STVP	Short Term Visit Pass
SIMC	Singapore International Mediation Centre
TFCD	Task Force on Climate Related Financial Disclosure
ToR	Terms of Reference
TPF	Third-Party Funding
WHT	Withholding Tax
WPE	Work Pass Exempt

ACKNOWLEDGMENTS

In a market economy, disputes are inevitable due to the competitive nature of businesses vying for market share, resources, and profits, which can lead to conflicts over contracts, intellectual property, and regulatory compliances. On a global stage, the diversity of participants with varying interests and goals increases the likelihood of disagreements and misunderstandings. Disputes are costly for an economy because they dissipate valuable resources, such as time and money, that could otherwise be used for productive activities, and they create uncertainty that can deter investment and disrupt business operations. Effective dispute resolution mechanisms are essential to foster a stable business environment and minimise the costs and disruptions associated with prolonged disputes, which can hinder economic growth and productivity.

2. Government of India has a grand vision for the GIFT City. It is promoting the GIFT City as a hub of ingenuity and innovation. Considering its competitive advantage in the provision of alternate dispute resolution services for all kinds of commercial and financial disputes emanating anywhere in the world, the Union Budget for 2022-23 proposed to set up an International Arbitration Centre in the GIFT City for timely settlement of disputes under international jurisprudence. The International Financial Services Centres Authority (IFSCA) set the ball rolling by constituting this Expert Committee to draft Institutional Arbitral Rules for the International Arbitration Centre at GIFT IFSC and matters incidental thereto.

3. The Committee thanks Mr. Injeti Srinivas, the first Chairperson of the IFSCA, for providing it an opportunity to draft arbitral rules for the International Arbitration Centre in the GIFT City and for sharing his thoughts and expectations in the first meeting of the Committee. It also thanks Mr. K. Rajaraman, the present Chairperson of the IFSCA for passionately driving the Committee to finish its task and extending necessary support. The Committee acknowledges the continuous support and guidance from IFSCA and its officers, Mr. Ankit Bhansali and Mr. Kirankumar G. Giriyappanavar, without which this task could not have been completed. Special thanks go to Mr. Ranveer Kumar of IFSCA for the smooth facilitation of the virtual and in-person committee meetings and secretarial support.

4. To design an institutional framework at par with global standards, the Expert Committee had extensive consultations with industry experts and international arbitrators through virtual platforms. The Committee also engaged with third-party funders and other global experts to gain a deeper understanding of the expectations and concerns of the stakeholders. The Committee appreciates the interaction with Mr. Laurence Wong of Singapore International Commercial Court; Mr. Tom Glasgow of Omni Bridgeway, Singapore; Mr. Quentin Pak of Burford Capital, Singapore; Mr. Roger Milburn and Ms. Carolina Carlstedt of LCM Finance, Singapore; Mr. Sarbjit Singh of Duane Morris and Selvam LLP, and Mr. Ankit Goyal of Allen & Gledhill, Singapore. Their valuable feedback and input have been instrumental in designing the regulatory framework.

5. The Bridge Policy Think Tank provided excellent research support and produced several drafts of the report till members were completely satisfied. The Committee deeply appreciates the relentless support of Mr. Anuroop Omkar, Ms. Kritika Krishnamurthy and Ms. Leepaxi Gupta of Bridge Policy Think Tank for their

significant contribution from conducting the research to ensuring the accuracy and coherency of the report while also maintaining the overall quality.

6. I appreciate and acknowledge the contribution of each Member of the Committee who brought an immense wealth of knowledge, expertise, and curiosity, all of which were necessary to undertake a unique exercise like this. I am deeply grateful to each of them for their invaluable guidance, support, and dedication throughout this project. Their insightful feedback and encouragement have been instrumental in the successful completion of this work.

(Dr. M. S. Sahoo)

EXECUTIVE SUMMARY

1. Gujarat International Finance Tec-City (GIFT City) houses India's maiden International Financial Services Centre (GIFT-IFSC). The GIFT-IFSC provides services related to capital markets, insurance, banking, asset management, alternative investment funds, aircraft and ship leasing, and ancillary services. The Government of India has a clear vision and plan for the GIFT-IFSC. The Indian Finance Minister articulated:[1] "*Government's vision for GIFT-IFSC transcends much beyond the realm of traditional finance and ventures into the realm of thought leadership. We envision it as the true embodiment of Atmanirbhar Bharat, a hub of ingenuity and innovation*." The Prime Minister of India reiterated the government's commitment to take the GIFT City beyond traditional finance and ventures: "*We want to make GIFT City the Global Nerve Center of New Age Global Financial and Technology Services*", he said as he expressed confidence that the products and services provided by GIFT City will help solve the challenges facing the world and the stakeholders will have a huge role to play.[2]

2. A financial product is a bundle of contractual rights and obligations. The quality of the product depends on the quality of the institutions that ensure contract enforcement, including the resolution of disputes arising from the associated contracts. That is why a financial product in one market/ jurisdiction differs from a similar product in another market/ jurisdiction, unlike physical products which are more or less uniform across geographies. A market is preferred where the institutions for contract enforcement and dispute resolution are better, which is a key parameter of competition among international financial services centres (IFSCs). Some market segments like the trading of securities have institutionalised processes that generate contracts online and enforce them automatically, minimising contract failures and disputes.

3. Yet, it is extremely important for an IFSC to have a robust mechanism for dispute resolution to assure businesses and investors that their disputes will be resolved swiftly, fairly, and professionally if any of their transactions end up in dispute. Most global financial centres provide tailor-made dispute resolution services to maintain their attractiveness. Globally, there is a marked preference for alternative dispute resolution over traditional resolution by the judiciary. Indians are increasingly opting for the resolution of their disputes at ADR institutions outside India. Catering to Indian disputants has become a top priority for such institutions as they constitute the leading foreign users of their services. A recent landmark judgment of the Supreme Court of India has given its seal of approval to Indian parties opting for a foreign seat of arbitration.[3] The global market for alternative dispute resolution services is estimated at USD 14.50 billion by 2030.

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[1] Finance Minister address during her visit to IFSCA at GIFT-IFSC on August 19, 2023.
[2] Prime Minister at the Infinity Forum 2.0 on December 9, 2023.
[3] PASL Wind Solutions v. GE Power Conversion India, Civil Appeal No. 1647 of 2021

4. As reiterated in the vision, IFSC is not just a financial centre; it is to be a hub of ingenuity and innovation. India has a huge natural hinterland as well an abundance of competent professionals, and a flourishing commercial jurisprudence, which has the potential to support efficient and cost-effective alternative dispute resolution services. In recognition of this potential, the need, and vision, the Union Budget for 2022-23 proposed: "*An International Arbitration Centre will be set up in the GIFT City for timely settlement of disputes under international jurisprudence*."[4] Accordingly, the International Financial Services Centres Authority (IFSCA) constituted an Expert Committee comprising legal luminaries and market experts to draft institutional arbitral rules for the proposed International Arbitration Centre (IAC) at GIFT City and matters incidental thereto, including suggesting a roadmap for making it a hub for alternative dispute resolution for international financial and commercial disputes and recommending a regulatory and legal framework for the proposed dispute resolution centre.

5. There are several international arbitration centres in the world. There are also arbitration centres in India under Indian statutes, though they are yet to reach the scale seen internationally. Replication of either model may not be entirely suitable for IAC in the GIFT City. The IAC should gel well with the relevant Indian statutes while emulating the global best practices in terms of technology as well as rules and procedures. Further, the provision for a standalone arbitration centre may not be adequate to meet the varying needs of the users, who may like to have various options for dispute resolution, including mediation. Therefore, the Committee has proposed a framework for an effective and comprehensive Alternative Dispute Resolution Centre (ADRC).

6. The Expert Committee studied the regulatory and institutional frameworks of well-established institutions such as Singapore International Arbitration Centre (SIAC), Singapore International Commercial Court (SICC), Hong Kong International Arbitration Centre (HKIAC), the London Court of International Arbitration (LCIA), and Dubai International Arbitration Centre (DIAC) among others. It engaged with international dispute resolution professionals and representatives from dispute resolution centres to understand the design features of an effective and competitive ADRC at the GIFT-IFSC. These helped the Committee to lay down the following guiding principles for the design of the ADRC:

- Party autonomy is the foundation of a successful ADRC. The parties to the dispute at GIFT City ADRC shall have unfettered freedom of the choice of the law and dispute resolution professional for the resolution of their disputes;
- The ADRC shall provide comprehensive alternative dispute resolution services to meet the diverse needs of the parties to the disputes. It shall provide traditional alternative dispute resolution services like arbitration and mediation, but also any hybrid of them and emerging alternatives, online, off-line and assisted online, for all

[4] Government of India, Union Budget for 2022-23.

kinds of commercial, financial, and other disputes, between/ among parties like private-private, government-private, and government-government, domestic and foreign;

- The ADRC shall adopt the global standards of resolving international commercial disputes, including its autonomy to modify its rules and procedures with ease to keep up with the fast-changing times and user demands in dispute resolution; and
- The institution shall be fully equipped to harness and integrate evolving technologies to enhance the efficiency and effectiveness of the dispute resolution process at ADRC.

7. The Committee has recommended a framework for the ADRC that provides arbitration and mediation to start with but has the flexibility to accommodate other forms of alternate dispute resolution mechanisms, including the forms that may evolve in the times to come. The specific recommendations of the Committee are discussed below.

8. Statutory Framework

8.1 The International Financial Services Centre Authority Act, 2019 is an umbrella legislation that enables the use of Indian statutes with certain modifications to the activities and entities in the GIFT-IFSC. This is also the typical approach with most other international financial centres. The Committee, therefore, proposes using four extant legislations, namely, the International Financial Services Centre Authority Act of 2019, the Arbitration and Conciliation Act of 1996, the Mediation Act of 2023, and the Special Economic Zones Act of 2005, with minimum changes, to develop and support the ADRC. These changes will be introduced through an amendment to the IFSCA Act, inserting the Third Schedule that amends the other three enactments only to the extent they apply to arbitrations seated at IFSC and other ADR mechanisms having a place of resolution at IFSC. *[Para no. 4.9]* A draft bill to amend these legislations is in Annexure III.

8.2 The extant statutes envisage the Arbitration Council of India (ACI) and Mediation Council of India (MCI) for developing and regulating arbitration and mediation in the country. Every regulation made by ACI, however, may not be equally helpful for arbitration in mainland India as well as for the ADRC in the GIFT City. In that case, carve-outs from or amendments to such regulations would be necessary to meet the needs of the ADRC in the GIFT City, just as amendments to the Arbitration and Conciliation Act are now proposed. In the alternative, the MCI may make two sets of regulations- one for mediation in mainland India, and the other for the ADRC in the GIFT City. This may not be practical, particularly when such regulations require prior approval of the Central Government. The Committee, therefore, proposes modification of statutes to enable IFSCA, which is practically an international regulator and closer to the ADRC, to discharge the duties and functions of the ACI and MCI in relation to the ADRC in the GIFT City. This may not be burdensome as the Committee envisages

a relatively lighter role for ACI and MCI in relation to the ADRC. *[Para no 4.10.2 - 4.10.4].*

8.3 The law needs to unambiguously allow Indian parties the choice of governing law for dispute resolution through arbitration. For example, if an international corporation decides to set up its aircraft leasing at GIFT City and it wishes to enter into long-term, high-value aircraft leases with companies all over the world, including India, it should not be restricted in the choice of law and courts for enforcement for its contracts. The Committee, therefore, proposes to allow the parties, Indian or foreign, to a contract to opt for IFSC as a seat for arbitration, and if they do so, they would have the option to choose foreign or Indian governing law – law of contract, law of arbitration and jurisdiction. This needs to be explicitly provided in the Arbitration Act to avoid possible challenges on the grounds of public policy envisaged under the Indian Contract Act. [*Para no 4.11.5 - 4.11.19].* A similar amendment is not required in the Mediation Act, since mediation is not an adjudicatory mechanism and the place of mediation does not hamper party autonomy.

8.4 ADRC envisages the resolution of disputes emanating from contracts executed anywhere in the world under laws of any jurisdiction among the parties from any nation. In such cases, arbitration acquires true international character, and therefore arbitrations seated at GIFT City should be considered as 'international commercial arbitration' under the Arbitration and Conciliation Act, 1996. The Committee proposes an amendment to the Act to this effect. This shall automatically ensure that any court assistance required to bring these arbitrations to fruition shall be provided by the High Court. *[Para no 4.11.2 - 4.11.4]* A similar amendment is proposed in the Mediation Act of 2023 to ensure mediation-related disputes from GIFT City are referred to the High Court. *[Para no. 4.13.2]*

8.5 The law should provide for an expeditious arbitration process as well as the enforcement of awards. To expedite the process, parties may have a choice to have document-only arbitration. Further, the ADRC may have standard operating procedures that provide for timelines for each step of the arbitration process. Failure to adhere to timelines should attract financial disincentives for professionals. *[Para no 4.11.20 – 4.11.21]* The parties should be discouraged from resorting to multiple rounds of judicial challenges and/or refusing to enforce arbitral awards, with or without a court order. To minimise judicial challenges, an application to set aside an arbitral award should be filed within 21 days from receipt of the award. The Court should dispose of applications to set aside arbitral awards and appeals within 90 days from the submission of all written pleadings. Adequate case management systems should ensure adherence to timelines for the submission of written pleadings and avoid unnecessary extensions of time. Further, a second appeal can be preferred to the Supreme Court of India only by way of special leave petitions. [*Para no. 4.11.22 to 4.11.25*]

8.6 Disputes tend to hamper liquidity available for businesses. Third-party funding of arbitrations has emerged to address this. Such funding is permissible under the laws in India if it is not provided by the professional engaged in dispute resolution. However, the Arbitration and Conciliation Act of 1996 discourages it by disallowing the sharing of updates concerning the arbitration with the third-party funder. The Committee, therefore, recommends that third-party funding in GIFT City may be expressly permitted through subordinate legislation to align with practices in established financial centres like Singapore, Hong Kong, and Dubai. Adequate rules, standard operating procedures, and guidance notes for arbitrations ensuring proper disclosure of such arrangements, avoiding conflict of interest situations, and overcoming barriers of privilege and security for cost orders are also recommended. [*Para no 4.11.26 and 4.14.6*]

8.7 The Committee had in-depth deliberation for and against accreditation and grading of ADR professionals which is part of the terms of reference of the Committee. The majority felt that such a practice is dated and hampers party autonomy. Accordingly, the provisions relating to accreditation and de-accreditation in the Arbitration and Conciliation Act and the Mediation Act shall be deleted. *[Para no 4.11.27- 4.11.28] and [Para no. 4.13.3]*

8.8 The Special Economic Zones Act, 2005 provides for dispute resolution in SEZs. This Act applies to the GIFT City which is a SEZ. Since a dedicated and comprehensive ADRC is being proposed for dispute resolution in the GIFT City, the provisions relating to dispute resolution under the SEZ Act shall not apply to dispute resolution in the GIFT City. *[Para no. 4.12]*

8.9 At present, GIFT City has an IFSC. Over time, the country may have many IFSCs. The statutory framework now proposed should apply to ADRCs located in IFSCs, existing or that may come up in the future.

8.10 The laws may be amended to enable the development of an ADR ecosystem that facilitates institutional service providers to provide ADR services at the ADRC in the GIFT City.

9. ADRC Structure

9.1 Usually, the market on its own does not come up with such institutions as ADRC. The authorities cajole and incentivise the market to promote ADRC and they support the ADRC in all possible manners in the initial days to demonstrate their commitment to the institution and build the trust of stakeholders. For example, the Government, in association with the trade associations and professional bodies, commenced major ADR institutions in the United Kingdom and Singapore but released them from its shadow soon after to operate autonomously. The Committee, therefore, recommends that the Government and the IFSCA promote the setting up of the ADRC and facilitate

its operations in the initial days, including financial support preferably by way of grants. They must not influence the working of the ADRC to build the right perception that the ADRC is truly autonomous and professionally run.

9.2 The Committee recommends that the ADRC shall be established as a section 8 company (not-for-profit) under the Companies Act, 2013. *[Para no 5.2.1- 5.2.5]* It is the typical structure adopted by all international institutions providing ADR services to avoid conflict of interests. The shareholding of ADRC shall be governed by the following guiding principles: (a) No conflict of interest, (b) Prevention of undue concentration of shareholding, and (c) Fair representation through representative institutions. The shares of the ADRC shall be available for subscription only to institutions and not individuals. The holding of an institution, along with persons acting in concert, maybe pegged at 5%. *[Para no 5.3.1- 5.3.4]*

9.3 The ADRC's governance structure will include a Board of Directors responsible for corporate governance and regulatory compliance, an International Advisory Council comprising 10-15 global experts providing strategic guidance, an Executive Council offering procedural counsel to the Secretariat, and a Secretariat managing day-to-day operations, headed by a CEO. *[Para no 5.4.3- 5.4.12]*

9.4 The ADRC shall be autonomous with its own self-regulating institutional rules of procedure. It shall amend its rules and issue guidance notes for practitioners on its own from time to time like any other international ADRC. The process of amending the Rules of ADRC should be minimalistic so that they can keep up with evolving international trends. The institutional rules of the ADRC shall include aspects such as a robust case management system, expedited timelines, foreign representation, use of technology, multi-lingual awards, and foreign industry experts among others. They should allow for ease of day-to-day operations and fast decisions on any technical issues faced by administrative staff. They should disincentivise frivolous challenges to proceedings through measures such as the imposition of penalties and disincentives for neutrals engaging in behaviour that induces delays. A draft of the rules proposed for arbitration proceedings and mediation meetings is provided in this Report. *[Annexures IV and V]*

10. Court system for GIFT-ADRC

10.1 For ADR users to derive actual value from arbitration and mediation, enforcement of awards and mediation settlement agreements need to be fast-tracked. The Committee recommends a three-phase transition of the court system for the ADRC. In Phase I, immediately with the constitution of ADRC, a bench of the Gujarat High Court shall be designated for matters arising out of the ADRC in the GIFT City. This does not require any statutory change. In Phase II, a separate High Court shall be established for all IFSCs in India. This High Court shall be named IFSC International Court and shall have all powers of a High Court other than the writ and criminal jurisdiction. This Court

shall act as the court of first instance and the court of appeal for all ADR matters arising from IFSCs. In Phase III, international judges may be allowed to sit in the IFSC International Court. This is the prevalent practice in Singapore and Dubai. Many retired Indian judges are already providing their services abroad to ease the interpretation of Indian law. Phase II and Phase III may require amendments to the Constitution of India. Countries like Singapore and Dubai have amended their respective constitutions to allow international judges.

10.2 To expedite the enforcement of arbitral awards passed in an arbitration having the seat at an IFSC, the Committee recommends developing Special High Court Rules for IFSC Courts. These Rules should allow the International IFSC Court to have exclusively designated officers such as registrars and bailiffs to ensure the effective execution of awards and judgments. The need for detailed case management rules and provisions for cost for the delay in statutes is emphasised. *[Para no 6.4.15- 6.5.11]*

10.3 The majority agreed that the number of appeals against arbitration awards should be reduced to provide a competitive advantage to the ADRC. Therefore, parties may file an application to set aside arbitral awards, however, if they're dissatisfied with the order, they may approach the Supreme Court under Article 136 (Special Leave Petition) rather than filing an appeal. *[Para no 4.11.25]*

11. Alternate Dispute Resolution Professionals

11.1 The majority (except the Chairman of this Committee, Dr. Sahoo) held the view that the ADRC shall not have any system of accreditation and de-accreditation of professionals who may provide services at the ADRC. To this extent, provisions in the Arbitration Act and the Mediation Act shall not apply to the alternate dispute resolution professionals in GIFT-ADRC. The ADRC, however, shall have a database of available neutrals for instances where parties themselves request the appointment of a neutral. *[Para no 5.6.1- 5.6.7]*

11.2 Dr. Sahoo has submitted a different view annexed to this report arguing for a system that allows an individual, who meets a threshold level of ability and conduct, to practise a profession, and debars him from practising whenever he fails to meet the norms. *[Para no 5.6.5 & Annexure I]*

11.3 The GIFT-ADRC shall have a code of ethics to which all dispute resolution professionals must adhere. The professionals providing their services to the ADRC shall be required to sign a declaration stating that they shall abide by the code of ethics while providing services in the ADRC. *[Para no 5.5.7]*

12. Roadmap

12.1 The Committee suggests that the work relating to the setting up of ADRC should be initiated by IFSCA, while parallelly trying to achieve the statutory amendments recommended in this Report. This will include establishing the secretariat and inviting experts to the international advisory committee and executive committee, and facilities for online dispute resolution to ensure easy access to ADRC. Key steps and way forward are elaborated in this Report. *[Para no. 7.1 to 7.8]* This should be accompanied by taking the High Court of Gujarat in confidence to set up a separate bench of the High Court for all ADR matters arising out of GIFT City.

12.2 After setting up the ADRC, its facilities should be marketed and promoted through roadshows, social media campaigns, workshops, conferences, and seminars in India and internationally to build a brand identity and gain visibility among its target user base. International personalities of eminence in the field of dispute resolution must be engaged to enhance ADRC's global visibility while attracting foreign investors and strengthening the overall reputation of the Centre among its international counterparts. *[Para no 7.8.1].* International businessmen and professionals may be invited to GIFT City to witness the capabilities and potential of ADRC first-hand and they should become ambassadors of the ADRC. *[Para no 7.3 - 7.6]*

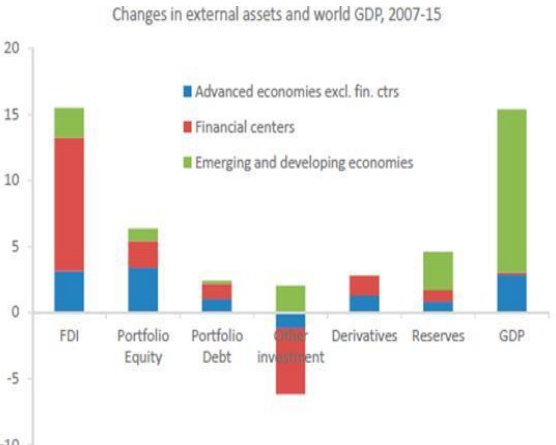
12.3 A real-time centralised database should be instituted that captures data on ongoing matters, tracks progress and provides information on engaged dispute resolution professionals and case management officers. This public database can help facilitate easy access to crucial information, reducing delays, and ensuring accountability. *[Para no 7.9.1]* A Standing Committee should be constituted for GIFT-ADRC which regularly evaluates data relating to processes and outcomes to draw lessons and suggest evidence-based changes to the legal and regulatory framework governing the ADRC. *[Para no 7.7.1 - 7.7.3]*

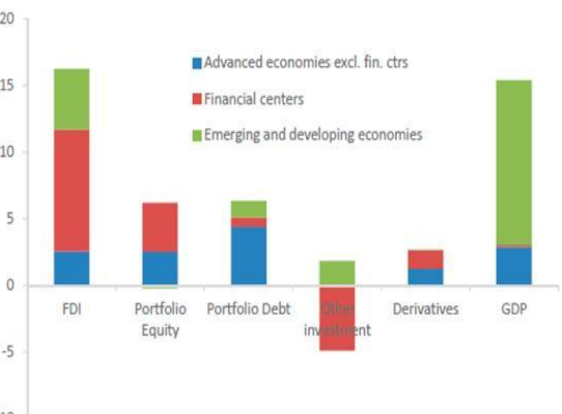
12.4 Visa and work pass facilitation should also be streamlined for foreign dispute resolution professionals. *[Para no 7.12.1 - 7.7.3]* The registration procedure for foreign lawyers and law firms in IFSC may be restructured and streamlined like other established jurisdictions like Singapore and Hong Kong to allow foreign practitioners to represent their clients in arbitrations and, if necessary, court proceedings arising out of ADRs at the IFSC International Court. Concessional policies and avoidance of double taxation should also be facilitated to attract foreign dispute resolution professionals. *[Para no 7.10.1 - 7.11.4]*

1. Background

1.1 In his seminal work 'The Formation of Financial Centres', economist Charles P. Kindleberger in 1974 not just predicted the creation of the currency Euro but also explained how the oldest financial centres of the world like London, Paris, Berlin, Turin, New York and Toronto were created because of concentration of capital, ease of transport, culture of trade and policy interventions. He also explains how one financial centre like New York fuelled the growth of others like London and Paris.[5] Studies have shown how this international axis between international financial centres spreads global financial crisis and there is a need for decentralisation of financial assets to create macroeconomic stability.[6]

1.2 Sensing the above, since the last international financial crisis of 2007, emerging economies of the world and global financial centres have contributed to a higher proportion of the world's gross domestic product ("GDP") as compared to the advanced economies of the world.[7] Majority foreign direct investment ("FDI") as a proportion to world GDP internationally is being held in global financial centres of the world.





1.3 With the emergence of International Financial Services Centre ("IFSC") at Gujarat International Finance Tec-City ("GIFT City"), Gandhinagar,

[5] Charles P. Kindleberger, The Formation of Financial Centers: A Study in Comparative Economic History, Princeton Studies in International Finance No.36, ISSN 0081-8070, Princeton University Press, New Jersey, 1974, available at: https://ies.princeton.edu/pdf/S36.pdf (last accessed on January 24, 2024)

[6] Dariusz Wójcik, The dark side of NY-LON: Financial centres and the global financial crisis, Working Papers in Employment, Work and Finance No. 11-12, University of Oxford, 2011, available at: https://ora.ox.ac.uk/objects/uuid:feb2a2bb-2ed9-4163-b37b-5c47a62b1f02/download_file?file_format=application%2Fpdf&safe_filename=geog11-12.pdf&type_of_work=Working+paper (last accessed on January 24, 2024)

[7] Philip R. Lane and Gian M Milesi-Ferretti, International Financial Integration in the Aftermath of the Global Financial Crisis, IMF Working Paper No.2017/115, International Monetary Fund, May 2017, available at: https://www.elibrary.imf.org/view/journals/001/2017/115/article-A001-en.xml (last accessed on January 24, 2024)

India is poised to take the economic advantage of being an emerging economy with a state-of-the-art global financial centre.

1.4 A global financial centre generally reduces currency risk by allowing trade in freely convertible currency clubbed with a low country risk of the host country. This translates to the host country having a good foreign investment reputation, sound financial market infrastructure, and favourable tax policies. Most importantly, global financial centres offer a good reputation in the enforcement of commercial rights of the parties.[8] It is interesting to note that financial centres like London, Paris and New York which were studied by Kindleberger in the early 1970s subsequently became hubs of international commercial dispute resolution and still remain relevant to this day as key financial centres of the world.

1.5 Research suggests that more investors are opting to resolve disputes in international financial centres through arbitration or mediation instead of opting for judicial proceedings in London and New York.[9] To capitalise on this international supply gap, it is important for India to leverage its combined strength of emerging economy with an international finance centre to transform IFSC as a prominent legal hub for commercial dispute resolution. In alignment with this, the Government of India announced, in the budget speeches of 2022-23 and 2023-24, the plans for establishing the International Arbitration Centre at GIFT City and amending the IFSCA Act to incorporate statutory provisions for arbitration.[10]

1.6 IFSC stands poised to become a premier financial services hub, attracting investments, innovation, and cross-border trade. It offers its participants globally benchmarked policies and regulatory structures that are carefully curated to foster financial growth and technological evolution. Since IFSC is committed to providing participants with a sustainable framework that encourages long-term engagement with the jurisdiction, it is imperative to provide mechanisms to resolve commercial conflicts as seamlessly as other regulatory proceedings at IFSC. This is a key consideration for potential participants, as they wish to ensure a secure, conclusive, and enforceable decision to end future disputes. It is also an important component of ease of doing business.

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[8] Mathew S. Erie, The new legal hubs: The emergent landscape of international commercial dispute resolution, Virginia Journal of International Law, Volume 60(2), 2020, available at: https://heinonline.org/HOL/LandingPage?handle=hein.journals/vajint60&div=11&id=&page= (last accessed on January 24, 2024)

[9] E.E. Petrovna et al., New Trends in Developing Alternative Ways to Resolve Financial Disputes, Journal of Politics and Law, Volume 13(3), 2020, available at: https://heinonline.org/HOL/LandingPage?handle=hein.journals/jpola13&div=84&id=&page= (last accessed January 24, 2024)

[10] Budget 2023-24, Government of India, February 1, 2023, Page 23, available at: https://www.indiabudget.gov.in/doc/bspeech/bs2023_24.pdf (last accessed February 9, 2024)

1.7 The availability of a robust dispute resolution system is a core pillar for creating a stable and business-friendly environment. It helps enhance the ease of doing business in any country. This, in turn, would promote an influx of investment and can significantly boost the national economy. Experiences of international financial centres worldwide indicate that a special dispute resolution framework was required to tackle disputes that arise within such setup. An efficient dispute resolution mechanism is essential to foster a conducive business environment. However, global international financial centres have different approaches to addressing this requirement. Dispute resolution centres are designed with different features and structures based on the objectives sought to be achieved with their establishment. They are majorly influenced by factors such as the timeline for resolving disputes, the judicial framework of the jurisdiction, the legal system followed, the regulatory framework, etc.

1.8 Hong Kong established the Financial Dispute Resolution Centre ("FDRC"), which acts independently and impartially to resolve financial disputes between financial institutions and the concerned parties. Similarly, the Dubai International Financial Centre ("DIFC") established a completely independent legal and regulatory framework separate from its domestic jurisdiction through a constitutional amendment.[11] It is modelled on international practices and follows the English common law approach. DIFC has a separate judiciary featuring a mixed bench of experienced local judges and eminent foreign jurists from the United Kingdom and various Commonwealth countries. This makes it an attractive place for parties to approach for dispute resolution.

1.9 Similarly, the Abu Dhabi Global Market ("ADGM") provides a common law system distinct from the civil law system found in onshore UAE and is not subject to onshore UAE civil and commercial laws. ADGM Courts operate as an alternative to onshore courts, using English law as their foundation to address civil and commercial disputes at both international and domestic levels. Further, the use of common law makes it a more attractive destination for parties to international contracts and cross-border disputes. Apart from being reputed and trusted, the essence of the common law is that the fundamental principles of English contract law have been developed by judges over the years. Moreover, it is followed strictly, by abiding precedents, which creates a level of predictability that is viewed as advantageous by those bringing commercial disputes to English courts. Hence, it is favourable for parties to opt for common law to resolve their disputes.

1.10 Likewise, the Singapore International Arbitration Centre ("SIAC") was also set up in 1991 as an independent and not-for-profit organisation to provide a neutral

[11] Legal Framework, DIFC Courts, available at: https://www.difccourts.ae/about/difc-courts (last accessed on November 30, 2023)

and efficient dispute resolution platform for the domestic as well as international business community. Over the years, it has gained an international reputation as an attractive global financial centre due to its effective and user-friendly approach, world-class infrastructure to facilitate physical, virtual and hybrid proceedings, and diverse panel of experienced arbitrators from around the world.

1.11 Given the increasing significance of mediation, conciliation and other alternative dispute resolution mechanisms in addressing commercial and financial disputes, the Committee recommends establishing an all-encompassing Alternative Dispute Resolution Centre at IFSC ("ADRC"). This shift from the initially proposed International Arbitration Centre in the annual budget of 2022-2023 aims to bolster the nation's position on the global stage by adopting a comprehensive approach to dispute resolution, moving beyond a singular focus on arbitration-led dispute resolution services.

1.12 With the country poised to reach the 10 trillion economy mark by 2030,[12] India stands at a stage where international businesses have renewed interest in entering the Indian market. The IFSC, set up and operationalised in 2015,[13] seeks to bring financial services carried outside India to a centre designated for all practical purposes, as a location with the same ecosystem advantage as their present offshore location, but which is physically in India.

1.13 By exercising the powers of four financial sector regulators, viz. the Securities and Exchange Board of India ("SEBI"), the Reserve Bank of India ("RBI"), the Insurance Regulatory and Development Authority ("IRDA"), and the Pension Fund Regulatory and Development Authority ("PFRDA") in relation to financial products, financial services and financial institutions in IFSCs, the International Financial Services Centres Authority ("IFSCA") has become a unified single window regulator tasked with accelerating the development of IFSC as a global financial hub with improved ease of doing business for both national and international institutions. However, ease of doing business is guided by multiple parameters, one of which includes providing effective dispute resolution services.

[12] Rishabh Sharma, India's growing strides towards 10 trillion-dollar economy, Invest India, National Investment Promotion and Facilitation Agency, Government of India, January 11, 2023, available at: https://www.investindia.gov.in/team-india-blogs/indias-growing-strides-towards-10-trillion-dollar-economy ; India set to become $10 trillion economy by 2030, says Hardeep Singh Puri, Business Standard, September 16, 2022, available at: https://www.business-standard.com/article/economy-policy/india-set-to-become-10-trillion-economy-by-2030-says-hardeep-singh-puri-122091600101_1.html last accessed on January 25, 2024)

[13] Operational Guidelines on International Financial Services Centre (IFSC), RBI/2014-15/530, Reserve Bank of India, March 31, 2015, available at: https://rbidocs.rbi.org.in/rdocs/notification/PDFs/92APDIRIFSC0104.pdf (last accessed on February 9, 2024); Press Release, International Financial Services Centre (IFSC), Ministry of Finance, Press Information Bureau, Government of India, March 1, 2015, available at: https://pib.gov.in/newsite/PrintRelease.aspx?relid=116213 (last accessed on February 9, 2024)

1.14 Given that trust is one of the key determinants for the success of international financial centres globally,[14] the need for an effective dispute resolution system that can be relied upon becomes a matter of great significance. A reliable dispute resolution system shall not only bolster the credibility of the financial services offered in IFSC but also provide a structured mechanism for resolving disputes, instilling confidence among domestic and international stakeholders. The present regulatory framework for the IFSC needs to provide an expeditious and streamlined regulatory framework for effective dispute resolution for entities established in the IFSC. The applicability of multiple judicial mechanisms under different laws further complicates the landscape, making it challenging for entities to navigate the dispute resolution process. Hence, integrating a robust alternative dispute resolution framework within the IFSC is necessary and a crucial step towards fostering a business-friendly environment.

1.15 Additionally, the growing market for dispute resolution is expected to rise in the coming years, with projections indicating a staggering USD 14.50 billion market size by 2030.[15] Beyond the quantitative allure of tapping into Asia's disputes market, the proposed ADRC can act as a strategic instrument for reclaiming disputes that have historically favoured foreign seats for ADR. In 2020, Indians represented the highest number of nationalities among parties from South & East Asia in the International Chamber of Commerce Centre of ADR.[16] Furthermore, the 2022 Annual Reports of SIAC revealed that India, China, and the USA are the leading foreign users of SIAC.[17] The escalating preference for foreign ADR centres is also evident in the increase in the number of Asians preferring the London Court of International Arbitration ("LCIA") in the period between 2021 and 2022.[18]

1.16 Moreover, the recent landmark judgment of the Supreme Court,[19] allowing two domestic parties to opt for a foreign seat in arbitration has raised the likelihood of an increase in disputes relocating from India to foreign jurisdictions to deal with lengthy court proceedings in India. While the exact number of cases diverted or could potentially be diverted from India remains abstract due to the discreet

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[14] Adam Church, The Rise-and-Fall of Leading International Financial Centers: Factors and Application, Michigan Business and Entrepreneurial Law Review, Vol 7, Issue 2, 2018, available at: https://repository.law.umich.edu/mbelr/vol7/iss2/5/ (last accessed on January 27, 2024)

[15] Conflict resolution solutions market size and share analysis – Growth trends and forecasts (2023-2030), available at: https://www.coherentmarketinsights.com/industry-reports/conflict-resolution-solutions-market (last accessed on January 25, 2024)

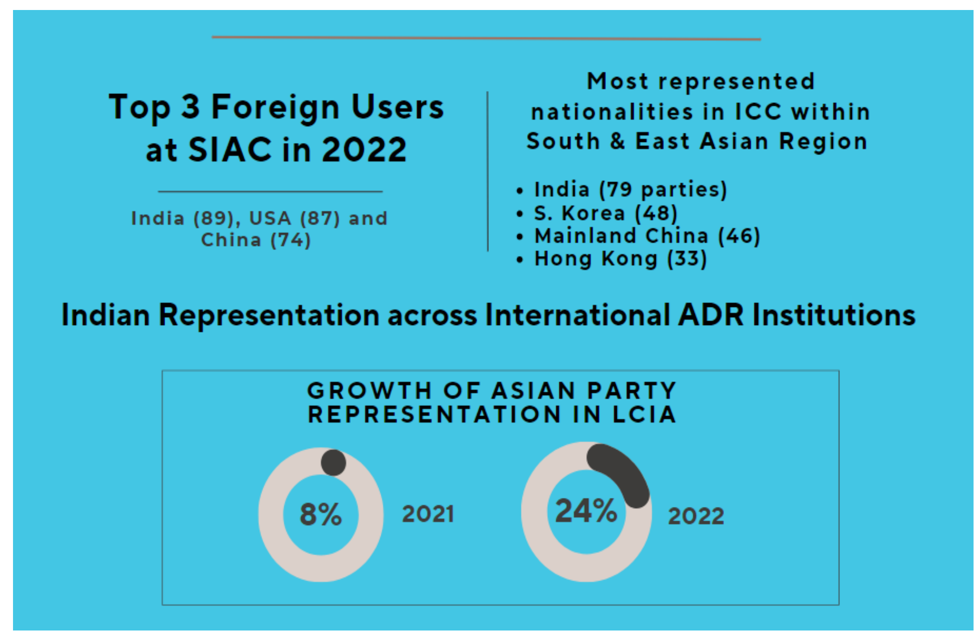
[16] ICC Dispute Resolution 2020 Statistics, ICC Dispute Resolution Services, International Chamber of Commerce, 2021, available at: https://jusmundi.com/en/document/pdf/publication/en-2020-icc-dispute-resolution-statistics (last accessed on January 21, 2024)

[17] Annual Report 2022, Singapore International Arbitration Centre, Page 22, available at: https://siac.org.sg/wp-content/uploads/2023/04/SIAC_AR2022_Final-For-Upload.pdf (last accessed on January 21, 2024)

[18] Annual Casework Report, London Court of International Arbitration, 2022, Page 15, available at: https://www.lcia.org/media/download.aspx?MediaId=935 (last accessed on January 21, 2024)

[19] PASL Wind Solutions v. GE Power Conversion India, Civil Appeal No. 1647 of 2021.

and confidential nature of arbitration disputes, the loss of market of disputes from India highlights the need for a more efficient and robust ADR centre.



1.17 Hence, by creating an ADRC and offering a reliable and efficient platform for resolving commercial disputes, India can incentivise substantial foreign investment from Asian countries, which shall help foster economic growth, job creation, and ease of doing business within the country. The benefits of ADRC are manifold and is likely to be a game-changer for India's economic landscape.

1.18 **Working Process of the Expert Committee**

1.18.1 International dispute resolution institutions worldwide typically draft their own rules governing their process. In practice, these rules are designed and drafted by a panel of legal luminaries who are experts in international arbitration. Therefore, an Expert Committee was constituted via an Office Memorandum dated May 25, 2023, by the IFSCA to draft institutional arbitral rules and matters incidental thereto.

A. Terms of Reference

1.18.2 As per the Terms of Reference ("ToR"), the Committee will suggest and guide in preparing a roadmap for making GIFT-IAC a hub for alternate dispute resolution of international financial and commercial disputes. The ToR for the Committee are as follows:

(i) To suggest and guide in preparing a roadmap for making GIFT-IAC a hub for alternative dispute resolution of international financial and commercial disputes.

(ii) To suggest regulatory design, legal framework including regulations, and procedures of the proposed dispute resolution centre in relation to:

a) Institutional framework for the legal and administrative structure of the proposed GIFT-IAC and the roles and responsibilities of its governing body;

b) Institutional rules for arbitration, mediation, and other hybrid mechanisms of alternative dispute resolution, such as mediation-arbitration, arbitration-mediation-arbitration, neutral evaluation, etc.;

c) Institutional framework for online dispute resolution, third-party funding in alternative dispute resolution proceedings and technology-related services existing in major established dispute resolution centres;

d) Assessment criteria for accreditation, empanelment, and grading including without limitation arbitrators, mediators, international financial experts, counsels appearing for the parties, etc;

e) Code of Conduct of mediators, arbitrators, international financial experts, to be empanelled for the GIFT-IAC;

f) To develop a set of core standards for case management to strengthen the quality of services and ensuring effective management of proceedings as per international standards; and

g) Amendments or modifications, if any, needed in any existing enactments or policy changes.

h) The Committee may also examine and address any other relevant matter by its own or as may be referred to it by the Chairperson, IFSCA.

(iii) The Committee may devise its own procedures for conducting its business/meetings/ field visits/ delegation/ constitution of sub-groups.

B. Composition

1.18.3 The Composition of the Expert Committee was as under:

(i) Dr. M. S. Sahoo, Distinguished Professor, National Law University Delhi - Chairperson

(ii) Mr. Bahram Vakil, Founder & Managing Partner, AZB & Partners - Member

(iii) Mr. J. Ranganayakulu, Former Executive Director, SEBI - Member

(iv) Ms. Shaneen Parikh, Partner and Head of International Arbitration, Cyril Amarchand Mangaldas - Member

(v) Mr. Naresh Thacker, Partner and Practice Head of Litigation, Arbitration and Dispute Resolution, Economic Laws Practice - Member

(vi) Mr. Praveen Trivedi, Executive Director, IFSCA - Member

(vii) Mr. Ranveer Kumar, Assistant General Manager, IFSCA - Co-ordinator

1.18.4 In the second meeting of the expert committee, it was decided to invite Mr. Shreyas Jayasimha (Partner, Aarna Law) to all future meetings of the Committee, considering his contribution to the Dr. Viswanathan Committee and his work in the area of alternative dispute resolution.

1.18.5 Copy of the Office Memorandum regarding the Expert Committee's constitution, the committee members' details, and detailed ToR for the Committee is annexed at **Annexure II.**

C. Meetings & Stakeholder Discussions

1.18.6 The Expert Committee convened a total of seven meetings. In the *inaugural meeting*, Mr. Injeti Srinivas, the former Chairperson of IFSCA highlighted the critical need for a competitive and robust mechanism for alternative dispute resolution within IFSC for the quick and cost-effective resolution of commercial disputes. It was agreed that, if necessary, the existing statutory framework, including the IFSCA Act of 2019, Arbitration and Conciliation Act of 1996 ("A&C Act"), and Contract Act of 1872 may be amended to facilitate the proposed dispute resolution mechanism. The Committee took note of the ToR and highlighted the necessity to develop an institutional framework that covers four essential blocks, namely, people, organisation, rules, and processes of the ADRC. The need to develop legislative and judicial support within the ADRC to enhance the confidence of prospective investors was also emphasised.

1.18.7 During the *second meeting,* the Committee identified the deliverables and determined the scope of ADRC. The Committee agreed that the institutional framework for ADRC may provide for arbitration and mediation services in the initial stage. Additionally, it was unanimously agreed that the institutional framework should be adaptable to accommodate various dispute-resolution methods, including new and innovative forms that may evolve over time. Further, the Committee extensively deliberated on the legal and administrative structures of established international centres for alternative dispute resolution, seeking to define the ideal legal and administrative structure for the ADRC.

1.18.8 In the *third meeting,* the Committee engaged in extensive discussions over the existing statutory framework (A&C Act, Contract Act 1872, Mediation Bill 2023, IFSCA Act 2019, Special Economic Zones Act 2005, and any other relevant Act) and the amendments required in the existing legislative framework for setting up a world-class ADRC.

1.18.9 In the *fourth meeting,* the Committee deliberated on important parameters and benchmarks for choosing an arbitration centre. The discussions in this regard were guided by international survey studies and reports. Further, the Committee continued its deliberations on proposed amendments to the existing statutory framework, noting that IFSCA may be given the power to make regulations and amend subordinate legislations under relevant statutes. The Committee also considered the need to establish a court system supporting the proposed ADRC.

1.18.10 In the *fifth meeting,* the Committee engaged in extensive stakeholder discussions to gain a better understanding of third-party funding and the demands of the dispute resolution market. International professionals, including third-party funders, major centres' representatives, and international dispute resolution experts were specially invited to give their valuable insights into the evolving demands of the industry and users of ADR. The stakeholders provided practical

insights on features and trends in international dispute resolution centres of global repute.

1.18.11 In the *sixth* meeting, the Expert Committee discussed the judicial structure for ADRC and determined the type of court structure to be established at IFSC. Additionally, it finalised the formulation of draft rules for mediation and arbitration within ADRC. The Committee also finalised the legal and administrative structure of ADRC in the meeting.

1.18.12 In the *concluding* meeting, the Expert Committee deliberated on the comments and suggestions received by the Committee Members on the first draft of the Report. Additionally, the court framework and appeal provisions were discussed at length and finalised.

D. Structure of the Report

1.18.13 Chapter 1 briefly discusses the major global financial centres, highlighting their crucial features whilst underscoring the potential of the Indian market to emerge as the next global financial hub. The chapter sheds light on the fact that India stands out among the leading foreign users of ADR methods with Indian parties being one of the highest-represented nationalities in major international centres of dispute resolution including SIAC, LCIA, and ICC. The chapter further emphasises that a robust dispute resolution system plays a key role as a fundamental pillar in creating a stable and business-friendly environment.

1.18.14 In Chapter 2, the vision and objectives of the ADRC are discussed in detail. It emphasises aspects such as safeguarding investor interests, establishing a globally esteemed institute in ADR, and integrating technology and global best practices within the ADRC.

1.18.15 Chapter 3 delves into the international best practices that are currently being followed by major dispute resolution centres such as SIAC, HKIAC, LCIA, LCAM, and ICC among others. It highlights crucial elements for developing a globally competitive dispute resolution centre such as the choice of law and jurisdiction, an efficient case management system, the integration of technology, governmental and court support for alternative dispute resolution, the promotion of third-party funding, the presence of foreign representation, and lastly, the recognition and enforcement of awards. Furthermore, the chapter also deliberates upon the key aspects that have been identified by studies for benchmarking ADR centres in terms of user preference.

1.18.16 Chapter 4 deals with the regulatory architecture of the ADRC. It discusses in detail the need for establishing a regulatory framework for ADRC and the importance of regulating ADRC through its own institutional rules. To provide an efficient dispute resolution mechanism, the chapter takes into account the existing

dispute resolution framework in India and explores the feasibility of incorporating an ADR-supporting framework at IFSC. In order to accommodate the needs of the ADRC, the chapter suggests certain amendments to statutes such as the IFSCA Act of 2019, the A&C Act, the Mediation Act of 2023, and the Special Economic Zones Act of 2005.

1.18.17 Chapter 5 explores the institutional framework for the ADRC, delving into the existing structures of international institutional bodies such as LCIA, SIAC, ICC, and HKIAC. It also sheds light on the proposed legal and administrative structure of the ADRC. The chapter also addresses the quality assurance and ethics of dispute resolution professionals, proposing that the ADRC may establish a code of conduct, rules and/or guidelines to address misconduct, unwarranted delays, and breach of ethics by dispute resolution professionals during dispute resolution proceedings to maintain a high standard of practice.

1.18.18 Chapter 6 examines the existing court framework supporting dispute resolution centres in global financial centres. It deliberates on the judicial frameworks supporting renowned arbitration centres worldwide, considering measures such as constitutional reforms, the establishment of distinct judicial structures, inclusion of local and foreign judges, and jurisdiction agreements, among other measures.

1.18.19 Lastly, Chapter 7 presents a roadmap for the effective execution of suggested reforms and the way forward for actualising the vision set out for ADRC.

2. Alternative Dispute Resolution Centre at IFSC

2.1. Vision and Objectives

2.1.1. The primary objective behind setting up IFSCs is to bring back the financial services and transactions carried out across international financial centres by Indian corporates and overseas branches and subsidiaries of financial institutions to India by offering a world-class business and regulatory environment. As mentioned above, an effective and efficient dispute resolution system is necessary to achieve this. Over the decades, India has made many strides to ensure that cost-effective, judicious, and prompt conclusions to conflicts are made available to its citizens. To continue building on this success, the Committee has proposed a dispute resolution framework for the ADRC to effectively address all disputes arising within IFSC. It is envisaged and developed with the following objectives:

2.1.2. **Protect the interest of the investors:** To ensure that investors from India and around the world are encouraged to participate in the growth of IFSC, a framework to ensure effective dispute resolution is needed. The structure proposed by the Committee aims to ensure that the apprehension of investors owing to prolonged timelines and case backlogs associated with the judicial system is resolved. The dispute resolution structure has been designed to provide investors with a robust, dedicated system to address all the disputes arising within IFSC in an expedited manner.

2.1.3. **Establish an institute of eminence in the field of ADR to compete with its global counterparts:** Globally, international dispute resolution centres have played a significant role in the growth of international financial centres like Singapore and London. The ADRC shall also aim to enhance the position of the Centre as one of the best options available to parties to disputes for efficient and effective dispute resolution through the adoption of international best practices in ADR. Further, the Centre shall be equipped to handle numerous cases in a limited timeframe, with specialised judges for distinct types of disputes.

2.1.4. **Imbibe technology and global best practices within the ADRC:** New and emerging technologies and processes such as Third-Party Funding (“TPF”), documents-only arbitration, online dispute resolution (“ODR”), flexibility in terms of choice of law, etc., are being inducted in the ADR process by jurisdictions across the world to enhance the allure of dispute resolution centres. Further, technological advancements, such as virtual hearings and tech-driven processes are being incorporated into dispute resolution processes to make the process timebound, cost-efficient, and easy for the parties involved. The ADRC aims to incorporate all these elements within its structure, making it an attractive destination for dispute resolution for parties worldwide.

2.1.5. **Promote institutional arbitration and mediation:** A shift from *ad hoc* arbitration to institutional arbitration is being promoted and preferred globally to promote a more organised and effective approach toward dispute resolution. The ADRC shall be used to promote institutional arbitration over *ad hoc* arbitration in the country. The ADRC, with its streamlined procedure, and dedicated rules and guidelines, would be an ideal environment for parties worldwide to resolve their disputes. It is also being established to promote reforms in ADR and develop the necessary infrastructure to achieve its objectives.

2.1.6. **Promote and organise training, fellowships, scholarships, and research in ADR:** The ADRC aspires to foster the adoption of the ADR culture nationwide and envisions the creation of a distinguished institute specialising in ADR. To cultivate the practice of using ADR for all types of disputes, especially financial and commercial disputes, it shall organise and conduct training sessions and workshops for professionals in the ADR domain. It may also be empowered to offer fellowships and scholarships in ADR and related fields to achieve this goal.

2.1.7. It is pertinent to note that almost all prominent international financial centres in the world are also dispute resolution hubs. Therefore, setting up the ADRC is crucial to making IFSC an investment and dispute resolution hub.

2.2. Existing Alternative Dispute Resolution Framework

2.2.1. India has an extensive alternative dispute resolution framework, which includes dedicated legislation like the A& C Act, and the Mediation Act, 2023, as well as broader legislation with provisions for ADR, such as the Code of Civil Procedure, 1908 ("CPC"), the Commercial Courts Act, 2015, etc. The organisational framework includes the judiciary, dispute resolution professionals, subject-matter experts, and dispute resolution institutions. However, some challenges are prevalent in the overall framework. The issues and the measures proposed by the Committee to address them in respect of IFSC are:

Challenges faced by existing
ADR FRAMEWORK
ISSUES

Prevalence of ad hoc arbitrations
- Uncertainty of timeframes and procedure
- Issues related to case management
- Challenges concerning appointments of the neutrals

Relating to Legislative framework
- Inevitable flow of the ADR mechanism to the litigation process
- Increased backlog in the judicial system
- Prolonged adjudication process
- Parties incur greater costs

Judicial Structure at IFSC
- No dedicated judicial framework for IFSC
- Disputes directed towards the Indian judicial system invariably leading to the traditional litigation path.

2.2.2. Prevalence of ad hoc arbitrations: Over the last few years, there has been a shift towards institutional dispute resolution as opposed to *ad hoc* dispute resolution. However, ad hoc arbitrations are still prevalent in India. This poses several challenges, such as uncertainty of timeframes and procedures,

issues with case management, challenges concerning appointments of the neutrals, etc. Several measures including streamlined timelines, minimal options for post-award litigation, and improved case management and administration are envisaged for the ADRC to cultivate the growth of institutional arbitration in the country.

2.2.3. Legislative framework pertaining to dispute resolution: The present structure allows ADR to invariably flow into the litigation process, defeating the objective behind initiating the said ADR procedure. This adds to the increasing backlog in the Indian judicial system and prolongs the adjudication process. Consequently, parties incur greater costs and remain tied up in litigation for years. Therefore, addressing this issue while developing the ADRC was a crucial objective for the Committee. Furthermore, investor-friendly practices like TPF have gained limited legal recognition in states such as Gujarat, Madhya Pradesh, Maharashtra, and Uttar Pradesh through amendments to the CPC. The Committee has addressed the challenges within the existing legislative framework by proposing targeted amendments thereunder.

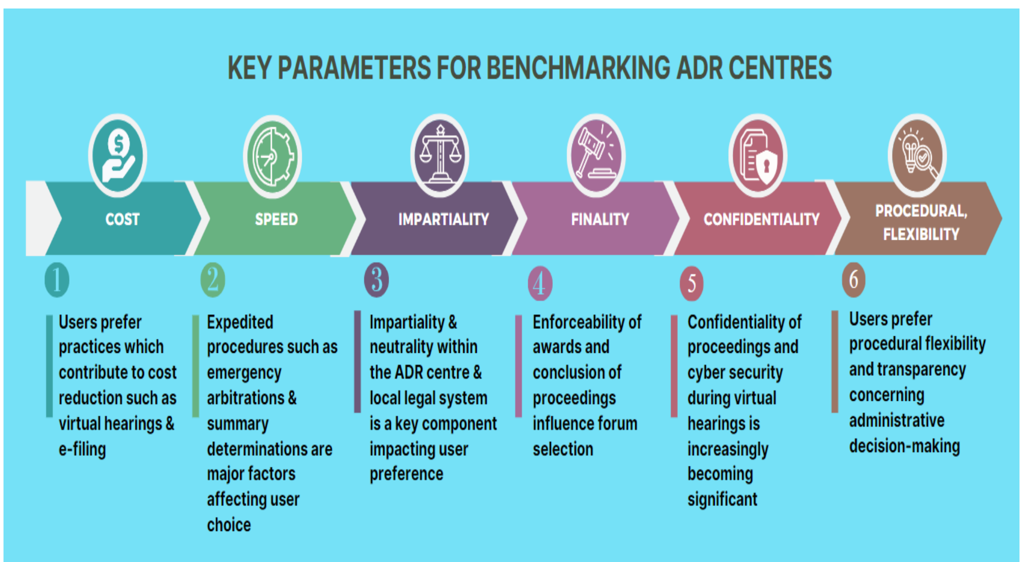
2.2.4. Judicial structure for dispute resolution at IFSC: Presently, no dedicated judicial framework exists specifically for IFSC. Consequently, the disputes from the jurisdiction will invariably be directed towards the Indian judicial system, and lead to the traditional litigation path. To prevent this from happening, the Committee has advised a judicial structure that takes into account the need for a robust court framework as well as a favourable environment for ADR.

2.2.5. To bring about change to the status quo, the Committee has conducted extensive research and proposed an institutional framework, including provisions for people, organisation, rules, and processes for the ADRC. It has also proposed changes to the legislative and judicial structure to create a comprehensive framework surrounding the jurisdiction to create a dedicated space to foster growth, innovation, and collaboration.

3. International Best Practices

3.1. ADR centres and dispute resolution hubs around the world aim to imbibe and promote practices that align with user requirements and needs. There is a conscious effort in such jurisdictions to develop ADR-oriented practices. This includes judicial, legislative, and administrative support for ADR to ensure a smooth and efficient system tailored to the users' requirements. Premier ADR centres around the world are mindful of the nuances that need to be accounted for as parameters associated with users. Consequently, users from around the world prefer these ADR hubs to resolve their disputes over their home jurisdictions.

3.2. In order to make ADRC a dispute resolution hub, the Committee reviewed the literature associated with such ADR-friendly jurisdictions and discussed them extensively during the course of its meetings. The Committee noted that the report titled *"2021 International Arbitration Survey: Adapting arbitration to a changing world"* by Queen Mary University of London and White & Case LLP ("**Queen Mary University Report**") collected data from users and identified key parameters relevant to users when electing an ADR Centre for dispute resolution.[20] The following attributes were identified as the primary factors considered by users:



3.2.1. **Cost:** Costs associated with dispute resolution procedures remain one of the biggest concerns for users. For cost reduction, a majority of the users were willing to forgo elements like unlimited length of written submissions and streamline the written submission process. Additionally, users preferred practices that contribute to cost reduction, such as administrative and logistical support for virtual hearings, secure electronic filing, and document-sharing platforms. They also preferred systems where local courts have the ability and

[20] 2021 International Arbitration Survey: Adapting arbitration to a changing world, Queen Mary University of London available at https://arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf (last accessed on February 8, 2024)

power to deal with matters remotely. Of the total users interviewed, 21% expressed their preference for cost sanctions for delay by arbitrators.

3.2.2. **Speed**: 25% of the users responded that the provision of expedited procedures was a key consideration for them. Other factors, such as provisions for emergency arbitrations and summary determination/dismissal of unmeritorious claims, were also deemed necessary by users.

3.2.3. **Impartiality**: Impartiality and neutrality within the ADR centre and the local legal system were identified as a key user consideration. Aligned factors that ensure or increase the probability of impartiality include diversity in the pool of neutrals, support for ADR by local courts, and availability of experts and neutrals.

3.2.4. **Finality of Outcome**: Enforceability of awards and agreements upon the conclusion of proceedings are necessary considerations for users. It is tied to the abovementioned requirement of support for ADR by local courts. The users considered the enforceability of awards by emergency arbitrators and interim measures ordered by arbitral tribunals to be important factors as well.

3.2.5. **Confidentiality**: Confidentiality of proceedings is an important element for users. Notably, one-third of the users deemed confidentiality and cybersecurity necessary for virtual hearings. Constituent factors such as secure email addresses, data encryption, secure platforms/technology offered by ADR centres, etc., were also highlighted as key considerations.

3.2.6. **Procedural Flexibility, Clarity, and Transparency**: Users expressed their preference for tailor-made procedures to cater to complex and multi-party ADR proceedings. Flexibility in the mode of proceedings (such as provisions for virtual and in-person proceedings) was considered important. 21% of the users supported rules giving extensive case management powers to arbitrators, including sanctions for the behaviour of parties and counsel. On the other hand, 29% of the users supported transparency concerning administrative processes and decisions, including selection of and challenges to arbitrators.

3.3. The Committee submits that these key considerations by users must be taken into account while developing an ADR ecosystem. Further, the Committee invited eminent subject-matter experts from the globe to provide their inputs on practices that could promote ADR in India, and make dispute resolution at IFSC more user-friendly, thereby securing investors' trust. Upon concluding the research and analysis of the practices pertaining to ADR around the world, the Committee deliberated on the same and identified the best practices around the world, which have been detailed below.

3.4. While all of these have not been converted into action items within the scope of the Committee's functions, it is recommended that these be taken into consideration by the Government while developing policies and frameworks on a judicial and legislative level to promote a user-centric ADR ecosystem. The international best practices identified by the Committee are as follows:

3.5. Choice of Law and Jurisdiction

3.5.1. User preference naturally gravitates to practices that offer them maximum options. Users may deem laws of specific jurisdictions to be better suited to their dispute, and to the objectives they want to achieve. Parties to international contracts and cross-border disputes often choose English law as the law of the agreement, owing to its clarity and history of prevalent practice.

3.5.2. As noted earlier, even financial centres in the Middle East, such as DIFC and ADGM have given due consideration to the prominence of English law, and have accounted for its applicability within their jurisdiction through constitutional amendments. Similarly, court frameworks such as that of Singapore International Commercial Court ("SICC") also prioritize party autonomy in the choice of law. Therefore, carve-outs may be provided to encourage the growth of IFSC through more investor-friendly legal systems and provisions.

3.5.3. Secondly, users may be allowed to determine the applicable law for their contracts and disputes in IFSC. The flexibility of choice of governing law would provide the ADRC with a competitive edge over its global counterparts. Amendments to make this possible (such as amendments to the Indian Contract Act, 1872, the Mediation Act 2023, the A&C Act, etc.) were deliberated upon by the Committee to allow parties to choose foreign laws as applicable laws to their contracts and subsequent disputes. The same can be enabled on a policy and legislative level to make the ADRC an attractive seat for dispute resolution.

3.6. Case Management System

3.6.1. The efficiency of an ADR centre is largely dependent on its case management system. The relevant factors affecting case management include identification of the nature of the dispute, cost management, using cost as a tool to positively influence the conduct of the parties, and giving directions to proceed with the case expeditiously. The Committee has included several measures for efficient case management within the rules and guidelines drafted for the ADRC, such as strict timelines and streamlining processes for a quick and efficient conclusion to disputes, etc.

3.6.2. However, greater support from the judiciary is required to sustain these efforts of effective and efficient case management. Courts in the UK and Singapore contribute to the case management process by minimising unnecessary delays in proceedings. In the UK, courts are mandated to consider compliance of the pre-action protocol by parties which encourages settlement of disputes through ADR mechanisms.[21] Further, it aids the case management process through the

[21] Practice Direction – Pre- Action Conduct and Protocols (UK)

implementation of cost penalties for non-compliance of protocols that simplifies the litigation process and enhance costs. The Singapore Court has an online case management system (the 'eLitigation system') that can be used by parties to file documents electronically.[22] Notably, the SIMC rules prescribe professional case management services offered to parties at competitive rates. These services include: (a) assisting parties while considering mediation and entering into an agreement to mediate; (b) filing; (c) appointing mediator(s) from SIMC's panel if the parties are unable to nominate a mediator jointly; (d) booking and configuration of venue and facilities; (e) pre- and post-mediation case management; (f) actual day case administration; and (g) overtime case support. Similar measures can be included in the ADRC and developed within the framework to ensure quality case management.

3.7. Use of Technology

3.7.1. In the aftermath of the COVID-19 pandemic, the trend of ODR increased. Owing to the time and cost efficiency, as well as ease and convenience of ODR, its popularity has sustained. Consequently, a greater inclusion and acceptance of technology in ADR practices can be observed.

3.7.2. Hong Kong, for instance, launched an Online Dispute Resolution Scheme, allowing parties to submit agreements and undertake negotiation, mediation, and arbitration proceedings online. The scheme is operated by a platform called eBram with the cooperation of the Government of Hong Kong.[23] There is also a continued practice of hearing parties and counsel via video conferencing. SICC, on the other hand, has been equipped with several technological facilities such as teleconference, video conference, and audio-visual facilities (including mobile infocomm technology facilities) and services, including audio recording of court proceedings and transcription services through the Supreme Court Digital Transcription System ("DTS"), available for use in SICC open Court and Chamber proceedings, Electronic Filing Service and Electronic Litigation Service. It is also equipped with cutting-edge technology, including evidence and trial management systems like 'Opus 2 Magnum' and 'Realtime Platform'.[24]

3.7.3. Another premier ADR institution, SIAC, has collaborated with major arbitration centres to increase the use of virtual evidentiary hearings. While SIAC currently

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[22] Kim M. Rooney (ed.), The Global Impact of the Covid-19 Pandemic on Commercial Dispute Resolution in the First Seven Months, International Bar Association, October 30, 2020, available at: https://www.ibanet.org/article/BD404CE3-3886-48A8-98F6-38EAACCD5F53 (last accessed on November 30, 2023)

[23] Online Dispute Resolution (ODR) and LawTech, Department of Justice, Government of the Hong Kong Special Administrative Region, December 11, 2023, available at https://www.doj.gov.hk/en/legal_dispute/online_dispute_resolution_and_lawtech.html (last accessed on January 24, 2024)

[24] Use of Technology at the SICC, Singapore International Commercial Court, December 13, 2023, available at: https://www.sicc.gov.sg/forms-and-services/use-of-technology-at-the-sicc (last accessed on January 21, 2024)

does not offer any video conferencing facility for hearings, parties may use 'Maxwell Chambers' virtual hearing 'room' via video conferencing software. Additionally, Maxwell Chambers conducts hybrid hearings and virtual hearings.[25]

3.7.4. Also, the APEC ODR Collaborative Framework[26] and the APEC Economic Committee's Study on Best Practices[27] in Using ODR prescribe the use of an ODR platform for online dispute resolution mechanisms. It prescribes that all communications take place on that platform to ensure fairness, privacy, data security, and confidentiality. This approach is suggested as it would afford protection against fraud and ensure that the proceedings, communications, and documents are recorded on a neutral platform. It also recommends that the platform provide for flexibility, efficiency, accessibility, affordability, useability, and capacity building to ensure user-centricity. The website or application providing the service must also be capable of handling voluminous documentation.

3.7.5. It should also accommodate technological changes and developments, such as artificial intelligence, machine learning, and algorithmic tools, which can automate processes, categorize cases based on pre-set parameters, populate information in drafts, and issue documents and information online. The NCTDR/ICODR ODR Standards also provide for use of artificial intelligence in the decision-making function of the platform and recommend making ODR platforms auditable.[28]

3.7.6. Notably, China International Economic and Trade Arbitration Commission's (CIETAC) APEC ODR platform includes a bilingual interface with multilingual translation services. Providing for such a feature would be imperative for an IFSC which would host businesses from across the world, whose members would belong to diverse linguistic backgrounds.

3.7.7. Apart from this, technology can be used for case management as discussed above, and also to issue claims and file documents. In the UK, certain courts such as Commercial Court, Technology Court, and Construction Court have only been using an online filing system since 2017, streamlining and organising

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[25] The Virtual and Hybrid Hearing Experience at Maxwell Chambers, ADR in Singapore, Maxwell Chambers, available at: https://www.maxwellchambers.com/online-adr-hearing-solutions/ (last accessed on November 30, 2023)

[26] UNCITRAL ODR Technical Notes, para 26; APEC ODR Collaborative Framework, para. 4.2

[27] Study on Best Practices in Using ODR, Asia-Pacific Economic Cooperation, January 2023, available at: https://www.apec.org/docs/default-source/publications/2023/1/study-on-best-practices-in-using-odr/223_ec_study-on-best-practices-in-using-odr.pdf?sfvrsn=1bb06f15_2 (last accessed on May 28, 2024)

[28] Standards, International Council for Online Dispute Resolution, available at: https://icodr.org/standards/ (last accessed on May 28, 2024)

the entire process of issuing claims and filing documents.[29] SIMC has online filing and neutral search capabilities.[30] Dispute resolution via alternate means is also made available through the online dispute manager website. Given the novelty of remote and hybrid hearings, SIMC helps mediators and parties adapt to the online context by providing end-to-end support.[31] This includes coordinating the schedules of mediators, parties, and counsel across several time zones, providing detailed briefings, and, during the mediation itself, ensuring documents and parties are moved efficiently online.

3.7.8. Similar technical developments have been deliberated upon by the Committee, and the inclusion of ODR and aligned practices have also been provided for in the ADRC to ensure the optimum use of technology for quality dispute resolution services.

3.8. Government and Court Support for ADR

3.8.1. The unique rise of Southeast Asian courts and ADR can, to a large part, be credited to the government efforts and the support of the court system. In Hong Kong, there is a specialist list in the High Court, Court of First Instance, known as the 'Construction and Arbitration List', created to deal with the applications under the Arbitration Ordinance.[32] The Hong Kong court has generally adopted a pro-arbitration policy and a 'hands-off' approach to cases involving arbitration. Moreover, the court is generally in favour of speedy and efficient enforcement of arbitration awards.[33]

3.8.2. In the case of Singapore, SIAC, SIMC, and SICC carry out marketing and outreach activities overseas with the support of the Ministry of Law of Singapore. They have collaborated with their counterparts in other countries, and are now expanding their footprint abroad by setting up representative offices in key markets.[34] Regular review of the legislative framework supporting

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[29] Dispute resolution in United Kingdom - England & Wales, Latham and Watkins LLP, Lexology, July 25, 2019, available at: https://www.lexology.com/library/detail.aspx?g=ad7cb85a-b3e2-49a7-98fb-ef5cfdc04d13 (last accessed on November 30, 2023)

[30] F. Peter Phillips, Singapore: The Hub of International Commercial Dispute Resolution, Business Conflict Management LLC, October 30, 2017, available at: https://www.businessconflictmanagement.com/blog/2017/10/singapore-the-hub-of-international-commercial-dispute-resolution/ (last accessed on November 30, 2023)

[31] ADR in the time of Covid-19, and why virtual and hybrid hearings are here to stay, News, September 9, 2020, Singapore International Mediation Centre, available at: https://simc.com.sg/news/adr-time-covid-19-and-why-virtual-and-hybrid-hearings-are-here-stay (last accessed on November 30, 2023)

[32] Construction and Arbitration List, Practice Direction 6.1, Hong Kong Judiciary, available at: https://legalref.judiciary.hk/lrs/common/pd/pdcontent.jsp?pdn=PD6.1.htm&lang=EN (last accessed on November 30, 2023)

[33] U v. A. HCCT 34/2016

[34] Written Answer by Minister for Law, Mr K Shanmugam, to Parliamentary Question on Singapore Convention on Mediation and Plans to Promote Singapore as an International Dispute Resolution Hub, Ministry of Law, Government of Singapore, February 16, 2021, available at: https://www.mlaw.gov.sg/news/parliamentary-speeches/written-answer-by-minister-for-law-mr-k-shanmugam-to-pq-on-singapore-convention-on-mediation-and-plans-to-promote-singapore-as-an-international-dispute-resolution-hub/ (last accessed on November 30, 2023)

international commercial dispute resolution is carried out to ensure it remains updated and responsive to the prevalent needs of international businesses. This, in turn, leads to an investor/user-centric approach that encourages financial growth of the region. Further, Singapore is party to a network of dispute resolution-related conventions, including the Hague Convention on Choice of Court Agreements which enhances party autonomy in exclusive choice of court by enabling reciprocal recognition and enforcement of foreign judgments, the New York Convention on the enforcement of foreign arbitral awards, and the Singapore Convention on Mediation. These case studies showcase the importance of legislative and judicial support to sustain a thriving ADR ecosystem.

3.9. Special Courts for Financial and Commercial Disputes

3.9.1. Apart from ADR institutions, special courts dedicated to financial and commercial disputes also play a crucial role in reducing case backlogs and ensuring speedy dispute resolution. A dedicated judicial framework tailored to address the cases flowing from the ADRC would, therefore, enhance the viability of IFSC.

3.9.2. For instance, the DIFC Courts are associated with the DIFC, the Qatar International Court ("QIC") is associated with the Qatar Financial Centre, and the ADGM Courts are associated with the ADGM.

3.9.3. In the UK, a Financial List has been created to handle claims related to financial markets in order to ensure that London remains a financial hub. As per the guide, a dispute is appropriate for the Financial List if: (a) it is for more than GBP 50 million and deals with one of the categories listed in the Financial List; or (b) it is in need of expertise in the financial market and raises an issue of importance with respect to finance. The judgments made pertaining to the Financial List have the same appeal process as that of those decisions made in the Commercial Court or the Chancery Division.[35] This expedites complex financial proceedings with the help of specialist judges so as to provide fast, efficient, and high-quality dispute resolution of claims related to the financial markets.[36]

3.9.4. Taking into consideration the specialised practices in other judicial forums, the Committee has proposed a multi-phased approach for dispute resolution centres established at IFSC. Under Phase I, a designated bench of a High Court having territorial jurisdiction over the area in which such a seat is situated shall handle all alternative dispute resolution matters arising out of IFSC. On the other hand,

[35] Part 63A – Financial List, Civil Procedure Rules and Directions, United Kingdom, available at: https://www.justice.gov.uk/courts/procedure-rules/civil/rules/financial-list (last accessed January 25, 2024)

[36] Guide to the Financial List, Courts and Tribunals Judiciary, United Kingdom, October 1, 2015, available at: https://www.judiciary.uk/wp-content/uploads/2022/11/financial-list-guide.pdf (last accessed on November 30, 2023)

under Phase II, a dedicated division of the High Court and Supreme Court which allows the appointment of international judges (i.e. judges of foreign nationality) shall be constituted to enhance the competitiveness of the ADRC through a strong judicial framework.

3.10. Promotion of Third-Party Funding

3.10.1. TPF has emerged as a prominent practice in arbitration around the world. Various jurisdictions that are already or are vying to be dispute resolution hubs have provisions pertaining to TPF in place. TPF is an arrangement by an entity (the "funder/third-party funder") that is not a party to a dispute, to provide funds or other material support to a disputing party in exchange for returns, depending on the outcome of the dispute. The return can be: (a) a multiple of the funding; (b) a percentage of the proceeds; (c) a fixed amount; or (d) a combination of all of the above.[37]

3.10.2. There are broadly the following models for TPF regulation, namely: (a) legislation governing TPF (followed in Singapore, Hong Kong, Abu Dhabi, and Nigeria); (b) judicial precedents encouraging the TPF industry; (c) self-regulation in which non-mandatory code of conduct is introduced by bodies like Association of Litigation Funding in the UK; and (d) judicial precedents encouraging the TPF industry.[38]

3.10.3. Notably, owing to the rise of TPF, jurisdictions like Hong Kong, Singapore, and Ireland have brought legislation to regulate TPF. In 2019, Hong Kong permitted parties to obtain funding through TPF for disputes in relation to arbitration.[39] The Hong Kong Code of Practice for Third Party Funding ("HK Code") in arbitration was formulated as per the powers conferred under The Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance, 2017 ("HK Ordinance"). Singapore also brought amendments through the Civil Law Amendment Act, 2017 that allowed lawyers to recommend the funder to their clients and advise clients on TPF contracts as long as they did not receive any direct financial benefit from their recommendation or advice. This excludes legal fees paid for legal services to the funded party. The ADGM Courts also

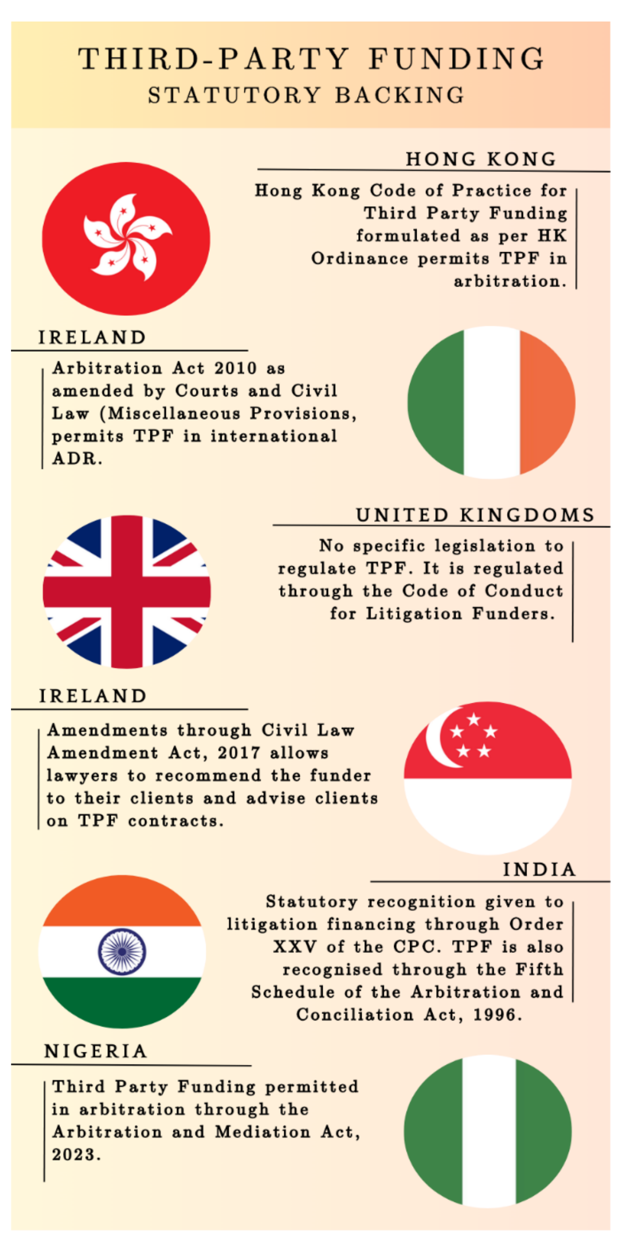
[37] Possible reform of Investor-State dispute settlement (ISDS) – Third Party Funding, A/CN.9/WG.III/WP.157, UNCITRAL Working Group III (Investor-State Dispute Settlement Reform), Thirty-seventh session, United Nations General Assembly, January 24, 2019, available at: https://uncitral.un.org/sites/uncitral.un.org/files/a-cn.9-157-for_the_website.pdf (last accessed on November 30, 2023)

[38] James Rogers et al., Emerging approaches to the regulation of third-party funding: Recent global developments, International Arbitration Report, Issue 9, Norton Rose Fulbright LLP, October 2017, Pages 29-31, available at: https://www.nortonrosefulbright.com/-/media/files/nrf/nrfweb/imported/20170925---international-arbitration-report---issue-9.pdf?la=en-gb&revision=cbb8b5c6-72fc-460c-8a30-e6ca10caea06 (last accessed on November 30, 2023)

[39] Amended Arbitration Ordinance (Cap. 609) and Mediation Ordinance (Cap. 620) through the Arbitration and Mediation Legislation (Third-Party Funding) (Amendment) Ordinance 2017.

released the Litigation Funding Rules in May 2019.[40] In Ireland, the Courts and Civil Law (Miscellaneous Provisions) Act 2023 recently amended the Arbitration Act 2010 of the country, permitting TPF in international commercial arbitrations, mediations, and court proceedings arising from arbitration.[41] Additionally, Nigeria also permitted TPF in arbitration through the country's Arbitration and Mediation Act, 2023.[42]

3.10.4. In the UK, on the other hand, TPF is a common practice. While there is no legislation to regulate TPF in the UK, it is controlled through self-regulation, i.e., the Code of Conduct for Litigation Funders (the "Code"). This Code is created by the Association of Litigation Funders and provides certain standards that funders must abide by with respect to various aspects such as capital adequacy of funders, termination and approval of settlements, and control of litigation and settlement negotiations. On the other hand, in several other countries, judicial courts have encouraged TPFs through precedents. For example, the DIFC Courts issued Practice Direction No.2 of 2017 ("PD") in relation to TPF.[43] While DIFC Courts have recognised the existence of TPF in the case of Rafed Al Khorafi and



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[40] ADGM Courts Litigation Funding Rules 2019, ADGM Court Rules, Abu Dhabi Global Market, available at: https://en.adgm.thomsonreuters.com/sites/default/files/net_file_store/ADGM1547_19839_VER20231214.pdf (last accessed on November 30, 2023)

[41] Section 124 of Courts and Civil Law (Miscellaneous Prov.) Act 2023

[42] Section 61 of the Arbitration and Mediation Act 2023 ("the AMA") (Nigeria)

[43] Practice Direction No. 2 Of 2017 on Third Party Funding in the DIFC Courts, Practice Directions, DIFC Courts, March 14, 2017, available at: https://www.difccourts.ae/rules-decisions/practice-directions/practice-direction-no-2-of-2017-on-third-party-funding-in-the-difc-courts (last accessed on November 30, 2023)

Others v Bank Sarasin-Alpen (ME) Ltd and Bank Sarasin & Co Ltd,[44] the PD provides clear instructions regarding the necessities to be complied with, by funded parties and how they should interact with funders in legal proceedings.

3.10.5. In India, although there is no specific legislation pertaining to TPF, statutory recognition has been accorded to litigation financing through Order XXV of the CPC. Several states, including Maharashtra, Gujarat, Madhya Pradesh, and Uttar Pradesh, have made specific amendments to Rules 1 and 3 of Order XXV with the objective of enabling litigation financing within the specified states. The amended provisions state that the courts have the power to permit third parties to finance litigation provided that they become parties to the dispute itself.[45] In addition to the CPC, the Fifth Schedule of the A&C Act also indirectly recognises third-party funders, particularly those having an economic interest, whether direct or indirect, in the claim. The Fifth Schedule places an obligation to disclose information affecting the neutrality and impartiality of the arbitrator. Thus, arbitrators are required to provide disclosure of any conflict of interest, including the involvement of a third-party funder with the objective of avoiding undue influence, if any.[46] Although the inclusion of TPF in the list of obligatory disclosures is not an express statutory recognition, it is still an acknowledgment of their financial involvement in a proceeding. This denotes that the concept of TPF is not uncommon in India.[47]

3.10.6. Furthermore, TPF has also been recognised in the case of Bar Council of India v. A.K. Balaji,[48] where the Supreme Court observed that there "appears to be no restriction on third parties (non-lawyers) funding the litigation and getting repaid after the outcome of the litigation". In another notable judgment pertaining to TPF, the Delhi High Court recently held in Tomorrow Sales Agency Private Limited v SBS Holdings Inc.[49] that an arbitral award cannot be enforced against a third-party funder, who was not a party to the arbitration proceedings or had any adverse orders against it.

3.10.7. Due to its inherent cost-effectiveness, TPF has emerged as an efficient tool for delivering access to justice. Indian companies, particularly in sectors like infrastructure, construction, and energy, often find themselves entangled in numerous disputes both, at the local and international level. Additionally, shipping companies entering into international contracts and joint ventures with Indian and foreign parties stand to potentially benefit from TPF. Furthermore, by alleviating the financial burden associated with litigation expenses, TPF frees

[44] [2018] DIFC CA 010
[45] Order XXV, Rule 1, Civil Procedure Code, 1908 (As amended by Bombay High Court Notification P. 0102/77)
[46] FIFTH SCHEDULE, vide Section 12(1)(b) of Arbitration and Conciliation Act, 1996
[47] Setting up appropriate dispute resolution facilities at IFSC: Research Report, International Financial Services Centres Authority, Gujarat National Law University and Bridge Policy Think Tank (2021)
[48] (2018) 5 SCC 379, 411-412, para 38
[49] FAO(OS) (Comm) No. 59/2023, 29 May 2023

up a substantial portion of a company's resources, allowing for redirection towards revenue-generating sectors of the business. Notably, TPF enables companies and businesses to pursue claims and remedies they would not pursue under normal circumstances owing to budgetary restraints, and would facilitate expediting and driving high-value settlements.

3.10.8. To enable the introduction of TPF in IFSC, the Committee invited TPF experts from around the world to convey their expectations of IFSC as a jurisdiction. It was concluded that to promote TPFs, several measures are required to be taken, such as: (a) clarity in the overall regulatory framework regarding TPFs; (b) making changes to ensure certainty in the conclusion of court proceedings; (c) ensuring ease and greater regulatory clarity in the flow of funds across borders; and (d) greater awareness to promote TPFs in India. Therefore, the Committee noted that a more comprehensive framework pertaining to TPF should be developed and encouraged to allow funders to partake in the ADR ecosystem. To actualise the vision of enabling funders to participate in the Indian alternative dispute resolution landscape, there is a crucial need for establishing an expert committee that particularly looks into the legislative and regulatory framework governing third-party funding, not only in IFSC but in India as well. The specialised/ expert committee can deliberate on the degree of regulatory requirements for third-party funding in India while ensuring that the resulting framework fosters a supportive environment conducive for TPF involvement in dispute resolution.

3.11. Foreign Representation

3.11.1. Dispute resolution laws of several jurisdictions allow party representation of other nationalities. Consequently, foreign lawyers are allowed to represent parties. The Hong Kong legislation does not prescribe any specific requirement with respect to the professional qualification of arbitrators, and its market is open to the international community of lawyers with a relatively easy system to obtain licenses to practice as a lawyer. In Singapore-seated arbitrations, there are no restrictions on foreign lawyers representing their clients. When it comes to the appointment of arbitrators/judges for the purpose of ADR, arbitration centres or courts generally appoint international experts or eminent international judges. In DIFC Courts, a person is qualified to be appointed as a judge if the person has been the holder of a high judicial office in any jurisdiction recognised by the Government of the UAE and if the person has significant experience as a qualified lawyer or judge in the common law system. In the case of DIFC-LCIA Arbitration, if the arbitrators are not nominated by the parties, they are appointed by the LCIA Court pursuant to the DIFC-LCIA Rules and from a database of senior and highly qualified local, regional, and international arbitrators. Similarly, the judges of the ADGM Courts consist of several eminent international judges from the UK, Australia, New Zealand, and Hong Kong. The same scheme of appointment is practised in Singapore. The SICC panel of

judges comprises both local and foreign judges (known as "International Judges"). In the SIAC, if the parties do not exercise their autonomy for an appointment, it has an experienced international panel ("SIAC Panel of Arbitrators") of almost 600 expert arbitrators from over 40 jurisdictions from which appointments are made by SIAC, based on specialist knowledge of an arbitrator's expertise, experience, and track record.

3.11.2. This flexibility and diversity in the appointment of practitioners and adjudicators entails greater trust from users, and consequently, a greater influx of cases and international interest. The Committee suggests incorporating legislative and judicial changes to the present ADR framework in India with respect to IFSC to enable foreign representation at ADRC.

3.12. Recognition and Enforcement of Awards/Judgments

3.12.1. The enforceability of arbitral awards is crucial for ADR. Centres and jurisdictions with more comprehensive and inclusive arrangements for enforcement are preferred by parties owing to the ease associated with the post-award/settlement stage. Arbitral awards are generally enforced in accordance with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, provided the State is a party to the Convention. Arbitral awards made in Hong Kong can be enforced where the country is a signatory to the Convention. In addition, Hong Kong has also entered into reciprocal arrangements with the Mainland and Macro Special Administrative Region ("SAR") to ensure the enforcement of arbitral awards in these areas.[50] Moreover, Hong Kong has signed an Interim Measures Arrangement with the Mainland so that parties to arbitral proceedings seated in Hong Kong are able to make a claim in Mainland Courts for interim measures for conducting arbitral proceedings successfully.[51]

3.12.2. The DIFC Court judgments can be enforced locally, regionally, and internationally, through treaties such as the Gulf Cooperation Council ("GCC") Convention, the Riyadh Convention, conventions with China, India, and France, and reciprocal arrangements with many of the leading commercial courts located in the world's top financial hubs, such as New York, Singapore, London, and Hong Kong. Also, the DIFC Arbitration Law clarifies that the DIFC courts are bound by the terms of any applicable treaties for the mutual enforcement of judgments, orders, or awards that the UAE has ratified, including the New York Convention. Enforcement of a DIFC-LCIA award within the DIFC is relatively

[50] Cooperation with the Mainland and Macao on Arbitration-Related Matters, Arbitration, Department of Justice, The Government of Hong Kong Special Administrative Region, available at: https://www.doj.gov.hk/en/legal_dispute/arbitration.html (last accessed on November 30, 2024)

[51] Press Releases, LCQ14: Hong Kong as an International arbitration hub, Department of Justice, The Government of Hong Kong Special Administrative Region, available at: https://www.doj.gov.hk/en/community_engagement/press/20191218_pr1.html (last accessed on November 30, 2023)

straightforward. For enforcing an award in Onshore Dubai, there exists a Protocol of Enforcement between Dubai Courts and DIFC Courts (the "Protocol"), jointly issued in 2010 by the DIFC Courts and the Dubai Courts. Under the terms of the Protocol, DIFC Court judgments can be enforced through the execution department of the Dubai Courts, provided that several (simple) procedural requirements are met. The ADGM Courts have signed two Memoranda of Understanding ("MoU") with local and federal governmental bodies relating to cooperation in legal and judicial matters. The ADGM Courts have an MoU with the Abu Dhabi Judicial Department, which facilitates judicial cooperation between the ADGM Courts and the Abu Dhabi Courts, especially concerning the recognition and enforcement of judgments, decisions, orders, and arbitration awards. As a result, the Abu Dhabi Courts have agreed to recognise and enforce ADGM judgments without re-examining the substance of the dispute. In addition, the ADGM Courts have entered into an MoU with the UAE Ministry of Justice titled "Cooperation in Legal and Judicial Matters". The MoU requires the parties to take all necessary measures that will ensure that enforcement of the ADGM Courts' judgments and arbitration awards issued in ADGM may be sought before the federal courts in the UAE.

3.12.3. To ensure that the ADRC can become a preferred destination for dispute resolution by users worldwide, arrangements ought to be made with different jurisdictions to develop a framework within which enforcement in such regions can become hassle-free, conclusive, and legally binding. This would require deliberations and agreements on the state level with different jurisdictions. Similar to the enforcement of the SICC's judgments over other jurisdictions through a mechanism of reciprocal enforcement by virtue of bilateral arrangements with other jurisdictions, the ADRC may also benefit from such agreements on the state level with different jurisdictions. Enabling reciprocal recognition and enforcement of foreign judgments as well as awards can help solidify ADRC's position in the global arena.

3.13. Options of Services for Disputants

3.13.1. Party autonomy is a basic feature and benefit of ADR. Most global ADR institutions keep only those issues that deal with the legality and integrity of proceedings out of the purview of party autonomy.[52] For example, in Hong Kong, there are no restrictions on the arbitration rules that parties may choose to resolve disputes in the jurisdiction. Similarly, there are no restrictions on the laws governing a contract that can be applied when determining a dispute by arbitration. Thus, theoretically, an arbitration under the International Chamber of Commerce ("ICC") Rules could be conducted in Hong Kong between a

[52] Report of the High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India, Department of Legal Affairs, Ministry of Law and Justice, Government of India, July 30, 2017, Page 17, available at: https://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf (last accessed on January 23, 2024)

Norwegian and Indonesian party applying Swiss law. This flexibility and choice make Hong Kong and its premier ADR centres an ideal destination for parties worldwide. They are key requirements that must be noted to ensure the ADRC's success at IFSC.

4. Regulatory Architecture for Alternative Dispute Resolution Centre at IFSC

4.1 IFSC seeks to promote the entry of investors and businesses by providing a progressive, principal-based regulatory environment for setting up financial institutions. This approach extends to promoting the development of financial products and financial services. The regulatory framework is structured to foster regional growth with a global connect. It, therefore, also needs a robust dispute resolution mechanism to inspire the confidence of the investors, and promote amicable and prompt conclusion to disputes.

4.2 The evolution of ADR in India reflects a commitment to foster a more amicable and streamlined approach to dispute resolution. Courts have embraced ADR methods with a soft touch, striving to minimise their direct intervention and encouraging parties to find mutual resolutions. Over the years, significant developments have been made to the regulatory regime and aligned frameworks to put in place a more party-centric approach.

4.3 IFSC was established under Section 18 of the Special Economic Zones Act, 2005 ("SEZ"). Under the IFSC regulatory framework, any financial institution (or its branch) set up in the IFSC shall be treated as a person resident outside India ("PROI").[53] The Foreign Exchange Management (International Financial Services Centre) Regulations, 2015 state that the concerned financial regulatory authority (including financial regulators such as RBI, SEBI, IRDA, and PFRDA)[54] determines which foreign currency it shall conduct business in and which entities it shall conduct business with.[55] Further, the residential status of a unit set up in IFSC will be considered as PROI for the purposes of the Foreign Exchange Management Act, 1999 ("FEMA").[56]

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[53] Section 3, Foreign Exchange Management (International Financial Services Centre) Regulations, 2015, Reserve Bank of India, March 2, 2015, available at: https://rbidocs.rbi.org.in/rdocs/content/pdfs/FEMANIFSC010415_AN.pdf (last accessed on February 8, 2024)

[54] Section 2(i), Foreign Exchange Management (International Financial Services Centre) Regulations 2015 states that *'Regulatory Authority'* includes Reserve Bank of India (RBI), Securities Exchange Board of India (SEBI), Insurance Regulatory Development Authority (IRDA), Pension Fund Regulatory and Development Authority (PFRDA), Forward Market Commission (FMC) or any other statutory authority empowered to regulate a financial institution under Indian laws

[55] Section 4, Foreign Exchange Management (International Financial Services Centre) Regulations, 2015, Reserve Bank of India, available at: https://rbidocs.rbi.org.in/rdocs/content/pdfs/FEMANIFSC010415_AN.pdf (last accessed on February 8, 2024)

[56] Operational guidelines on International Financial Services Centre (IFSC), RBI/2014-15/530, Reserve Bank of India, March 31, 2015, available at: https://rbidocs.rbi.org.in/rdocs/notification/PDFs/92APDIRIFSC0104.pdf ; Press Release, International Financial Services Centre (IFSC), Press Information Bureau, Government of India, March 1, 2015, available at: https://pib.gov.in/newsite/PrintRelease.aspx?relid=116213 (last accessed on November 30, 2023)

4.4 In recent years, India has emerged as a prominent global investment destination, attaining recognition alongside established international financial centres such as Singapore, London, and Hong Kong. These jurisdictions have collectively set exemplary standards for fostering a business-oriented environment characterised by regulatory efficiency and deepened investor trust. India, in particular, harbours a demonstrable commitment to adopting progressive practices and fostering innovation within its business landscape. The nation's proactive approach to enhancing regulatory frameworks, coupled with a growing emphasis on technological advancements and innovative solutions, underscores its dedication to becoming a leading force in the global business arena.

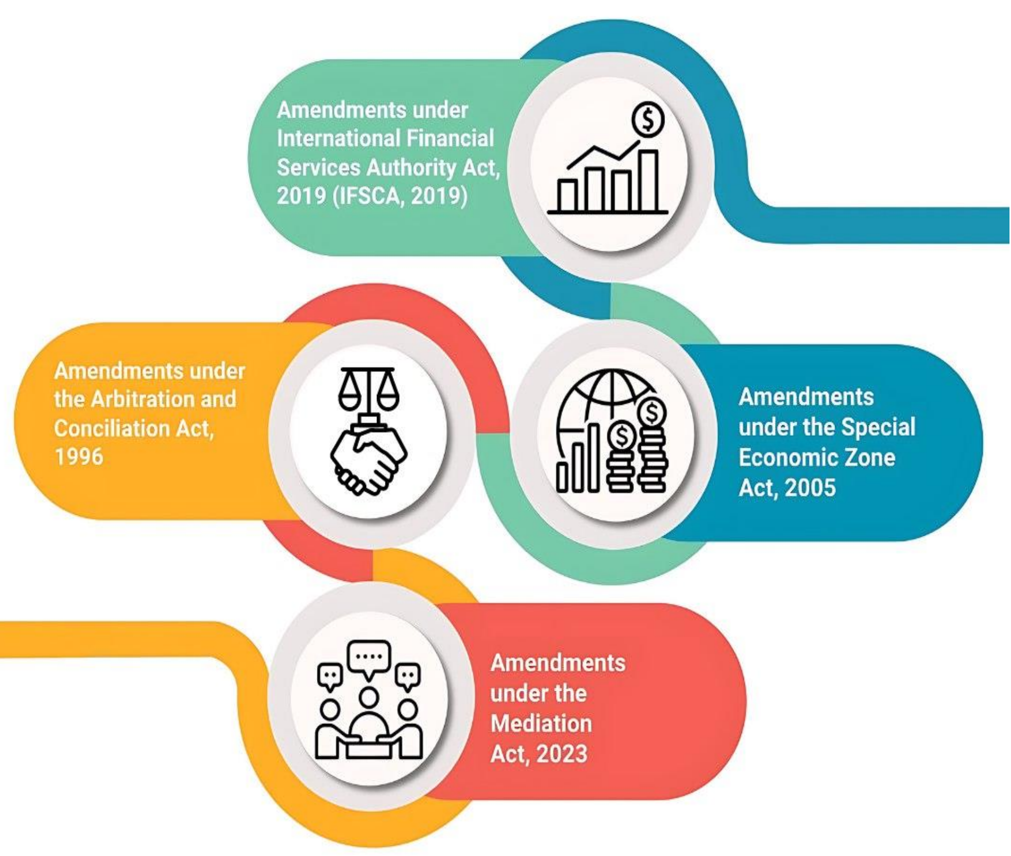
4.5 The core vision for IFSC revolves around establishing a zone where the paramount focus is to create and sustain the most favourable business environment for its users. Further, it is to create an avenue for promoting international commercial arbitration and dissuade parties from constantly opting for jurisdictions outside India for their ADR processes. There have been numerous instances where Indian parties have opted to have their arbitration proceedings in other jurisdictions, such as Singapore, London, Hong Kong, New York, etc., rather than in India. ADRC is being established to resolve such issues. Since IFSC aims to provide an environment that streamlines financial activities and minimises barriers and complexities that often accompany international finance, a proper regulatory mechanism to address any disputes that may arise from such complexities is imperative. All of this will encompass not only the businesses and financial entities operating within the IFSC but also extend to the investors and parties engaged in various transactions.

4.6 To be successful, the ADRC must mirror the user-friendly attributes. The alignment of these user-friendly qualities is essential in realising the overarching goal of creating a holistic, supportive ecosystem that accommodates the needs of all stakeholders, ultimately making the IFSC a compelling and comprehensive destination for all international financial activities.

4.7 Upon a comprehensive review of the statutory framework, the Committee recognised the need to amend multiple statutes to establish a favourable framework at IFSC that operates seamlessly, effectively, and in alignment with international best practices.

4.8 To fulfil the objective of providing an efficient dispute resolution mechanism at IFSC, the Committee took note of the existing dispute resolution framework in India and the feasibility of incorporating a similar framework at IFSC. Considering the challenges within the existing framework and the need for changes that are aligned with the needs of the international community using financial services at financial centres, the Committee recommends certain amendments to the IFSCA Act, 2019, the A&C Act, the Mediation Act, 2023 and the Special Economic Zones Act, 2005.

4.9 Several rounds of discussion were conducted among committee members to deliberate on the approach to implementing amendments. The Committee weighed two options: i) incorporating a dedicated chapter in the IFSCA Act, 2019 to encompass all necessary modifications for the establishment and operation of ADRC, or ii) introducing amendments directly into the pertinent sections/sub-sections of each relevant statute. The consensus within the Committee favoured the first option, as it facilitates consolidating all amendments to pertinent laws in a single location. The proposed approach ensures a cohesive framework, minimising disruption by comprehensively addressing IFSC-related issues through a single amendment. The proposed framework, namely the International Financial Services Centres Authority (Amendment) Bill has been annexed hereto as **Annexure III**. The recommendation envisages an amendment within the International Financial Services Authority Act, 2019 to apply the requisite changes in the regulatory framework governing alternative dispute resolution mechanisms.



4.10 **Amendments under International Financial Services Centres Authority Act, 2019 (IFSCA Act)**

4.10.1 The Committee noted that the present scope of the International Financial Services Authority Act, 2019 does not provide the IFSCA with the powers to establish and govern alternative dispute resolution services within IFSC. To address this and further enhance the power of the Authority in relation to ADR mechanisms, the Committee recommends the following amendments:

Recommendation:

In the International Financial Services Centres Authority Act, 2019 (hereafter referred to as the principal Act), in section 3, in sub-section (1),

(a) clause (a) shall be renumbered as clause (ab);

(b) before the renumbered clause (ab), the following clauses shall be inserted, namely: –

"(a) 'alternative dispute resolution mechanism' means a process whereby parties attempt to reach a resolution of their disputes including settlement through methods other than court-led adjudication, and includes:
(i) negotiation, neutral evaluation, mediation, conciliation, and arbitration,
(ii) any other alternative dispute resolution mechanism as may be notified, and
(iii) any hybrid of the alternate dispute mechanism;

(aa) 'alternative dispute resolution enactment' means an enactment that governs the conduct of alternative dispute resolution mechanism, and includes:
(i) the Arbitration and Conciliation Act, 1996 (26 of 1996);
(ii) the Mediation Act, 2023 (32 of 2023); or
(iii) any other enactment that provides for alternative dispute resolution mechanism;"

4.10.2 The definition clause of the IFSCA Act, 2019 will have to be amended to insert the definition for the term 'alternative dispute resolution mechanism'. The rationale behind this suggestion stems from the fact that the present ADR framework within India is not limited to one legislation (For instance, the A&C Act is applicable to arbitrations while the Mediation Act, 2023 is used for regulating mediations). Considering the evolving nature of ADR mechanisms, and the need to comprehensively cover all current and potential future alternative dispute resolution services provided within the IFSC, it was deemed necessary to establish a precise definition for the term 'alternative dispute resolution mechanism'. The proposed definition employs terms such as 'neutral evaluation' and 'any hybrid of the alternate dispute mechanism' to facilitate an expansive ambit and to further ensure that the ADRC need not rely on express notifications to be permitted to utilise existing services in a hybrid format. Additionally, the term 'alternative dispute resolution enactment' has also been proposed to effectively encapsulate the diverse legal frameworks regulating alternative dispute resolution mechanisms in India.

4.10.3 Secondly, the Committee proposes amendments under Section 12(2) of Chapter III of the IFSCA Act, 2019 which provides for the functions of the IFSCA.[57] It is suggested that a new clause (ca) be inserted after clause (c) of Section 12(2), expanding the Authority's powers under the IFSCA Act to effectively regulate and foster the development of ADR mechanisms within the IFSC. This inclusion shall inherently grant IFSCA the authority to promote and develop a robust alternative dispute settlement mechanism. It shall enable IFSCA to govern and regulate ADRC, which could further be developed to become a world-class ADR institution on the global stage.

Recommendation:

In section 12 of the principal Act, in sub-section (2), after clause (c), the following clause shall be inserted, namely: –
"(ca) promoting the development of, and regulating the alternative dispute resolution mechanisms in the International Financial Services Centres."

4.10.4 To effectively regulate ADR services and service providers in IFSC, the Committee recommends insertion of a chapter on 'Alternative Dispute Resolution Mechanism' after Chapter III of the existing IFSCA Act. The proposed Chapter IIIA of the principal legislation shall contain two provisions. Section 13 A is designed to broaden the functions of the Authority by casting an obligation on the IFSCA to actively promote and regulate the development of ADR mechanisms within IFSC. It also empowers the regulator to oversee matters that are incidental or connected to the ADR process within IFSC. Further, Section 13B clarifies that the conduct of ADR proceedings at IFSC must be aligned with the provisions set forth in the ADR enactments such as the A&C Act, the Mediation Act or any other law that governs ADR mechanisms. The proposed amendments collectively aim to fortify the regulatory oversight and facilitative role of the IFSCA in shaping a conducive environment for alternative dispute resolution within the IFSC.

Recommendation:

In the principal Act, after chapter III, the following chapter shall be inserted, namely: -

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[57] 12. Functions of Authority.—(1) Subject to the provisions of this Act, it shall be the duty of the Authority to develop and regulate the financial products, financial services and financial institutions in the International Financial Services Centres, by such measures as it deems fit.
(2) Without prejudice to the generality of the provisions in sub-section (1), the powers and functions of the Authority shall include—
(a) regulating the financial products, financial services and financial institutions in an International Financial Services Centre which have been permitted, before the commencement of this Act, by any regulator for any International Financial Services Centre;
(b) regulating such other financial products, financial services or financial institutions in the International Financial Services Centres as may be notified by the Central Government from time to time;
(c) recommending to the Central Government such other financial products, financial services and financial institutions which may be permitted in an International Financial Services Centre by the Central Government;
(d) perform such other functions as may be prescribed.

“Chapter IIIA
Alternative Dispute Resolution Mechanisms

13A. ***Functions of Authority in relation to alternative dispute resolution mechanisms***

The Authority shall promote the development of, and regulate alternative dispute resolution mechanisms, and matters connected therewith or incidental thereto, in International Financial Services Centres.

13B. ***Alternative dispute resolution mechanisms at an International Financial Services Centre***

Notwithstanding anything contained in any other law for the time being in force:

(a) Arbitrations having its seat at an International Financial Services Centre; and

(b) All alternative dispute resolution mechanisms other than arbitration conducted at an International Financial Services Centre

shall be conducted in accordance with the provisions of the alternative dispute resolution enactments as modified and notified under the IFSCA Act, if any.”

4.10.5 Fourthly, an amendment is proposed for inclusion in sub-section 2 of Section 28 of the IFSCA Act.[58] Section 28 provides for the IFSCA’s powers to make regulations. In sub-section 2 after clause (g), it is suggested that a clause (ga) may be inserted which shall provide the Authority the power to make regulations for ADR proceedings having a seat or venue at IFSC and other matters connected to it. The objective of the suggestion is to enable IFSCA to make regulations with respect to all ADR mechanisms having a seat or venue at IFSC.

[58] Section 28. Power to make regulations.—(1) The Authority may, by notification, make regulations consistent with this Act and the rules made thereunder for carrying out the provisions of this Act.
(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely—
(a) the time and place of meetings and the rules of procedure in regard to transaction of business at such meetings under sub-section (1) of Section 8;
(b) the salaries and allowances and other terms and conditions of service of officers and other employees of Authority under sub-section (2) of Section 11;
(c) the manner in which the Authority may perform its functions under subsection (7) of Section 13;
(d) the manner of providing information to the Performance Review Committee under sub-section (4) of Section 17;
(e) the maintenance of the website or any other universally accessible repository of electronic information under sub-section (1) of Section 18;
(f) the foreign currency in which transaction of financial services in International Financial Services Centres may be conducted under Section 20;
(g) the powers and functions of the Authority which may be delegated under sub-section (2) of Section 23;
(h) any other matter which is required to be or may be, specified by regulations.

Recommendation:

In the principal Act, in section 28, in sub-section (2), after clause (g), the following clause shall be inserted, namely:-
"(ga) alternative dispute resolution mechanism having a seat or venue at an International Financial Services Centre, and matters connected or incidental thereto."

4.10.6 Further, an amendment is proposed for insertion of a 'Section 33A' after Section 33.[59] Similar to Section 33 of the IFSCA Act, Section 33A deal with amendments to enactments under the Third Schedule of the Act. Alternatively, the committee has proposed amendments to Section 31 of the IFSCA Act which empowers the central government to modify provisions of other enactments in relation to IFSCs. Section 31 of the IFSCA Act presently reads as follows:

> ***"Power to modify provisions of other enactments in relation to International Financial Services Centres**. — (1) The Central Government may, by notification, direct that any of the provisions of any other Central Act or any rules or regulations made thereunder or any notification or order issued or direction given thereunder (other than the provisions relating to making of the rules or regulations) specified in the notification—*
>
> *(a) shall not apply to financial products, financial services or financial institutions, as the case may be, in an International Financial Services Centre; or*
>
> *(b) shall apply to financial products, financial services or financial institutions, as the case may be, in an International Financial Services Centre with such exceptions, modifications and adaptations, as may be specified in the notification.*
>
> *(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the House."*

4.10.7 The Committee recognised that the current provision restricts changes solely to financial products, services, or institutions, creating a barrier to making amendments in central legislations or statutes governing or regulating ADR services. Hence, two options have been proposed in connection with Section 31 to achieve the goal of expanding the scope and flexibility of regulatory amendments within the IFSCs. The first option incorporates the language used

[59] Section 33. Amendment to certain enactments.—The enactments specified in the Second Schedule shall be amended in the manner specified therein.

in a similar provision under Section 49(1) of the SEZ Act.[60] The focus is on whether the provisions apply or do not apply to the IFSC as a whole. The first option provides a broader approach addressing the applicability of provisions to the entire IFSC instead of limiting it to financial products, services, or institutions within the IFSC.

4.10.8 On the other hand, the second option in relation to amendments under Section 31 of the IFSCA Act suggests the insertion of a new sub-section after Section 31(1). The new sub-section (1A) shall empower the central government to issue notifications specifying that certain provisions of alternative dispute resolution enactments will either be applicable or not applicable with specified exceptions, modifications, or adaptations. The amendment introduces a nuanced approach, allowing the central government the flexibility to specifically tailor the application of ADR enactments on ADR having a seat at IFSC.

Recommendation:

*"33A. **Amendments to certain other enactments**. -*
The enactments specified in the Third Schedule shall be amended in the manner specified therein."

Or

6. In the principal Act, in section 31, in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely: -
"(a) shall not apply to International Financial Services Centre; or
(b) shall apply to International Financial Services Centre with such exceptions, modifications, and adaptations, as may be specified in the notification."

Or

6. In the principal Act, in section 31,
(a) after sub-section (1), the following sub-section shall be inserted, namely: -

[60] Section 49 . Power to modify provisions of this Act or other enactments in relation to Special Economic Zones. (1) The Central Government may, by notification, direct that any of the provision of this Act (other than sections 54 to 56) or any other Central Act or any rules or regulations made thereunder or any notification or order issued or direction given thereunder (other than the provisions relating to making of the rules or regulations) specified in the notification--
(a) shall not apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones; or
(b) shall apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones only with such exceptions, modification and adaptation, as may be specified in the notification:

Provided that nothing contained in this section shall apply to any modifications of any Central Act or any rule or regulation made thereunder or any notification or order issued or direction given or scheme made thereunder so far as such modification, rule, regulation, notification, order or direction or scheme relates to the matters relating to trade unions, industrial and labour disputes, welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits applicable in any Special Economic Zones.

> "(1A) *"The Central Government may, by notification, direct that any of the provisions of any alternative dispute resolution enactment shall not apply or apply, with such exceptions, modifications or adaptations, as may be specified in the notification, to alternative dispute resolution having the seat at an International Financial Services Centre.";*
> *(b) in sub-section (2), for the words 'sub-section (1)', 'this section' shall be substituted.*

4.10.9 All of the abovementioned amendments enhance the scope of the Authority to develop and regulate the ADR mechanism to be set up in IFSC. Following a comprehensive examination of prevailing ADR laws in India, the Committee suggests adjustments in the existing enactments to align the ADR services offered at IFSC with the standards upheld by other prominent international dispute resolution centres and global financial hubs. The changes proposed are to be incorporated by way of a Third Schedule in the IFSCA Act which deals with 'Amendments to certain other enactments'. The Third Schedule has been divided into Part I, Part II and Part III to incorporate amendments under the Arbitration and Conciliation Act, 1996, the Special Economic Zone Act, 2005 and Mediation Act, 2023 respectively.

4.11 Amendments under the Arbitration and Conciliation Act, 1996

4.11.1 The Committee had extensive deliberation to ascertain the changes to be made within the A&C Act. It delved into various aspects including the nature of disputes emanating from arbitration seated at IFSC, the options available to the parties in selecting applicable laws, the adjudicatory body vested with jurisdiction, and the timeframe within which such disputes are to be resolved. It came to the conclusion that for the ADRC to be effective and stand out in terms of the services it provides, multiple changes have to be made in the A&C Act. Therefore, to integrate the various envisioned modifications within the Act, the Committee proposes the insertion of Part V in the Arbitration and Conciliation Act, 1996, specifically addressing arbitration with a seat in IFSC. The proposed amendment may be divided into the following:

A. Amendment to the definition of 'Court' under Arbitration and Conciliation Act, 1996

4.11.2 Time is a critical factor in dispute resolution services, particularly in arbitration. While the existing arbitration laws have made strides in reducing the time taken for awards, the involvement of Indian courts, which are already dealing with a backlog of cases, in appointing arbitrators and handling award challenges can impact the efficiency of services at the ADRC. Hence, the Committee has proposed modification to the definition of 'court' under the A&C Act to bring certainty regarding the judicial forum that shall have the power to intervene in arbitration seated at IFSC. The amendment suggests the creation of a proviso

after sub-clause (ii) of Section 2(1)(e), stipulating that for cases of arbitration with the seat located at IFSC(s), the designated 'Court' shall be a bench of a High Court with territorial jurisdiction over the area in which the seat is situated, as designated by its Chief Justice. The proposed judicial framework for the designated bench of the High Court has been discussed in Chapter 6, wherein the Committee has recommended amending the IFSCA Act further by the insertion of a new clause, namely Section 3(1)(ga), laying down the proposed definition of IFSC Bench of High Court. *(Refer to para no. 6.3.12–6.3.16)*. The proposed amendment to Section 2(1)(e) of the A&C Act seeks to streamline arbitration procedures by introducing a dedicated judicial forum for disputes having a seat at IFSC, thereby distinguishing them from disputes originating elsewhere. Otherwise, the Civil and High Courts across India could potentially assert jurisdiction and intervene in IFSC-related arbitrations, based on the party's location, if this amendment is not implemented.[61] Furthermore, facilitating documents-only proceedings in court would necessitate amendments to the High Court rules. The proposed amendment to the definition of court would allow the exclusive adaptation of such rule changes to support the court structure for the alternative dispute resolution services provided at IFSC.

Recommendation:

In section 2, in sub-section (1),

(a) in clause (e), after sub-clause (ii), the following proviso shall be inserted, namely: -

"Provided that the court shall mean IFSC Bench of High Court defined in clause (ga), subsection (1) of Section 3 of the International Financial Services Centres Authority Act, 2019 (50 of 2019) where the seat of arbitration is at International Financial Services Centre."

B. Arbitration at IFSC to be classified as international commercial arbitration

4.11.3 The law on arbitration in India provides for three types of arbitration- (i) domestic arbitration, where both parties are purely domestic; (ii) international commercial arbitration, where either one of the parties is foreign by virtue of Section 2(f); and (iii) lastly, foreign arbitration which falls under Part II of the A&C Act. In the present scenario, arbitrations seated at IFSC shall not fall under the third category. However, it may fall under purely domestic arbitration or international commercial arbitration based on the status of parties.[62] By virtue of Section 28(1) of the of A&C Act, all domestic arbitrations which do not fall under the category of international commercial arbitration shall be decided in accordance with the substantive law of India. This means, disputes between units established in IFSC shall be construed as a domestic arbitration with avenues for multiple levels of court intervention. To avoid multiplicity of

[61] Setting up appropriate dispute resolution facilities at IFSC: Research Report, International Financial Services Centres Authority, Gujarat National Law University and Bridge Policy Think Tank (2021)

[62] Ibid.

proceedings and ensure swift resolution of disputes for entities established in IFSC, the Committee suggests amending the definition of international commercial arbitration.

4.11.4 The Committee proposes the insertion of sub-clause (v) in Section 2(f) to include a unit set up in the International Financial Services Centre within the definition of international commercial arbitration. Further, the amendment also includes a non obstante clause which clarifies that the scope of international commercial arbitration extends to arbitrations having a seat at IFSC. Moreover, it emphasises that the regulations and provisions within this Act pertaining to international commercial arbitration are applicable, with the necessary changes having been made, to arbitrations with the seat at an IFSC.

Recommendation:

In section 2, in sub-section (1),
(a) in clause (f), after sub-clause (iv), the following shall be inserted namely:-
"*(v) a Unit setup in an International Financial Services Centre in India; Notwithstanding anything contained in this Act, all the provisions applicable to an international commercial arbitration in this Act shall mutatis mutandis apply to all arbitrations having seat at International Financial Services Centre, and to that extent reference to 'international commercial arbitration' in this Act shall be construed to include arbitrations having seat at International Financial Services Centre."*

C. Enhancing the Choice of Governing Law for Parties bringing disputes to IFSC

4.11.5 Under the present legal framework in India, it is established in law that the governing law of a contract has to be Indian if the parties are Indian (domestic parties). Parties are not allowed to oust the jurisdiction of the Indian courts, even if they mutually agree in writing to do so.[63] Laws of India are to continue to apply to Indian contracts between Indian parties.

4.11.6 In *Hakam Singh v. M/s. Gammon (India) Ltd.*,[64] the Supreme Court held that when two courts have the jurisdiction to preside over a matter, parties opting for the jurisdiction of one through an agreement would not be restrictive of the legal proceedings or violative of India's public policy as per Sections 28 and Section 23 of the Indian Contract Act, 1872 respectively. However, it also clarified that such an agreement could not confer jurisdiction on a court that did not have jurisdiction in the first place to preside over the dispute by law, even if the parties agreed to do so.

[63] Section 28, the Indian Contract Act.
[64] Hakam Singh v. M/s. Gammon (India) Ltd., 1971 (1) SCC 286.

4.11.7 In cases where there are foreign elements involved, however, the applicability of this principle is not straightforward, and undergoes complex layers of interpretation. Multiple elements involved in a dispute, such as the nationality of parties, governing law of contract, procedural law of arbitration, and substantive law applicable to the dispute, can have an Indian or foreign character. The incongruity between these within a single case gives rise to complexities owing to conflicting laws. The interpretation and application of these have evolved through case laws over the years.

i. Applicability of foreign laws and recognition of foreign legal processes

4.11.8 In *Satya v. Teja Singh*,[65] it was held that the recognition and applicability of foreign law and any judicial pronouncements cannot be provided mechanically in India. However, this does not mean that foreign law is automatically inapplicable in India. Foreign law and judicial processes are recognisable in India unless they contravene India's laws and/or public policy.

4.11.9 In case a party is a corporation, it is established that the law by virtue of which the corporation exists will be referred to while dealing with its status, unless the same is contrary to public policy.[66] In *Technip S.A. v. SMS Holding (Pvt.) Ltd. and Ors*.[67], the issue of determining applicable law arose before the Supreme Court of India. The question arose regarding the acquisition of control of Coflexip by Technip, both of which were incorporated in France. The Supreme Court concluded that since they were incorporated in France, French law would be applicable to them. This was despite the fact that Coflexip acquired a significant shareholding of an Indian company SEAMEC, which the SEAMEC shareholders contended was violative of Section 10 and Section 12 of Regulations. In the same vein as affirming the applicability of French laws to the abovementioned corporations incorporated in France, the Supreme Court noted that Indian laws would apply to SEAMEC. It concluded that the French laws applicable to Coflexip and Technip were not violative of Indian public policy, and consequently, there was no reason to disregard their applicability.

4.11.10 Consequently, where there are both Indian and foreign parties to a dispute, Indian laws apply to the Indian parties, and foreign laws apply to the foreign parties to the extent that they are not violative of India's laws and public policy.[68]

4.11.11 The term "corporation" in India includes companies registered under the Indian law (i.e., the Companies Act 1956/2013).[69] Section 20 of the Code of Civil Procedure, 1908, confers upon Indian courts the jurisdiction to decide matters

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[65] Satya v. Teja Singh, 1975 AIR 105.
[66] Technip S.A. v. SMS Holding (Pvt.) Ltd. and Ors., (2005) SCC 465.
[67] Technip S.A. v. SMS Holding (Pvt.) Ltd. and Ors., (2005) SCC 465.
[68] Technip S.A. v. SMS Holding (Pvt.) Ltd. and Ors., (2005) SCC 465.
[69] Hakam Singh v. M/s. Gammon (India) Ltd., 1971 (1) SCC 286.

where the corporation carries out its business in India, or the cause of action arises wholly or in part. Consequently, the courts of India will continue to have jurisdiction over companies incorporated in India, and their jurisdiction cannot be ousted, even by way of mutual agreement between the parties. In *Modi Entertainment Network and Anr v. WSG Cricket PTE Ltd.*,[70] it was held that the parties can choose to submit their issues for adjudication to a foreign court. However, they cannot oust the jurisdiction of Indian courts. Therefore, a 'non-exclusive' jurisdiction may be conferred upon the foreign court, which may be deemed a 'neutral court' or 'court of choice' to the extent permissible

ii. Applicability in case of International Commercial Arbitration

4.11.12 In *TDM Infrastructure (P) Ltd. v. UE Development India (P) Ltd.*,[71] the jurisprudence was further developed by the Supreme Court of India in the context of what could be deemed to be an International Commercial Arbitration ("ICA"). In this case, both parties were incorporated in India. However, the directors and shareholders of TDM were residents of Malaysia. Therefore, the management function of TDM was deployed through Malaysia, not India. The parties entered into an agreement by way of which UE Development India Private Limited ("UE") subcontracted to TDM a portion of the rehabilitation and upgrading contract that was awarded to UE by the National Highways Authority of India. The arbitration clause in the parties' agreement directed that the parties to follow the A&C Act with the seat being New Delhi. As disputes arose between the parties, TDM approached the Supreme Court of India to appoint an arbitrator u/s 11(5) and 11(9) of the A&C Act. The Court held that the nationality of the parties was crucial to determine for the purposes of appointment of an arbitrator. It held that a company incorporated in India have Indian nationality and since both the parties are Indian, the arbitration cannot be deemed to be an ICA. For the purposes of this determination, the fact that the central management and control of TDM was based in Malaysia, was deemed immaterial. This is because both the parties were registered in India. It reads Sections 28 and 2(6) of the A&C Act to interpret the legislative intent of the AC Act, which, it concludes, prohibits Indian nationals from derogating from Indian law.

4.11.13 However, in other judgments, a more party-centric approach has been promoted by the Indian judiciary. In *Man Roland Druckimachinen Ag v. Multicolour Offset Ltd.,*[72] the appellant carried out business in Germany. The respondents have their registered office in Mumbai. The arbitration agreement between these deemed German law to be the applicable law, and German courts to be the courts before which the disputes would be brought. The Supreme Court of India held that since the parties had agreed to a forum, the forum agreed upon

[70] Modi Entertainment Network and Anr v WSG Cricket PTE Ltd., 2003 (4) SCC 341.
[71] 2008 (14) SCC 271
[72] 2004 (7) SCC 447

would adjudicate the dispute. It also held that this agreement was not contrary to public policy or violative of Sections 23 and 28 of the Indian Contract Act of 1872. However, it is pertinent to note that in this case, unlike *TDM Infrastructure (P) Ltd. v. UE Development India (P) Ltd.*, both parties were not registered in India.

4.11.14 In the recent years, this party-centric view has been endorsed by the Indian judiciary in several cases. In *Piramal Healthcare Ltd. v. DiaSorin S.p.A*,[73] the Delhi High Court held that the jurisdiction clause between the parties conferred non-exclusive jurisdiction to the English Courts in relation to any disputes between the parties. The court held that since the parties have agreed to the same, they must have foreseen the eventuality of the consequences of a dispute arising between them, and upheld their choice of jurisdiction.

4.11.15 Notably, in the landmark judgment of *PASL Wind Solutions v. GE Power Conversion India* ("PASL v. GE"),[74] the agreement between the parties specified Zurich, Switzerland as the seat of the arbitration proceedings in accordance with ICC Rules. Substantive law was deemed to be Indian law, and the venue was agreed to be Mumbai. The dispute was referred to a sole arbitrator appointed by ICC, who held that the parties could arbitrate outside India, and that the seat of arbitration was Zurich. GE Power Conversion India ("GEPL") filed proceedings before the Gujarat High Court under Sections 47 and 49 of the A&C Act to enforce the award, and sought interim relief u/s 9 of the A&C Act. However, PASL contended that the seat of arbitration was Mumbai, not Zurich, and challenged the award u/s 34 of the A&C Act. The Gujarat High Court held that Zurich was the seat and the parties were not barred from choosing a foreign arbitral seat. PASL appealed this decision. The Supreme Court of India held that two Indian parties could choose a foreign seat of arbitration as it was specifically agreed to by the parties. It also held that the parties can obtain interim relief u/s 9 of the A&C Act. The court also clarified that Part I and Part II of the A&C Act are mutually exclusive and that foreign award and ICA cannot be confused with each other. While 'foreign award' emanates from a place, ICA is characterised by the involvement of a non-Indian party. The court noted that both parties were Indian, as they were incorporated in India. It held that Section 23 of the Indian Contract Act, 1872 or the public policy did not prohibit two Indian parties from referring disputes outside India. Therefore, it concluded its decision in favour of party autonomy.

4.11.16 However, the question of whether two Indian parties could opt out of the Indian laws did not arise in *PASL v. GE*, as both the parties were Indian. Therefore, this question remains unaddressed

[73] (2010) 172 DLT 131

[74] PASL Wind Solutions v. GE Power Conversion India, Civil Appeal No. 1647 of 2021.

4.11.17 In light of the above, the Committee noted that the existing jurisprudence, including the recent Supreme Court judgment, PASL v. GE does not conclusively clarify whether two Indian parties can opt for a foreign law. Consequently, the question regarding the choice of governing law for two Indian parties remains ambiguous. In light of this, the Committee feels that allowing such a choice in governing law for parties in IFSC is crucial for enhancing competitiveness and positioning IFSC as a preferred seat of arbitration. Therefore, the Committee proposes a change to the existing legal framework to accord clarity to disputes relating to the IFSC.

4.11.18 To ensure that the objectives of IFSCA-seated arbitrations have their intended effect, the Committee has proposed that the provisions applicable to international commercial arbitration shall mutatis mutandis apply to IFSCA-seated arbitrations as well. This would expand the applicability of the provision to IFSCA-seated arbitrations. Additionally, an explanatory provision to Section 28 shall be inserted which states that a contract providing for a governing law of any jurisdiction shall be legal if such contract provides for arbitration having a seat at IFSC.

4.11.19 These proposed amendments will eliminate the ambiguity regarding which parties, regardless of their nationality or the location of their central management, are permitted to opt out of following Indian contract laws or can choose the laws applicable to their proceedings. This will provide an umbrella authorisation to parties choosing an IFSCA-seated arbitration to choose any law of their preference. This will promote party autonomy and choice, which, in turn, will further the objective of IFSCA to become a dispute resolution hub.

Recommendation:

In Section 28, the following changes may be made:

(a) Clause (b) of sub section (1) shall be modified as:

"(b) in international commercial arbitrations ***or arbitrations seated at International Financial Services Centre****, -*

(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 (a) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute."

(b) After sub-section (1) of section 28, the following Explanation shall be inserted, namely

"Explanation : For the purposes of this Act and notwithstanding anything contained in any other law for the time being in force, where parties have

chosen the seat at an International Financial Services Centre, any agreement or contract entered into between such parties, irrespective of their nationality, domicile, or place of business, in which they expressly agree in writing to govern the contract or the arbitral proceedings by the law of any jurisdiction other than the laws of India, shall not be deemed illegal, void, or opposed to public policy of India.”

D. Streamlining challenge and appeal to award through “Documents-only” procedure

4.11.20 An amendment in the form of proviso to Section 34 and Section 36 of the A&C Act is recommended by the Committee to enhance party autonomy and reduce the timeframe required to complete the dispute resolution process. The proposed amendment aims to provide the parties with the option to opt for documents-only proceedings for the challenge and stay of the award passed by the arbitral tribunal.

4.11.21 Additionally, the definition of "documents-only" has been introduced under the definition clause of the A&C Act to provide clarity, indicating that documents-only proceedings pertain to cases where the proceedings are conducted solely on the basis of written submissions and documentary evidence without an oral hearing.

Recommendations:

In Section 2, in sub-section (1), after clause (e), the following sub-clause shall be inserted, namely:
“(ea)‘documents-only’ in respect of a proceeding means a proceeding where (a) no oral hearing is held; and
(b) proceeding is conducted on the basis of written submissions and documentary evidence.”

In section 34, after sub-section (1), the following proviso shall be inserted, namely: -
“*Provided that a party may file an application to set aside the award passed in an arbitration having the seat at an International Financial Services Centre, through documents only, where the parties have agreed in writing prior to the date of the award or where the rules of the institution chosen by them so provide.”*

In section 36, after sub-section (2), the following proviso shall be inserted namely:
“Provided that a party may file an application for stay of an operation of an award passed in an arbitration having the seat at an International Financial Services Centre, through documents only, where the parties have agreed in writing prior to the date of the award or where the rules of the institution chosen by them so provide.”

E. Accelerating arbitration timeline of disputes seated at IFSC

4.11.22 The proposed court structure is envisioned to have an expedited procedure and certainty of timelines within which the court proceedings should conclude. The mere establishment of the ADR Centre is insufficient for fostering a comprehensive ecosystem for ADR in IFSCA. The Centre must be complemented by an efficient court system capable of providing expedited, fast-track and specialised adjudication in commercial matters, only then the proposed ADR Centre can potentially maximise its effectiveness.

4.11.23 The present statutory framework provides 90 days for filing an application for setting aside an award and an additional 30-day grace period, totalling 120 days. To enhance the efficiency of the dispute resolution proceedings, the Committee proposes a significant reduction in the timeline to 42 days. The parties to dispute seated at IFSC shall be provided a period of 21 days in the first instance for filing an application to set aside an arbitral award. The proviso further emphasises that the Court shall only entertain applications within 21 days unless the applicant demonstrates sufficient cause of delay before the court. In such instances where the cause of delay is justified, the court shall be empowered to allow for an additional 21 days.

4.11.24 The Committee further acknowledged the need to have an efficient court system capable of providing expedited, fast-track and specialised adjudication in commercial matters. To ensure the proposed court structure also follows the timelines prescribed within the law, a mandate in the form of a non-obstante clause has been included to ensure that an application filed before the court under Section 34 is disposed of within a period of 90 days from the date of submission of all written pleadings. The proposed amendment aims to incentivize the court to adhere to the timeline specified in the legislation. In this regard, the court is also empowered under Section 34 to impose exemplary costs on parties causing unreasonable and unnecessary delays, especially when such delays prevent the court from meeting the prescribed deadline. The Committee has integrated similar amendments with respect to costs and timeline under Section 37 which deals with appeals.

Recommendation:

In section 34,
(a) after sub-section (3), the following provisos shall be inserted, namely: -
"*Provided that in case of an award passed in an arbitration having the seat at an International Financial Services Centre, the Court shall not admit an application if it is made beyond a period of twenty-one days from receipt of the arbitral award:*

Provided further that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period, it may entertain the application within a further period of twenty-one days, but not thereafter."

(b) after sub-section (6), the following proviso shall be inserted, namely:-
"Notwithstanding anything contained in this section, in case of an award passed in an arbitration having a seat at an International Financial Services Centre, an application under this section shall be disposed of expeditiously within a period of 90 days from the date of completion and submission of all written pleadings.

Provided also that if the Court is unable to adhere to this timeline for the reasons attributable to one or more of the parties, then, it shall have the discretion to impose exemplary costs on such party or parties under Section 31A"

In section 37, after sub-section (3), the following shall be inserted namely:

"(4) An application under this section against an award passed in an arbitration having its seat at an International Financial Services Centre shall be disposed of expeditiously and in any event, within a period of 90 days from the date of completion and submission of all written pleadings.

Provided that if the Court is unable to adhere to this timeline for the reasons attributable to one or more of the parties, then, it shall have the discretion to impose exemplary costs on such party or parties under Section 31A."

F. Removal of the additional layer of appeal under Section 37

4.11.25 The Committee deliberated extensively on whether the statutory right to appeal under Sec.37(1)(c) against orders made under Sec. 34 should be removed for arbitration seated at IFSC. Presently, Section 37(1)(c) of the A&C Act allows parties in arbitration to appeal court orders under Section 34, resulting in multiple layers of judicial intervention. The proposed recommendation will essentially cut short the appeal preferred under section 37(1)(c), which is anyway limited to the grounds pleaded under section 34 and serves as a second layer of challenge to the arbitral award. It would reduce the number of appeals and provide a competitive advantage to the dispute resolution centres at IFSC. The parties may file an application to set aside arbitral awards under Sec. 34, however, if they are dissatisfied with the order, they shall have the option to directly approach the Supreme Court under Article 136, i.e. a Special Leave Petition rather than filing an appeal under section 37(1)(c).

Recommendation:

In section 37, in sub-section (1), after clause (c), the following proviso shall be inserted, namely: -
"*Provided that no appeal shall be filed under this clause against an award passed in an arbitration having the seat at an International Financial Services Centre."*

G. Balancing disclosure and confidentiality requirements for permitting TPF in IFSC

4.11.26 Confidentiality is an integral aspect of arbitration. Hence, Section 42A of the A&C Act permits disclosure of information related to arbitral proceedings, except for the purpose of enforcement and implementation of award, to an exclusive set of entities which includes an arbitrator, arbitral institutions and the parties to the arbitration agreement. The compulsory nature of the provision makes it impossible for parties to engage third-party funders in the arbitration process. Considering established financial centres such as Singapore, Hong Kong and Dubai have crafted a space within the legal framework to encourage TPF, the Committee finds it fitting to introduce a proviso under Section 42A of the A&C Act to permit TPF in IFSC. The proviso allows a party involved in an arbitration with the seat at IFSC to disclose information to specific individuals in accordance with rules, regulations or laws prescribed for its governance.

Recommendation:

In section 42A, the following proviso shall be inserted, namely: -
"Provided that in the case of an arbitration having seat at an International Financial Services Centre, a party may disclose such information to such persons in such manner on such conditions as may be prescribed."

H. Conferring powers to IFSCA for regulation of arbitration seated at IFSC

4.11.27 Although amendments have been made in the IFSCA Act, conferring power to promote and regulate ADR services at IFSC, by virtue of Part I A of the A&C Act, the Arbitration Council of India ("ACI") is the authority empowered to frame policies governing arbitral institutions, including grading and accreditation of arbitral institutions and arbitrators. Given the unique needs of IFSC, it is not viable to have a single authority regulating ADR services for both IFSC and the rest of India. Therefore, to ensure streamlined governance that caters to the specific demands of IFSC, the Committee recommends that the operations of arbitration proceedings at IFSCs shall be exempt from applicability of any rules and/or guidelines issued by the ACI under the A&C Act. Hence, all sections referring to the roles and functions of ACI shall be deleted and have no effect on arbitrations conducted at dispute resolution centres at IFSC. The rationale behind this measure is to ensure that the ACI is not empowered to construct rules for the IFSC since it is proposed to have different criteria and qualifications for dispute resolution professionals and a distinct regulatory and institutional framework from the rest of India. This carve-out is envisioned to facilitate a culture of autonomy and flexibility at IFSC.

4.11.28 To further ensure that the IFSCA have the autonomy to make regulations for carrying out the provisions of the A&C Act for arbitrations seated at IFSC, carve-outs are proposed under the Section 84 of the A&C Act to substitute the

power conferred to the central government to IFSCA where the seat of arbitration is an IFSC.

Recommendation:

(1) Section 2(1)(j) and Sections 43A to 43M shall be deleted.

(2) For section 84, the following section shall be substituted, namely: -

"84. ***Power to make rules and regulations***
(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
(2) The International Financial Services Centres Authority may, by notification in the Official Gazette, make regulations for carrying out the provisions of this Act in respect of arbitrations seated at an International Financial Services Centre.
(3) Every rule and regulation made under this Act shall be laid, as soon as may be, after it is made before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation."

4.11.29 In addition to the above-mentioned, the Committee has proposed amendments to the definition clause in order to include the meanings of terms such as 'Authority', 'International Financial Services Centre', and 'International Financial Services Centre Authority' in the A&C Act.

4.12 Amendments under the Special Economic Zone Act, 2005 ("SEZ Act")

4.12.1 IFSC was established through Section 18 of the Special Economic Zones Act, 2005, making the laws applicable to the SEZ Act also applicable to IFSCs. This denotes that Section 42 of the SEZ Act, which discusses the designated forum for dispute resolution, is also applicable to IFSC. To delineate the applicability of the dispute resolution process provided in the SEZ Act on IFSCs, the Committee has proposed an amendment through Part II of Schedule III of the IFSCA Act. The proposed amendment states that Section 42 of the SEZ Act shall not be applicable to IFSC.

Recommendation:

PART II
AMENDMENT TO THE SPECIAL ECONOMIC ZONES ACT, 2005
(28 of 2005)

In section 42, after sub-section 3, the following sub-section shall be inserted, namely: -
"4. *Nothing contained in this section apply to an International Financial Services Centre."*

4.13 **Amendments under the Mediation Act, 2023**

4.13.1 The Committee discussed the potential impact of the recently enacted Mediation Act, 2023 on the ADRC and concluded that similar changes, akin to those made in the A&C Act, for empowering IFSCA, need to be implemented in the Mediation Act, 2023 for mediations where the place of mediation is at IFSC. The changes proposed by the Committee include:

A. Amendment to the definition of Court to streamline dispute resolution:

4.13.2 Further, a proviso to definition of term 'Court' has been incorporated to ensure that mediation-related disputes arising out of IFSC are referred to the specialised bench of the High Court constituted for handling cases arising out of IFSC. The rationale behind this provision is to provide a streamlined and expert resolution process for disputants at IFSC and to ensure that complex financial and mediation related disputes are handled efficiently and effectively by a specialised bench, recognising the need for specialised courts in global financial centres.

B. Excluding the role of Mediation Council of India for mediations at IFSC:

4.13.3 The Mediation Act, 2023 envisages the establishment of the Mediation Council of India with various duties including, but not limited to, specifying the criteria to be fulfilled by mediation institutes and service providers, registering mediators, and setting certification guidelines. After thorough deliberation on MCI's potential role in IFSC-bound mediations, the Committee concluded that the unique nature of disputes at IFSC demands services of commercial and financial mediators from diverse global backgrounds. Therefore, the guidelines and qualifications for mediators practicing at IFSC must be distinct from MCI's nationwide guidelines to effectively cater to international, financial and commercial mediation requirements. Establishing such a distinct dispute resolution framework which provides its own internationally acceptable norms for the appointment of mediators and mediation services could position IFSC as a premier destination for efficient and recognised mediation services. To incorporate this distinction, the Committee suggests the following recommendations:

i. The definition of the term "mediator" and 'specified' under clause (i) and (y) of Section 3 respectively has been modified to exempt registration of a mediator with the MCI and exclude regulations made by the MCI from the purview of mediations at IFSC. Similarly, the proposed changes in Section 40 aim to eliminate MCI's involvement in IFSC mediation by ensuring that mediation service providers established as a unit at IFSC are not obligated to seek recognition from the MCI;
ii. Further, a non -obstante clause has been incorporated after sub-section (5) of the Section 8 of the Mediation Act, 2023 to clarify that when the place of mediation is at IFSC, the mediator shall not be required to possess qualifications, experience, and accreditation specified by the Council. Also, the recommendation clarifies that in cases where parties are unable to agree on a mediator or the agreed mediator declines to act, a mediator from the database maintained by the mediation service provider at the IFSC may be appointed with their consent.
iii. Additionally, similar to the A&C Act, the provisions in the Mediation Act that refer to the functions and responsibilities of the mediator, including the chapter on the Mediation Council of India, have been omitted for mediations at IFSC.
iv. Lastly, Section 41 of the Mediation Act, 2023 has been modified to give clarity that the mediation service providers at IFSC are not mandated to accredit mediators or maintain a panel of mediators.

4.13.4 Lastly, the Committee has proposed insertion of the terms such as 'Authority', 'International Financial Services Centre' and 'International Financial Services Centres Authority' under the definition clause of the Mediation Act, 2023.

Recommendation:

PART III
AMENDMENT TO THE MEDIATION ACT, 2023
(32 of 2023)

"After Chapter XI, the following Chapter shall be inserted, namely: -

"CHAPTER XII
MEDIATION HAVING CONDUCTED IN AN INTERNATIONAL FINANCIAL SERVICES CENTRE

66. The provisions of this Act shall apply to a mediation conducted at an International Financial Services Centre with the following modifications:

(1) In section 3,

(a) Before clause (a), the following clause shall be inserted, namely: -

"(aa) 'authority' means the International Financial Services Centres Authority established under sub-section (1) of section 4 of the International Financial Services Centres Authority Act, 2019 (50 of 2019)";

(b) After clause (d), the following proviso may be inserted, namely:
"Provided that the court shall mean IFSC Bench of High Court defined in clause (ga), subsection (1) of Section 3 of the International Financial Services Centres Authority Act, 2019(50 of 2019) where the place of mediation is at an International Financial Services Centre."

(c) After clause (f), the following clauses shall be inserted, namely: -
"(fa) 'International Financial Services Centre' shall have the meaning as assigned to it in the International Financial Services Centres Authority Act, 2019 (50 of 2019);
(fb) 'International Financial Service Centres Authority' means the International Financial Services Centres Authority established under sub-section (1) of section 4 of the International Financial Services Centres Authority Act, 2019 (50 of 2019); "

(d) After clause (i), the following proviso may be inserted, namely:
"*Provided that where place of mediation is at an International Financial Services Centre, such mediator shall not be required to be registered with the Council*."

(e) After clause (y) the following may be inserted, namely:
"Explanation: "Specified" shall mean specified by regulations made by the Council under this Act, except where the place of mediation is at an International Financial Services Centre."

(2) In Section 8, after sub-section (5), of the following may be inserted, namely:
"Notwithstanding anything contained in this section, where the place of mediation is at an International Financial Services Centre:
(a) The mediator shall not be required to possess the qualifications, experience, and accreditation specified by the Council.
(b) In case the parties are unable to reach an agreement as to the appointment of a mediator or the mediator agreed by them refuses to act as a mediator, a mediator from the panel maintained by the mediation service provider at the IFSC may be appointed, with his consent."

(3) In Section 20, after proviso of the subsection (1), the following may be inserted, namely:

"Provided further that the mediation settlement agreement under this section may be registered with the mediation service provider where the place of mediation is at an International Financial Services Centre."

(4) Sections 31 to 39 and Section 42, 45, 46, 47 and 52(2) shall be deleted.

(5) In Section 40, after sub-section (2), the following may be inserted, namely:
"Notwithstanding anything contained in this section, where the place of mediation is at an International Financial Services Centre, the mediation service provider shall not be required to be recognised by the Council so long as the mediation service provider is registered as a Unit at International Financial Services Centre"

(6) In Section 41, after clause (f), the following may be inserted, namely:
"Provided that, notwithstanding anything contained in this section, clause (a) shall not be applicable to mediation service providers where the place of mediation is at an International Financial Services Centre."

(7) In section 52, for subsection (1), the following sub-sections shall be substituted, namely: -
"(1) *Subject to sub-section (1A), the Council may, with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.*
(1A) The International Financial services Centres Authority may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act where the place of mediation is an International Financial Services Centre."

4.13.5 The Government has recently promulgated rules pertaining to the MCI, including the salary, travel and other allowances to the Chairperson and members of the MCI, effective June 13, 2024.[75] However, since these rules specifically relate to the MCI and the Committee has proposed the express exclusion of the role of the Council, these rules do not have any direct bearing on the ADRC. Therefore, by virtue of the exemption of the above-discussed provisions namely, Sections 31 to 39, and Sections 42, 45 and 46, these rules shall not be applicable to the ADRC.

4.14 Regulation of Dispute Resolution Mechanisms through Institutional Rules

[75] Mediation Council of India (Salary, Allowances and other Terms and Conditions of Service of Chairperson and Members) Rules, 2024; Mediation Council of India (Travelling and other Allowances for Part-time Chairperson and Part-time Members) Rules, 2024; Mediation Council of India (Forms and Manner of Annual Statement of Accounts) Rules, 2024

4.14.1 International dispute resolution centres must operate independently and not be subject to direct governmental oversight in terms of conducting proceedings.[76] It is imperative for an international dispute resolution centre to have its own self-regulating rules of procedure in place for dispute settlement. A self-regulatory approach empowers the centre to cater to the diverse and evolving needs of the parties involved, thereby enhancing the efficacy and accessibility of the process of dispute resolution. Likewise, major international arbitration centres, including SIAC, HKIAC and LCIA, have established their own rules and procedures. Drawing inspiration from these renowned institutions, the Committee has acknowledged that the ADRC also needs to have its own rules which serve as high-level guidelines for the functioning of the centre.

4.14.2 The Committee, taking note of the best practices and innovations that have proven to be successful on an international scale, has recognised certain aspects that are central to dispute resolution and ought to be included within the institutional framework of ADRC. Proper case management system, use of technology and foreign representation, shorter timelines, option for multi-lingual awards, industry experts and foreign practitioners on the panel, and protocols for hybrid mechanisms are certain additional features which are pertinent for the growth of a global dispute resolution centre. The goal is to ensure that the ADRC not only keeps pace with global standards but also emerges as a pioneering force in providing a user-friendly and progressive environment for dispute resolution at IFSC.

A. Proper case management system and adherence to timelines:

4.14.3 To ensure quick resolution of disputes, the proposed rules provide for the creation of a procedural timetable for the conduct of arbitration which shall be adhered to by the parties as well as the arbitrator(s) (Rule 22, Draft Arbitration Rules of ADRC ("Arbitration Rules"). This facilitates a streamlined and efficient dispute resolution process wherein potential issues can be identified and resolved early on. Further, the Committee has emphasised the significance of cost and its role in positively influencing the expeditious conduct of proceedings. Hence, the imposition of costs can be employed as a deterrent tool for the non-complying parties for stricter adherence to the agreed timeline. In addition, the arbitral tribunal is mandated to draw up a document defining the terms of reference which is to be signed by all parties to the disputes. The objective of this provision is to identify all the claims at an initial stage of proceedings (Rule 23, Arbitration Rules).

B. Institutional capacity to integrate technology and ODR mechanism:

[76] Bibek Debroy and Suparna Jain, Strengthening Arbitration and its Enforcement in India – Resolve in India, NITI Aayog, Government of India, 2016, available at: smartnet.niua.org/sites/default/files/resources/Arbitration.pdf (last accessed on January 24, 2024)

4.14.4 In the dynamic landscape of ADR, the integration of technology and ODR mechanism within the ADRC's institutional framework has been recognised as crucial by the Committee. The rising digitisation and automation, especially in the wake of COVID-19, have transformed every sector and the legal field is no different. Studies suggest that the global legal technology industry which was valued at USD 23.34 billion in 2022, is estimated to reach USD 45.73 billion by 2030.[77] Further, the Government of India has recognised the growing significance of ODR, especially in the face of delays in the disposal of disputes in the Indian context.[78] Hence, it is categorically recognised that, in tandem with the other major ADR institutions, the proposed ADRC ought to also have an institutional capacity to seamlessly incorporate technology and ODR mechanisms within the proposed framework.

4.14.5 Accordingly, the proposed rules provide for the utilisation of online platforms to initiate the dispute resolution proceedings via relevant website or email (Rule 4.1, Arbitration Rules), the conduct of dispute resolution proceedings including virtual hearings via video conferencing and conference calls, etc. (Rule 26.3, Arbitration Rules). Such provisions are aimed at enabling the remote participation of parties and their representatives without the need for their physical presence. Such modes provide flexibility and ease to the disputing parties, especially foreign individuals and businesses that have a presence across the globe.

C. Permitting TPF arrangements:

4.14.6 After the comprehensive study of major ADR institutions and thorough deliberation with TPF experts from around the world, the Committee concluded that the proposed institutional framework of the ADRC must expressly affirm the acceptance of TPF arrangements. In this regard, the draft rules provide the explicit recognition of TPF Agreements in the following manner:

> Rule 2(l), Draft Arbitration Rules, defines Third Party Funding Arrangement or Third-Party Agreement as *"an arrangement between an independent third party (whether an individual or body corporate) and one of the parties to the arbitration which confers on that third party an economic benefit which is linked to the outcome of the arbitration and may involve the receipt of a share of the proceeds of any award."*

4.14.7 Moreover, the rules contain a provision outlining the procedure to be followed when TPF arrangements are in place (Rule 40, Arbitration Rules). The provision clarifies the stages of arbitration proceedings during which parties can engage

[77] Legal Technology Market Analysis Report 2023-2030, Grand View Research Inc., available at: https://www.grandviewresearch.com/industry-analysis/legal-technology-market-report (last accessed on January 21, 2024)

[78] Designing the Future of Dispute Resolution: The ODR Policy Plan for India, NITI Aayog, Government of India, October 2021, available at: https://www.niti.gov.in/sites/default/files/2023-03/Designing-The-Future-of-Dispute-Resolution-The-ODR-Policy-Plan-for-India.pdf (last accessed on January 21, 2024)

in TPF arrangements. It outlines the type of information to be disclosed to the arbitral tribunal and other involved parties once an agreement is established. It aims to provide regulatory clarity to TPFs across the globe on the stance taken by the ADRC in relation to TPF and further highlight the need to disclose the existence of TPF arrangements in arbitration.

D. Option for neutral nationality and panel of international experts:

4.14.8 The ADRC aims to become an institution of international repute and shall be catering to diverse commercial disputes and parties across the globe. In such a scenario, it is pertinent for the parties to have the option of neutral nationality. The rules provide that the parties to the dispute shall disclose their nationalities to the administrator, and if the parties belong to different nationalities, then their arbitrator/ mediator/ neutral leading the arbitration shall not have the same nationality as either of the parties unless otherwise agreed by the parties in writing (Rule 12, Arbitration Rules). The rationale behind the provision is to mitigate the risk of bias and favouritism, strengthen the fairness of the dispute resolution process and build trust among the parties.

4.14.9 Furthermore, having foreign dispute resolution professionals on the panel ensures a more balanced and impartial decision-making process. It has the potential to enhance the credibility of the ADRC and foster the perception of fairness and neutrality. Especially in the Indian context, the panel of arbitrators and mediators are often filled with retired judges and lawyers and historically, arbitrations in India are often seen devolving into traditional court hearing formats, as has been noted by the Law Commission of India.[79] To evolve a structure that is in line with global standards, it is important to maintain a dynamic approach which instils confidence among its users and contributes towards the effectiveness of the dispute resolution process.

E. Shorter and strict timelines for quicker disposal of disputes:

4.14.10 Practitioners and experts have repeatedly cited procedural delays and uncertainty as amongst the most important factors behind not preferring a dispute resolution centre in India. Hence, the Committee acknowledged the need to prioritise timely and efficient resolution of disputes where timelines are strictly adhered to. For this purpose, the parties are expressly given the option to modify and shorten various time limits set out in the draft rules of the ADRC (Rule 44, Arbitration Rules). Further, strict timelines have been maintained throughout the rules for various stages of proceedings from response to the notice of arbitration, the appointment of arbitrator(s) till the stage of the final award to ensure effective resolution of disputes.

[79] Report 246: Amendments to the Arbitration and Conciliation Act, 1996, Law Commission of India, August 2014, Page 12, available at: https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081615.pdf (last accessed on January 21, 2024)

4.14.11 Furthermore, the Committee noted that the ADRC should discourage frivolous challenges to the proceedings and must provide for penalties or disincentives for parties and neutrals engaging in the behaviour which contributes towards delays.

F. Options for multi-lingual awards:

4.14.12 Parties to the disputes may come from varied cultural backgrounds, nationalities and diverse linguistic identities. By facilitating the option of multi-lingual awards, such parties who may not be proficient in English, or such other default language, can be seamlessly accommodated within the framework. It is proposed that the ADRC must provide the option of multi-lingual awards to enhance inclusivity and ease of use among users. (Rule 20, Arbitration Rules)

G. Hybrid mechanism / Arb-Med-Arb protocols and neutral evaluation:

4.14.13 The Committee has also recognised that going forward, the ADRC must be an evolving environment that can easily adapt to the continuous changes in the ADR landscape, whether regulatory, legislative or technological. ADRC must have the ability to enhance flexibility, efficiency and effectiveness in resolving disputes while maintaining a party-centric approach. For this purpose, employing a tailored approach catering to the unique needs of the disputing parties is essential. New and hybrid mechanisms of dispute resolution allow for a customised strategy wherein techniques are utilised for resolving disputes. The Committee recommends the creation of specific rules and protocols for hybrid mechanisms such as Arb-Med-Arb and the adoption of Neutral Evaluation to attract more disputants to the ADRC and ensure higher chances of settlement of disputes. Since the commercial culture tends to favour negotiated settlements, parties tend to favour non-adversarial and amicable resolutions.

4.14.14 Presently, the proposed rules for the ADRC state that the parties are free to choose different methods or procedures to settle their disputes or a combination of settlement methods or procedures, including arb-med-arb protocols and neutral evaluation (Rule 1.7, Mediation Rules). This provision reflects the ADRC's commitment to becoming a forward-thinking institution and maintaining adaptability in response to the evolving needs of dispute resolution.

4.14.15 In addition to the above, the Committee also noted that a user council may be established going forward, which shall serve as a valuable channel for receiving user feedback and insights. The user council may meet and discuss recent developments and check if the rules are being complied with and whether the system remains user-friendly and aligns with the needs of the users. The rules governing the ADRC will be inherently dynamic and adaptive in nature.

4.14.16 The Draft Arbitration and Mediation Rules for ADRC proposed by the Committee, keeping in mind the needs and requirements of the ADRC are annexed hereto as **Annexure IV** and **Annexure V** respectively.

5. Institutional Framework for Alternative Dispute Resolution Centre at IFSC

5.1 Existing International Institutional Structures

5.1.1 The Committee evaluated the institutional structure of various international ADR Centres to understand the key design features that ADRC should adopt. A snapshot of a few such institutions is provided below.

A. The London Court of International Arbitration (LCIA)

5.1.2 The foundation of LCIA can be traced back to 1883 when the Court of Common Council of the City of London set up a committee to formulate recommendations for creating a tribunal dedicated to domestic arbitration.[80] At that time, LCIA was a joint initiative of the London City Corporation and the London Chamber of Commerce.

5.1.3 In 1884, a plan was submitted to establish a tribunal administered by the City Corporation, with the cooperation of the London Chamber of Commerce.[81] By April 1891, the tribunal was named "The City of London Chamber of Arbitration" and was overseen by the arbitration committee consisting of members from both the London Chamber of Commerce and the London City Corporation. Subsequently, in April 1903, the tribunal underwent another name change, becoming the "London Court of Arbitration". The governance framework of the London Court of Arbitration experienced minimal alterations over the following seventy years, with the institution continuing to be under government control.

5.1.4 In 1975, the Institute of Arbitrators joined the other two existing administering bodies, leading to significant structural changes. The earlier arbitration committee became the 'Joint Management Committee', and its size was reduced from twenty-four members to eighteen. The rationale was to incorporate six representatives from each of the three organisations. Subsequently, in 1981, the court was renamed the "London Court of International Arbitration" ("LCIA") and in 1986, the LCIA became a private, not-for-profit company, limited by guarantee and fully independent of the three founding bodies.[82]

5.1.5 In this manner, like most centres, LCIA started as a government-controlled body and transitioned into its current private, not-for-profit company structure. It operates as a distinguished body corporate, established to provide a robust framework for international dispute resolution. As a body corporate, the LCIA

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[80] History, London Court of International Arbitration, available at: https://www.lcia.org/LCIA/history.aspx (last accessed on November 4, 2023)

[81] History, London Court of International Arbitration, available at: https://www.lcia.org/LCIA/history.aspx (last accessed on November 4, 2023)

[82] Sankalp Jain, Institutional Arbitration Vis-a-Vis Statutory Law: London Court of International Arbitration October 27, 2015, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2815285 (last accessed on November 8, 2024)

possesses its own legal identity, allowing it to independently administer arbitration proceedings, formulate rules, and ensure the fair and impartial resolution of disputes.

Structure of LCIA

Company

Represented by the Board

Arbitration Court

Constitute of President, Vice President, members and representatives.

Secretariat

Headed by the Registrar

LCIA ORGANISATION STRUCTURE

The **Director General** of the LCIA fulfils the role of chief executive officer, with day-to-day responsibility of the conduct of the business of the LCIA, and is the principal point of contact between the institution, the **Board** and **Court.**

5.1.6 The LCIA operates under a three-tier structure comprising a private limited company, an Arbitration Court, and a Secretariat. It is overseen by a Director General. The Board of the LCIA ("the Board") comprises members from varied backgrounds such as partners and heads of renowned law firms, international arbitration groups, heads of accounting firms,[83] and other experts with years of experience in arbitration. However, it is noteworthy that a large majority of the Board comprises of prominent London-based arbitration practitioners having extensive experience and expertise in international dispute resolution.

5.1.7 Further, the management structured is designed to prevent conflicts of interest among practitioners. Based on publicly available information and interviews conducted, it is understood that LCIA shareholders are entrusted with administrative responsibilities but refrain from enjoying the benefits of the services of LCIA to ensure that there is no undue influence in the functioning of the centre. A separate group of experts and user councils has also been constituted to advise LCIA on ADR procedural issues when administering arbitrations.[84]

[83] The LCIA Board, London Court of International Arbitration, available at: https://www.lcia.org/LCIA/the-lcia-board.aspx (last accessed on February 8, 2024)

[84] Constitution of LCIA User's Council, London Court of International Arbitration, available at: https://www.lcia.org/Membership/LCIA_Users_Council_Constitution.aspx (last accessed on February 9, 2024)

5.1.8 The Board is entrusted with the responsibility of overseeing the operations and development of the LCIA's business.[85] While it doesn't directly administer arbitrations or mediations, it maintains a close association with administrative functions. Additionally, the Board is empowered to appoint the members of the LCIA Court.[86]

5.1.9 Though LCIA has a constituent body, namely 'arbitration court', none of the functions discharged by any of the bodies of LCIA is related to any state legal system or any government. LCIA appoints independent arbitrators on a case-by-case basis.[87] The arbitrators are paid by the parties concerned and not by LCIA. The Arbitration Court of LCIA (also known as "LCIA Court") operates in accordance with LCIA rules. The LCIA Court is composed of up to thirty-five members, appointed by the Board of LCIA on the recommendation of the Court. Among the members, no more than seven individuals are allowed to be of the same nationality, ensuring a diverse and internationally representative body.[88]

5.1.10 The officers of the LCIA Court include the president and a maximum of up to seven vice presidents.[89] Most of the functions endowed upon the LCIA Court are discharged by the president or the vice president. However, an honorary vice president or a former vice president who has been appointed by the president or vice president may also perform said functions.[90] Furthermore, the president or vice president holds the authority to appoint a division of the arbitration court which shall comprise of either three or five members (chaired by President and may include vice president, honorary vice president or former vice president) to perform functions of the LCIA Court. The LCIA Court acts as the final authority for the proper application of the rules specified by LCIA. Some of its key responsibilities include the appointment of tribunals, adjudication of challenges to arbitrators, cost control and timely review of the arbitration rules.

5.1.11 The secretariat, on the other hand, is led by the registrar, who heads the casework secretariat. The casework secretariat is the team of administrative staff responsible for carrying out the secretariat's functions. The registrar and the casework secretariat work together to support the smooth functioning of the arbitration proceedings. The secretariat is responsible for day-to-day

[85] Organisation, London Court of International Arbitration, available at: https://www.lcia.org/LCIA/organisation.aspx (last accessed on February 8, 2024)
[86] Ibid.
[87] Is the LCIA actually a court?, Frequently Asked Questions, London Court of International Arbitration, available at: https://www.lcia.org/frequently_asked_questions.aspx (last accessed on February 8, 2024)
[88] Organisation, London Court of International Arbitration, available at: https://www.lcia.org/LCIA/organisation.aspx (last accessed on February 8, 2024)
[89] Constitution of the LCIA Arbitration Court, London Court of International Arbitration, available at: https://www.lcia.org/LCIA/constitution-of-the-lcia-court.aspx (last accessed on February 8, 2024)
[90] Ibid.

administration of the disputes under LCIA.[91] The registrar and deputy registrar act to fulfil their roles in accordance with the rules and procedures published by the LCIA from time to time.[92]

5.1.12 Notably, as part of LCIA's administrative services, the Secretariat acts as administrator in cases brought under the UNCITRAL Rules[93] and further provides fundholding facility in other ad hoc proceedings.[94] Other additional functions of the secretariat include flexible administrative support, monitoring of cases, maintaining files and account ledgers, etc.

B. Singapore International Arbitration Centre (SIAC)

5.1.13 The Singapore International Arbitration Centre is an independent, not-for-profit organisation, established in 1991. It is a global arbitration institution that provides case management services to the international business community. Initially, the government held a stake and exercised significant control over the centre's functioning. However, this control was gradually relinquished by completely diluting its shareholding and transferring oversight to other not-for-profit entities. Although SIAC received grants from the government in the initial stage of its establishment, it presently operates independently without depending on external funding.[95] Further, SIAC continues to enjoy the government's non-pecuniary support to the extent of extensive promotion of its activities and legislative changes where necessary.[96] Notably, the government does not intervene or influence the operations, functioning, appointment, or any other decision-making power of SIAC.

5.1.14 The private, not-for-profit company structure of SIAC highlights the importance of impartiality and efficiency in the institutional structure of an international arbitration centre. By being privately operated and non-profit-oriented, such centres focus entirely on promoting efficient dispute resolution through

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[91] Organisation, London Court of International Arbitration, available at: https://www.lcia.org/LCIA/organisation.aspx (last accessed on February 8, 2024)

[92] Registrars and Deputy Registrars, Constitution of the LCIA Arbitration Court, London Court of International Arbitration, available at: https://www.lcia.org/LCIA/constitution-of-the-lcia-court.aspx (last accessed on February 8, 2024)

[93] LCIA Terms and Conditions for the Administration of and/or Provision of Specific Services in UNCITRAL Arbitrations, London Court of International Arbitration, available at: https://www.lcia.org/dispute_resolution_services/lcia-terms-and-conditions-for-the-administration-of-andor-prov.aspx (last accessed on February 8, 2024)

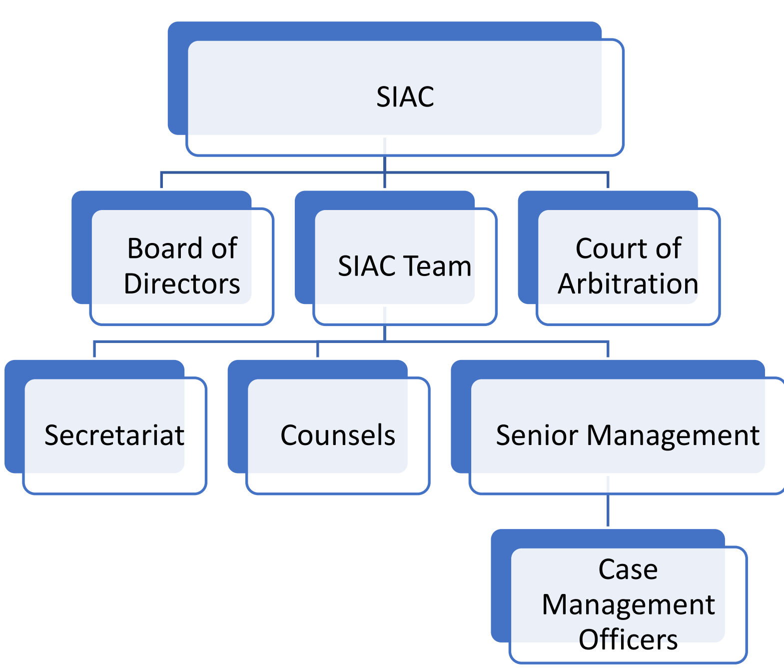
[94] LCIA Terms and Conditions for Fundholding, London Court of International Arbitration, available at: https://www.lcia.org/dispute_resolution_services/lcia-terms-and-conditions-for-fundholding.aspx (last accessed on February 8, 2024)

[95] Bibek Debroy and Suparna Jain, Strengthening Arbitration and its Enforcement in India – Resolve in India, NITI Aayog, Government of India, 2016, Page 9, available at: smartnet.niua.org/sites/default/files/resources/Arbitration.pdf (last accessed on January 24, 2024)

[96] Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India, Department of Legal Affairs, Ministry of Law and Justice, Government of India, Page 39, available at: https://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf (last accessed on February 9, 2024)

alternative dispute resolution mechanisms, unencumbered by profit-making pressures. This structure ensures that the primary aim is fair and impartial resolution of disputes, which is fundamental to building trust and credibility in the ADR processes. The organisational structure of SIAC comprises the board of directors, senior management, secretariat, court of arbitration, counsels, or the panel of arbitrators and case management officers.

Administrative Structure of SIAC



5.1.15 The board of directors consists of eminent lawyers and professionals from all over the world. Presently, it comprises of a total of 9 persons including chairman, deputy chairman and members.[97] The Board is the governing body of SIAC and is responsible for general oversight and making crucial decisions such as approval of policies, rules and regulations. It is responsible for supervising SIAC's operations, business strategy development and corporate governance matters.[98]

5.1.16 The Court of Arbitration of SIAC ("SIAC Court") comprises 35 professionals including the president, 2 vice presidents and members. The distinguished professionals are recognised experts and practitioners in the field of arbitration from across the globe, hailing from both common law and civil law backgrounds.[99] The SIAC Court's main functions *inter-alia* include the appointment of arbitrators and overall supervision of case administration at SIAC.

[97] Board of Directors, Singapore International Arbitration Centre, available at: https://siac.org.sg/about-us/board-of-directors (last accessed on February 8, 2024)
[98] Why SIAC, About Us, Singapore International Arbitration Centre, available at: https://siac.org.sg/about-us/why-siac (last accessed on February 8, 2024)
[99] How international is SIAC, Frequently Asked Questions (FAQs), Singapore International Arbitration Centre, available at: https://siac.org.sg/faqs/siac-general-faqs (last accessed on November 4, 2023)

5.1.17 The Executive Body of SIAC, also known as the 'Senior Management', comprises of the Chief Executive Officer ("CEO"), Registrar and the Chief Operating Officer ("COO"). The Secretariat of SIAC, on the other hand, comprises of the Registrar, Deputy Registrar and Supervisory Counsel. The Secretariat of SIAC is an administrative body responsible for executing day-to-day operations, including tasks such as determining the applicable payment schedule, applicability of expedited procedures, etc. The precise details regarding the formation of the institution's administrative structure are not publicly available. However, presently, the Secretariat comprises 13 legal counsels (counsel and deputy counsel) qualified in multiple jurisdictions.[100] Further, it has 7 Case Management Officers ("CMOs") currently responsible for handling case management of disputes brought before the centre for resolution and offering support to the Panel.[101] The institution also houses an international panel with more than 100 expert arbitrators spanning 25 jurisdictions.[102] SIAC's structure includes Overseas Offices that coordinate and collaborate closely with stakeholders in specific regions, contributing to the improved management of the dispute resolution process.

C. International Chamber of Commerce (ICC), Paris

5.1.18 The International Chamber of Commerce's ("ICC") history reflects its evolution from a government-owned entity to a private organisation. Established in 1919 by Member States, including Belgium, Denmark, France, Italy, the United Kingdom, and the United States, the ICC was originally conceived to foster open trade and facilitate a free financial market. Over time, the ICC's influence expanded globally, with National Committees now present in over 90 countries.[103] Over the years, as the global business landscape transformed, the ICC adapted to the changing needs of the international business community. In a pivotal shift, the ICC transitioned from being predominantly government-driven to embracing a private entity structure.

5.1.19 The evolving nature of the ICC is highlighted by its Constitution, particularly Article 1(3),[104] which empowers the organisation to pursue its objectives by creating or acquiring structures of any nature, including companies, groups, or not-for-profit institutions. This constitutional provision enables the ICC to enter into diverse arrangements, cooperation agreements, or joint ventures with entities

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[100] Our Team, Singapore International Arbitration Centre, available at: https://siac.org.sg/about-us/our-team (last accessed on February 8, 2024)

[101] Ibid.

[102] SIAC Panel, Singapore International Arbitration Centre, available at: https://siac.org.sg/siac-panel-directory (last accessed on February 8, 2024)

[103] National Committees are regional offices of ICC present across the globe. Please refer to https://iccwbo.org/national-committees/ and https://2go.iccwbo.org/about-icc-knowledge-2-go (last accessed on February 9, 2024)

[104] ICC Constitution, International Chamber of Commerce, 2016, available at: https://iccwbo.org/icc-constitution/ (last accessed on November 30, 2023)

governed by any law, as well as participate in any restructuring operations connected to the organisation's activities. This flexibility has played a crucial role in the ICC's transformation from a government-led initiative to a dynamic and adaptable private entity.

5.1.20 The ICC International Court of Arbitration ("ICC Court") operates within the administrative structure of the ICC. While the ICC Court is an independent body responsible for administering arbitration and resolving disputes, it functions under the guidance and oversight of the ICC World Council and the ICC Executive Board. The administrative structure of ICC contains the following key components:

i. **World Council**:

5.1.21 The ICC's World Council functions as the supreme governing body of the organisation, akin to the general assembly of a major inter-governmental organisation. However, what sets it apart is that instead of government officials, the delegates in the ICC World Council are exclusively business executives. Its unique composition allows the ICC to address issues and challenges from a private sector perspective and advocate for business interests in international affairs. The World Council elects the ICC Chair and Vice-Chair every two years. Furthermore, the Executive Board that leads the strategic direction of the ICC is also elected by the World Council.

ii. **Executive Board**:

5.1.22 The ICC's Executive Board is a key decision-making body within ICC which is responsible for developing and implementing the organisation's strategy, policies, and programs. They are also responsible for overseeing the financial affairs of ICC. The Executive Board comprises both *ex officio* and elected members, each having equal rights. The board recommends the appointment of the ICC

Chairmanship and Secretary General to the ICC World Council and approves all policy positions and recommendations.

5.1.23 In addition to the Executive Board, there are various committees that operate under its umbrella to address specific aspects of the ICC's functioning. The various executive committees include the Governance Committee, Finance Committee, Governing Body for Dispute Resolution Service, Nominations and Human Resource Committee, Policy Commissions Committee and Global Networks Committee. Each of these committees plays a crucial role in supporting the Executive Board in fulfilling its responsibilities and advancing the ICC's objectives in the international business community.

iii. ICC’s Secretariat:

5.1.24 It is the administrative body that supports the implementation of ICC's activities and initiatives. It is headed by the ICC Secretary General, who manages the day-to-day operations of the ICC and coordinates its various programs and services. The World Council appoints the Secretary General, upon recommendation by the Executive Board.[105] Further, it also dedicates resources and expertise to support the specialised dispute resolution services offered by the ICC. The ICC Court’s Secretariat is made up for more than a hundred lawyers and support personnel operating out of different offices around the world. The Secretary General’s performance is periodically evaluated by the Executive Board. It may also make recommendations where necessary.

iv. The Secretary General:

5.1.25 He/she is the *ex-officio* Secretary of the World Council, and may be appointed as the secretary of any meeting of the Chairmanship. He coordinates the activities of the World Council, the Executive Board, the Chairmanship, and the Committees of the Executive Board. The Executive Board delegates to the Secretary General various powers that it may deem necessary to carry out their duties and functions. The Secretary General can call for the permanent heads of the National Committees for a meeting at the international headquarters at least once a year. He is responsible for setting an agenda for the same.[106]

v. ICC’s Governing Body for Dispute Resolution Services:

5.1.26 It is an important body within the ICC. It is a permanent, interminable Committee established under the Executive Board. Its primary objective is to propose measures to the ICC Executive Board to ensure that ICC's Dispute Resolution Services achieve their principal objectives. These objectives include maintaining high-quality service to users, identifying areas for growth, and preserving the ICC's reputation as a pre-eminent global institution for resolving disputes. The

[105] Article 5.3. (a), the ICC Constitution
[106] Article 3.9., the ICC Constitution

governing body is composed of 16 members comprising of *ex-officio* and elected members. The *ex-officio* members are as follows:

a) The President of the International Court of Arbitration;
b) The Secretary General of the International Court of Arbitration;
c) The Chair of ICC; and
d) The Secretary General of the ICC

5.1.27 The chair of the Governing Body is appointed for a two-year term, which may be renewed by the ICC Executive Board. Remaining 12 members are elected for a term of two years, with a maximum limit of two terms (four years) each. The functions of the Governing Body for Dispute Resolution Services include:

a) Preparation of Business Plans and Policy Proposals: The Governing Body is responsible for preparing business plans and policy proposals that align with the objectives of ICC's dispute resolution services. These plans and proposals aim to enhance and improve the efficiency and effectiveness of the services provided. There are also regional teams for business development, management, and promotion of the organisation.

b) Oversight of Implementation: The Governing Body oversees the implementation of any proposals of strategic importance regarding the ICC Court. Once these proposals are approved by the ICC Executive Board and the ICC World Council, the Governing Body ensures their effective implementation. This includes areas such as introducing new rules, adjusting fees for arbitration services, opening new branches, or handling any other matters that may impact ICC's overall profile or activities in the realm of dispute resolution.

vi. Key positions in ICC Court:

5.1.28 **President**: The President of the ICC Court is the head and official representative of the ICC Court. The President is elected by the ICC World Council upon the recommendation of the ICC Executive Board and based on the proposal of an independent selection committee comprising highly distinguished arbitration practitioners. The President has the authority to make urgent decisions on behalf of the Court. However, any such decision must be reported to the ICC Court at one of its next sessions.[107]

5.1.29 **Vice President**: The ICC World Council appoints the Vice Presidents of the ICC Court. The Vice Presidents are selected among the members of the ICC Court. Both President and Vice – President together form the bureau of the ICC Court and may have the same powers as the President at the President's request, in the President's absence, or in situations when the President is unable to act. [108]

[107] Article 1(3), ICC Arbitration Rules, International Chamber of Commerce
[108] ICC Arbitration Rules, International Chamber of Commerce

5.1.30 **Other Members of the Court:** The members of the ICC Court are appointed by the ICC World Council on the proposal of ICC National Committees or Groups. Each National Committee or Group proposes one member for the Court. The ICC World Council may appoint alternate members on the proposal of the President. In countries or territories without a National Committee or Group, the ICC World Council may appoint members and alternate members on the proposal of the President.

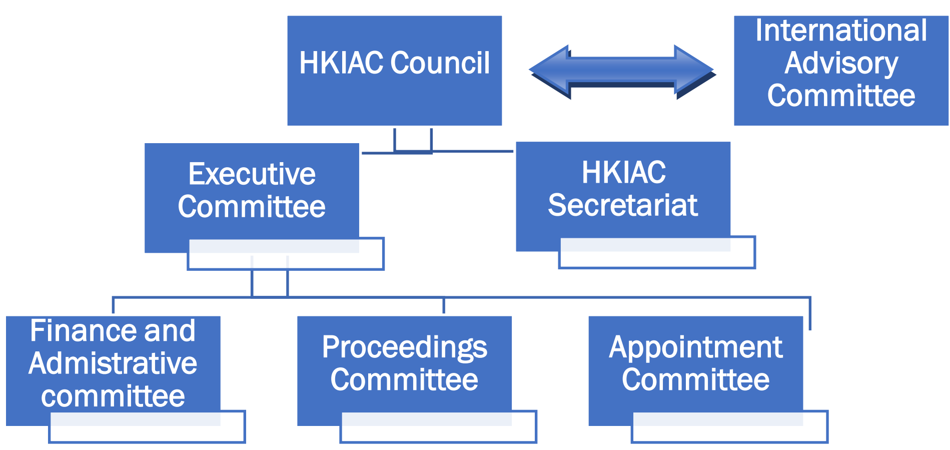
5.1.31 ICC Court always has a minimum of three members in any of the committees. Members of the committees consist of a president and two other members. However, exceptions are made in case of special committees and single-member committees. Members of the Special Committee consist of a president and at least six other members.

D. Hong Kong International Arbitration Centre (HKIAC)

5.1.32 The Hong Kong International Arbitration Centre ("HKIAC") has undergone a transformative journey from its establishment in 1985, evolving from a non-profit organisation with government funding to its current status as a private company limited by guarantee. Initially founded by a consortium of prominent business figures and professionals, the HKIAC was conceived as a non-profit entity with financial support from both the business community and the Hong Kong Government. Despite its governmental origins, the HKIAC has maintained a steadfast commitment to independence, ensuring autonomy from government interference in its arbitration proceedings. The HKIAC's incorporation as a company under the Hong Kong Companies Ordinance (Cap 32)[109] solidifies its legal identity as a private body. The organisation's role in the arbitration landscape of Hong Kong is noteworthy, as referenced in the Arbitration Ordinance of 2011 (Cap 609). Designated under this ordinance, the HKIAC holds the authority to appoint arbitrators and determine their number when disputing parties are unable to reach an agreement. This designation further reinforces the HKIAC's autonomy and underscores its pivotal role in facilitating impartial and effective dispute resolution within the Hong Kong jurisdiction.

[109] Cap 609, Arbitration Ordinance, 2011

Administrative Structure of HKIAC



5.1.33 **HKIAC Council**: HKIAC is governed by HKIAC Council. The primary function of the HKIAC Council is to address the needs of HKIAC's users, considering the perspectives of both domestic and international parties. The HKIAC Council also aims to gather direct input from in-house counsel, recognising their valuable insights and experiences in dispute resolution. The HKIAC Council plays an advisory role to the HKIAC Secretariat, providing valuable insights and recommendations on policy direction and strategic decisions related to dispute resolution and general management. It's worth noting that the HKIAC Council also supervises the work of other important bodies within the organisation, such as the Proceedings Committee, the Appointments Committee and the Secretariat. The HKIAC Council is a representative body with a broad composition, comprising various stakeholders involved in dispute resolution. The council's members include domestic and international users, private practitioners, arbitrators, and in-house counsel. It is diverse, with legal professionals familiar with both civil law and common law systems, reflecting the global nature of HKIAC's operations.

5.1.34 **International Advisory Committee**: The International Advisory Committee serves as a consulting body to the HKIAC Council matters relating to HKIAC's policies and development. It is composed of leading figures from the global business community and the field of international arbitration.

5.1.35 **Executive Committee**: The Executive Committee plays a crucial role in directing the activities of the HKIAC in alignment with the policies approved by the HKIAC Council. It comprises key individuals holding leadership positions within the organisation such as Co-Chairpersons of HKIAC, the vice-chairpersons of HKIAC, and the chairpersons of each of HKIAC’s three Standing Committees. The three standing committees under the Executive Committee are as follows:

i. Finance and Administrative Committee: It is responsible for overseeing financial and administrative matters. It ensures the efficient management of resources and adherence to best practices in governance. The committee consists of chairperson, committee members and *ex-officio* members.

ii. Proceedings Committee: The Proceedings Committee plays a significant role in overseeing the arbitration proceedings administered by HKIAC. It is responsible for various key aspects of the arbitration process such as decide challenges to the appointment of arbitrator; exercise all other powers vested not exercised by the Appointments Committee or the Secretariat, consider revisions of arbitration rules and propose new rules and practice notes. The committee consists of Chairperson, committee members and *ex-officio* members.

iii. Appointment Committee: The Appointment Committee is responsible for appointing and confirming arbitrators, emergency arbitrators, mediators, and experts in cases administered by HKIAC. The committee is entrusted with the duty to determine the number, fix the costs and review and admit members to HKIAC's panels and list of arbitrators. It plays a crucial role in ensuring a fair and competent selection process for these roles. The appointment committee consists of Chairperson, committee members and *ex-officio* members.

5.1.36 **Secretariat**: The Secretariat of the HKIAC plays a pivotal role in the organisation's day-to-day operations and the administration of dispute resolution proceedings. It is composed of various professionals, led by the Secretary General, and is responsible for providing administrative support and legal expertise in arbitration, mediation, adjudication, and domain name disputes. The Secretariat is led by the Secretary General and it includes Deputy Secretary General and various members working as administrative staff including Business Development Support, Case Manager, IT Support. It comprises qualified counsel and deputy counsel, who are admitted to multiple jurisdictions, educated at top universities, speak multiple languages and have experience in international commercial and investment arbitrations.

5.1.37 Further, there exists an additional nomination committee, which looks into identifying, vetting and recommending new members to the HKIAC Council. The Nomination Committee comprises of an ex-Council Member or retired Chairperson of HKIAC; a prominent member of Hong Kong's legal and/or arbitration community; a prominent member of the international arbitration community; an individual of high standing within the local or international legal, arbitration or business communities; and, the current chairperson(s) of HKIAC.

5.2 Proposed Legal Structure for ADRC

5.2.1 The Expert Committee conducted an in-depth analysis of the institutional framework of international ADR organisations when determining the legal structure of the ADRC. Three potential legal structuring models were considered: Section 8 company, society and a statutory body created by legislation.

5.2.2 Market research revealed that most ADR institutions are constituted as not-for-profit, body corporate structures within their respective jurisdictions. When contemplating the possibility of establishing the ADRC as a society, the Committee recognised the prevalence of this structure in India for not-for-profit activities. However, it carefully evaluated the advantages and disadvantages of this model. Societies are subject to standards, norms, rules, and directions prescribed by the respective state where they are established. Furthermore, their incorporation documents or governance structures are not available online or in the public domain for inspection which is a limitation compared to a Section 8 company.

5.2.3 Similarly, the Committee examined the option of creating the ADRC as a statutory body through legislation. However, it identified several limitations associated with this structure, including rigidity in decision-making, challenges in amending statutes, limited autonomy, budgetary dependence, complex administrative structures, and a lack of agility in responding to changing needs and opportunities.

5.2.4 After meticulous deliberation, the Committee opted for the Section 8 company structure for the ADRC. This decision stemmed from the Section 8 company's inherent advantages, which address the shortcomings found in the other two models. A Section 8 company is a body corporate with perpetual succession and is required to comply with the terms and conditions of the Companies Act, 2013 and the rules issued thereunder including filings of requisite applications, documents, forms, etc. with the concerned Registrar of Companies. Hence, it offers compliance transparency, online accessibility of documents, and perpetual succession, aligning with the ADRC's mission and goals. This model's adaptability and flexibility enable it to quickly respond to changes, comply with international legal standards, and meet emerging needs in the realm of international arbitration.

5.2.5 Therefore, the choice of a Section 8 company for the ADRC was driven by a thorough evaluation of the benefits it provides, ensuring that the chosen structure aligns perfectly with the mission and objectives of the ADRC while mitigating the limitations associated with other legal frameworks.

5.3 Key Considerations in relation to Governance Framework

5.3.1 Independence, impartiality, and neutrality are pivotal components for ensuring effective dispute resolution services. The governance framework plays a crucial role in safeguarding of the ADRC's institutional design against external pressures and third-party influence. To achieve this, the Committee identified certain guiding principles concerning the shareholding of the ADRC which shall be the

key considerations for shaping the shareholding composition of the centre. They are as follows:

5.3.2 **No Conflict of Interest:** To prevent conflicts of interest, it is crucial to ensure that individual practitioners or law firms holding shares in the ADRC do not introduce potential conflict. Further, there exists a need for measures to establish an environment where the ADRC operates impartially, free from external influences.

5.3.3 **Prevention of Undue Concentration of Shareholding:** Secondly, it is important to be mindful of the fact that there is no undue control of anyone on the functioning of ADRC. The risk of concentrated shareholding must be addressed through careful distribution of shares. A single entity, whether directly or through relatives and affiliates, must be discouraged from holding a disproportionate share of the ADRC. The rationale behind this is to ensure that an equitable and balanced ownership structure is established, preventing a single entity from exerting undue influence.

5.3.4 **Fair Representation through Representative Institutions:** Recognising the importance of providing fair representation, the Committee suggested the formulation of a shareholding model that gives due consideration to all representative institutions. The strategy adopted should foster inclusivity and collaboration among stakeholders, ensuring a balanced and representative ownership structure for the ADRC. In the Committee's view, financial regulators, institutions governing professions in India, trade associations, or chambers of commerce may be approached as potential institutional shareholders. Further, IFSCA may directly invite other entities to subscribe, acquire, or hold shares in the ADRC. However, in relation to institutional shareholding in the ADRC, the Committee agreed that the threshold for holding shares by any eligible institutions (as may be specified by central government from time to time) should not exceed 5%. In addition, it was noted that it is pertinent to define institutions that would be eligible to hold shares. Moreover, it was noted that the final shareholding of the ADRC shall remain confidential in line with practices of other international ADR Centres across the globe.

5.3.5 The Committee recommends that the above-mentioned guiding principles should lay the foundation for specific regulations regarding shareholding patterns to be formulated by the IFSCA. Further, it was highlighted that government grants, especially in the initial stage, could prove to be beneficial to the centre. Financial support from the government during the establishment of the centre and its early operations can enhance its credibility in the eyes of various stakeholders, including potential investors, international organisations, and users of ADR on a global scale. Although the Government is not proposed to have any control over the operations of the ADRC, it is imperative that the government along with

IFSCA must play a pivotal role in setting up and driving the growth of ADRC. This approach ensures that parties do not perceive it as a government-controlled unit, as they tend to prefer a setup that is autonomous and efficient for dispute resolution.

5.3.6 In addition to the three principles previously outlined, IFSCA may formulate specific regulations in the future governing the shareholding patterns, including details concerning the minimum and/or maximum percentage of shares to be allocated to each class of shareholders, whether individual or institutional.

A few broad parameters that can serve as the basis for framing specific regulations are as follows:

- The shareholders of the ADRC may be an organisation such as a company, partnership firm, corporate body, society, trust, etc., or an individual.
- An organisation may be allowed to hold up to 5% shares of the company.
- To facilitate transparency and prevent undue concentration of shares, all applicants in their applications must be required to provide a declaration of all their related parties.
- In the event of oversubscription, shares would be allocated on a pro-rata basis, and in case of undersubscription, IFSCA may invite financial regulators to hold shares of the company.
- In the event that the shares are undersubscribed and applications from financial regulators are not adequate to arrive at full subscription, IFSCA shall subscribe to the shares pending allotment.

5.3.7 **Fit and Proper:** Another pivotal criterion for ADRC's shareholding composition is the requirement for shareholders to meet the 'fit and proper' eligibility criteria. Several factors may be considered to determine if an individual is fit and proper, such as one's integrity, honesty, ethical behaviour, reputation, fairness, and character, among other things.[110] Hence, individuals seeking to hold shares in the ADRC must fulfil the eligibility criteria of being deemed 'fit and proper'. Furthermore, organisations subscribing, acquiring and holding the shares of ADRC may be obligated to ensure that the organisation and its directors/partners/designated partners, key managerial personnel and controlling shareholders are fit and proper persons at all times.

5.4 The Administrative Structure of the ADRC

[110] Securities and Exchange Board of India (Intermediaries) (Third Amendment) Regulations, 2021, November 17, 2021, Securities and Exchange Board of India, available at: https://www.sebi.gov.in/legal/regulations/nov-2021/securities-and-exchange-board-of-india-intermediaries-third-amendment-regulations-2021_54025.html (last accessed on February 9, 2024)

5.4.1 A distinct administrative structure helps in the effective governance and streamlined operations of any dispute resolution Centre. From the overarching governance and decision-making processes to implementation-related tasks, day-to-day management and handling the operational matters at the centre, there are diverse sets of roles and responsibilities which require careful consideration of distinct bodies within the centre. Acknowledging this, the Committee concluded that there is a need to design a robust, well-organised, and systematic administrative structure to not only effectively address these varied duties but also resolve disputes at the ADRC in a timely and efficient manner.

5.4.2 The ADRC is envisioned to have a four-tiered administrative structure consisting of the Board of Directors, International Advisory Council, Executive Council and lastly, the Secretariat. Broadly, the Board of Directors would be the core body primarily responsible for overseeing corporate governance and ensuring compliance with relevant regulatory requirements of the ADRC. The International Advisory Council shall comprise eminent experts from around the world, aiming to provide the ADRC with a comprehensive global outlook. The Executive Council, on the other hand, would be responsible for handling the core functionality of resolving disputes and appointment of arbitrators, etc. whereas the Secretariat would be responsible for handling the day-to-day operations, coordination and case management. The details of each of the abovementioned bodies have been discussed below.

A. Board of Directors

5.4.3 The proposed establishment of the ADRC as a Section 8 Company under the Companies Act, 2013 would be subject to various regulatory requirements and compliances that the centre shall adhere to. These requirements may range from maintaining statutory registers, financial statements and accounts, filing annual returns to the appointment of the auditor, etc. and the Board of Directors ("the Board") would be the main body dealing with these compliance requirements.

Further, the primary responsibility for budgetary matters will also rest with the Board of Directors.

5.4.4 The Board shall primarily be composed of shareholders' representatives. However, these shareholders shall have limited involvement in the day-to-day operations and decision-making in relation to the ADRC. The Board's composition should ensure that the number of shareholder directors is not significantly fewer than that of independent directors. Since ADRC is proposed to be a non-profit organisation with substantial shareholder contributions, all shareholders should have representation on the board. When constituting the rules of appointment of the Board of Directors in the articles of association, the principle of corporate governance is recommended to be followed to ensure that less than 50% of the Board should consist of interested parties (shareholder nominees as directors) while over 51% should constitute the representatives of the general public (independent directors) to foster transparency and accountability within the ADRC's framework.

B. International Advisory Council

5.4.5 The International Advisory Council will play an advisory role and offer crucial guidance to the ADRC concerning its vision and mission. It may help shape the initiatives and projects of the centre, frame the vision statement for the centre on an annual basis, and provide insights into the mid-term and long-term goals related to user requirements and developments in the field of ADR. The International Advisory Council. may also actively participate in the centre's events, including the Annual Meetings, Summits, or such other events as may be specified. The council shall be responsible for promoting the centre's values and principles relating to efficient and effective dispute resolution, and fostering a holistic approach to advancing the field of ADR.

5.4.6 The International Advisory Council should include fifteen members, who shall be invited to the membership by the ADRC. It is also recommended that no two members ought to be nationals of the same country. The membership in the International Advisory Council shall be open to individuals from jurisdictions not identified in the public statement of the Financial Action Task Force ("FATF") as 'High-Risk Jurisdictions subject to a Call for Action'. Further, eligible individuals should have positive foreign relations with India. It is also suggested that the membership of the International Advisory Council be allotted on a pro-rata basis amongst all the continents of the world. Eminent personalities in the field of ADR, and founders, promoters, Chief Executive Officers, Chief Financial Officers, Managing Directors, and other key decision-makers of reputed companies of different countries may be approached for membership in the International Advisory Council.

5.4.7 The Committee recommends that the membership term may be kept at two years, with a cooling off period of one term (i.e., two years) for reappointment. Members of the International Advisory Council are proposed to meet annually to engage in discussions concerning matters related to ADRC. The agenda would include key developments and efforts required to have a greater impact in the field of ADR.

C. The Executive Council

5.4.8 While the International Advisory Council plays an overall advisory role to the ADRC as a whole, the Executive Council plays an advisory role to the Secretariat of the ADRC. Notably, the formation of the rules will be the domain of the Executive Council. The Executive Council will be vested with the power to review and approve the rules, regulations, standard operating procedures, guidance notes, and any similar documents necessary for the functioning of the Centre. The Executive Council will also be empowered to appoint a panel of arbitrators, conciliators, mediators, and neutrals. Further, it shall be equipped to offer counsel and clarifications regarding procedural concerns for ongoing cases to the Secretariat on an anonymous basis. The Executive Council, manned by subject-matter experts, will assist the Secretariat with any decisions to be made on the implementation of an institutional rule, urgent interim appointment of arbitrators, extension of time, etc. The Executive Council is envisaged to adopt a hands-on approach wherein it shall offer support to the Secretariat on a regular basis, be it monthly or weekly, depending upon the nature of tasks or queries received by the Executive Council.

5.4.9 The Executive Council will be appointed by the Board of Directors, based on the Chief Executive Officer ("CEO") recommendation and eligibility criteria. It is recommended that the Executive Council should have ten members of which fifty per cent shall be foreign nationals, i.e., 'persons resident outside India' under the Foreign Exchange Management Act, 1999. It shall be headed by the Chief Executive Officer of the ADRC, who shall be the *ex-officio* member of the Executive Council.

5.4.10 The Executive Council should be structured in a manner where one-third of the seats are allocated for in-house counsels actively involved in facilitating dispute resolution for their respective companies, another one-third for practicing advocates and ADR professionals, and the remaining one-third for professionals specialising in law, finance, management, business, encompassing chartered accountants, company secretaries, cost and works accountants and other similar professionals who promote the use of ADR mechanisms. The Executive Council may meet once a month at such place and time as it may appoint, with at least fifty per cent of the total members of the Executive Council forming its quorum.

D. The Secretariat

5.4.11 The Secretariat shall be responsible for the day-to-day operations and management of the ADRC. It shall be headed by the CEO who shall be

responsible for preparing the human resource requirement plan and appointing competent and specialised employees for operating the ADRC.

5.4.12 Certain illustrative responsibilities of the CEO shall be as follows:

i. to propose the general policy of the ADRC and strategic plans required for the achievement of its objectives and submit the same to the Board of Directors for approval;

ii. to propose the rules and regulations governing the administrative, financial, and technical work of the ADRC including human resources regulations, and submit the same to the Board of Directors for approval;

iii. to prepare the budget plan, human resource requirement plan, business plan, and growth plan depicting their vision of how they wish to achieve the objectives of the ADRC and present it before the Board of Directors for approval;

iv. to provide the Board of Directors with the financial data and information on the annual plan and administrative and logistic needs of the ADRC, within the time frames prescribed by the Board of Directors in this respect;

v. to supervise the implementation of the approved annual budget of the Centre;

vi. to supervise the work of the Secretariat;

vii. to propose the rules and regulations prescribing the fees for registration of claims, for registration on lists of arbitrators, conciliators, mediators, neutrals, etc., and for all other services provided by the ADRC; and submit the same to the Board of Directors for approval;

viii. to sign documents on behalf of the ADRC in respect of all administrative and financial matters;

ix. to implement the resolutions issued by the Board of Directors;

x. to manage the funds of the ADRC in accordance with the relevant rules approved by the Board of Directors;

xi. to prepare an annual report on the achievements, work, and various activities of the ADRC, and any other periodic reports or work requested by the Board of Directors;

xii. to submit proposals on cooperation with local and international specialised arbitration centres and institutions for the achievement of the objectives of the ADRC, and present the same to the Board of Directors to take the appropriate action in this regard; and

xiii. to exercise any other duties or powers assigned or delegated to the Chief Executive Officer by the Board of Directors.

5.5 Quality Assurance and Ethics of Dispute Resolution Professionals

5.5.1 One of the core tenets of ADR is the autonomy provided to the parties to choose the dispute resolution professionals for the adjudication of their disputes. This customisation allows parties to provide for greater efficiency, ease, and relative expertise in their dispute resolution process, thereby ensuring the optimisation of the outcome. This makes it an attractive mode of dispute resolution for parties.

5.5.2 However, while it is crucial to allow parties the flexibility to choose dispute resolution professionals as per their requirements and preferences, the ADRC also has the obligation of ensuring that the professional in question meets certain parameters to ensure the quality and legality of the process and outcomes. The ADRC should establish specific criteria that professionals must meet, either as essential or desirable qualifications. Additionally, the centre should also have a mechanism in place to check the availability of dispute resolution professionals to ensure that they have the time to oversee the proceedings in a proper manner, and to dispose of the matter within prescribed timeframes.

5.5.3 The ADRC may also collect reports of dispute resolution professionals from the parties whose disputes they adjudicated. Future appointments may be based on these. For instance, in an effort to promote transparency and accountability, the ICC publishes arbitrators' names and panel details in ongoing cases, along with information concerning nationality and whether the appointment is made by the Court or by the parties.[111] ICC has also introduced fee reductions for tribunals failing to submit draft awards within the stipulated time frame. Further, delays in partial awards are also taken into account. Arbitrators are also encouraged to expedite case resolutions through additional financial incentives, promoting the timely and efficient conclusion of proceedings. However, the absence of specific statistics on fee adjustments makes it challenging to assess the outcomes and details of this process.

5.5.4 The ADRC may choose to not make these reports public, and only take them into account for making appointments and imposing penalties. Further disciplinary action may be taken in cases of adverse reports or violations of prescribed timelines, and a code may be developed to establish the particulars of the same.

5.5.5 It is also recommended that the centre have measures in place to address grievances against dispute resolution professionals. For instance, ADR institutions like HKIAC handle complaints against arbitrators through a detailed process.[112] It involves the submission of the complaint to the HKIAC Secretariat which is forwarded to the Appointments Committee for evaluation and potential sanctions upon the conclusion of the evaluation. The type of sanctions imposed include warnings, suspension, or removal from HKIAC panels. Furthermore, the Code of Ethical Conduct mandates arbitrators to accept appointments only if they

[111] ICC Court announces new policies to foster transparency and ensure greater efficiency, News, International Chamber of Commerce, January 5, 2016, available at: https://iccwbo.org/news-publications/news/icc-court-announces-new-policies-to-foster-transparency-and-ensure-greater-efficiency/ (last accessed on January 23, 2024)

[112] Complaints Against Arbitrators, Hong Kong International Arbitration Centre, available at: https://www.hkiac.org/arbitration/arbitrators/complaints (last accessed on November 30, 2023)

possess suitable experience for the case and have adequate time to conduct the arbitration.[113]

5.5.6 Similarly, complaints are also accepted against mediators by the HKIAC in relation to their alleged conduct in connection with a mediation proceeding and/or not connected with a mediation proceeding but which might be seen to call into question their suitability to remain an Accredited Mediator.[114] Additionally, the HKIAC Mediation Rules stipulate that mediation should be concluded within 42 days, and the appointment of a mediator is not allowed to extend beyond three months. Hence, even though the HKIAC doesn't have specific regulations to handle delays in concluding proceedings, the scope of the complaint procedure and allied rules and codes may be inferred to be wide enough to allow complaints in case of unreasonable delays.

5.5.7 After extensive deliberations, the Committee agreed that the ADRC shall have a code of ethics to which all dispute resolution professionals must adhere. The ADRC may make a code of conduct, rules, and/or guidelines to address any misconduct, unwarranted delays, breach of ethics, etc. by the neutrals during any dispute resolution proceedings, in order to maintain the standard of practice. Further, the professionals providing their services to the ADRC shall be required to sign a declaration stating that they abide by the code of ethics while providing services in relation to the ADRC. The Draft Code of Ethics for dispute resolution professionals is annexed at **Annexure VI.**

5.5.8 It is also suggested that continued learning through professional development programmes (such as case studies-based learning, interactive sessions, simulated environments, etc.) be conducted for the neutrals to ensure that their skills and knowledge are up-to-date, and that they meet the standards that the centre requires. This would ensure greater competence and efficiency, and would introduce the professionals at the centre to new methodologies, subject matters, technological tools, and skills. For instance, the Chartered Institute of Arbitrators ("CIArb") has online and offline programs to educate and train ADR neutrals.[115] It includes training modules and workshops on brand protection during disputes, maritime arbitration, award writing practices, etc. It is suggested that similar programs should be conducted by the centre to ensure that the professionals engaged continue to deliver high-quality services.

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[113] Code of Ethical Conduct, Hong Kong International Arbitration Centre, available at: https://www.hkiac.org/arbitration/arbitrators/code-of-ethical-conduct (last accessed on November 30, 2023)

[114] Rules for the Handling of Complaints Against an Accredited Mediator, Hong Kong International Arbitration Centre, available at: https://www.hkiac.org/mediation/rules/rules-for-handling-complaints (last accessed on November 30, 2023)

[115] COVID-19 and CIArb Operations, Chartered Institute of Arbitrators, available at https://www.ciarb.org/training/ (last accessed on November 30, 2023)

5.5.9 These programs may be organised in-person or virtually. They could be conducted on emerging subject matters like FinTech, Artificial Intelligence, foreign investment, etc., to acquaint professionals with the changing times and trends. Sessions could also be conducted on the practice and processes of adjudicating disputes, such as how to best manage timelines to ensure that awards and settlement agreements are made within prescribed timeframes, best practices to be followed when drafting awards/settlement agreements, use of technological tools to optimise processes, etc. Imbibing these practices and developing the materials and frameworks incidental thereto would be pivotal in ensuring that the ADRC remains a world-class institution.

5.6 Accreditation, Grading, and Maintenance of Panel for ADRC

5.6.1 The Expert Committee extensively discussed the issue of accreditation, grading, and maintenance of a panel of neutrals at ADRC when amending the provisions surrounding arbitration and mediation in the A&C Act and the Mediation Act. The majority of the Committee members noted that the creation of a panel of arbitrators may impede party autonomy, which is a fundamental principle of arbitration. The Committee put forth that it would be prudent to avoid establishing a panel for dispute resolution professionals, as it would limit the options available to the parties to those accredited or graded by the ADRC. Further, it emphasized that parties should be able to select the arbitrator and/or mediator of their choice and should not be restricted to choosing from a limited database of empanelled dispute resolution professionals.

5.6.2 The importance of party autonomy has also been highlighted in the legal pronouncements made by Indian courts. In *PASL Wind Solution v. GE Power Conversion,*[116] the Hon'ble Supreme Court of India noted that party autonomy was the guiding spirit of arbitration. Further, in *Amazon.com Investment Holdings LLC ("Amazon") v. Future Retail Limited & Ors. ("Future Retail"),*[117] the Court highlighted that the parties, in choosing to be bound by institutional rules of dispute resolution, were doing so in the exercise of their autonomy itself. This decision permitted the exercise of emergency arbitration under the aegis of the dispute resolution institution and its rules, although it was not expressly permitted or provided for by the A&C Act. The Court also noted that the A&C Act does not explicitly prohibit such a practice. Consequently, the jurisprudence that stands is that the institutional rules can design the process in a way that does not contravene the legislative provisions governing dispute resolution.

5.6.3 The parties' right to appoint arbitrators of their choice was also discussed in the Supreme Court case of Perkins *Eastman Architects DPC v. HSCC (India) Limited.* [118] It held that parties have the right to appoint arbitrators of their choice, but while

[116] 2021 SCC OnLine SC 331
[117] (2022) 1 SCC 209
[118] 2019 SCC OnLine SC 1517

ensuring that the appointment process and *lex arbitri* safeguard the independence, impartiality, and neutrality of the said arbitrator. Therefore, impartiality and fairness take primacy over party autonomy in India.[119]

5.6.4 The Committee also highlighted that the institutional rules for ADRC and judicial framework under Sections 14 and 15 of the A&C Act provide adequate opportunities for parties to challenge the appointed arbitrator if they are not satisfied. Furthermore, creating a barrier to entry for dispute resolution professionals in the form of accreditation, grading, or panel maintenance would be counter to international best practices. Moreover, it was emphasized that the global ADR community is moving away from accreditation and grading as a prerequisite to be eligible to arbitrate, and that many dispute resolution professionals may refuse to provide their services to the ADRC if mandatory accreditation or grading is required. It was also noted that several successful international institutions such as the Mumbai Centre for International Arbitration ("MCIA") and LCIA do not disclose their panel members. The issue of undue influence from higher authorities for their inclusion in the panel was also considered as a reason for not maintaining the panel at the ADRC.

5.6.5 In view of the above, the Committee, by majority, concluded that the ADRC should not maintain a panel. Additionally, it was emphasized that neither the ADRC nor the IFSCA should be responsible for accrediting, grading, or setting qualifications for dispute resolution professionals who may provide services through the ADRC. However, Dr. M.S. Sahoo has a different view in this regard which is annexed at **Annexure I**.

5.6.6 Although the majority opined against maintaining a panel, it is pertinent to take into account the possibilities wherein disputing parties may approach the Centre, requesting the appointment of a neutral (including arbitrators, mediators, or otherwise). In such instances, even if the ADRC does not maintain an official panel of neutrals comprising arbitrators, mediators, and other dispute resolution professionals, the Centre should have a comprehensive database of neutrals in the least. In case the parties to a dispute do not nominate neutrals of their choice, this database shall serve as a repository of potential neutrals who may be appointed to facilitate efficient dispute resolution.

5.6.7 While the Centre may or may not have threshold qualifications and specific eligibility criteria for the inclusion of neutrals in the database, the main goal behind the maintenance of a database in the absence of a formal panel is to ensure that that there is a comprehensive and accessible record of qualified individuals who can serve as neutral arbitrators or mediators. It shall provide parties with a reliable source of potential neutrals who possess the necessary expertise,

[119] *Proddatur Cable TV Digi Services v. SITI Cable Network Ltd.*, (2017) 8 SCC 377

experience, and impartiality required to effectively resolve disputes. Further, by maintaining such a database, ADRC can facilitate the selection process for parties seeking neutrals, promote transparency, and uphold the integrity of the alternative dispute resolution process.

6. Judicial Framework

6.1 Considerations Influencing Reform

6.1.1. In the realm of international commerce and disputes, time is often a currency as valuable as any other. Presently, in India, the disposal of commercial cases takes approximately 626 days,[120] which is equivalent to almost two years. Discussions with stakeholders and ADR practitioners highlighted that despite significant changes in the country's alternative dispute resolution laws, varying degrees of court intervention and unpredictability in the length of proceedings persist. This impacts not only time but also the cost effectiveness of the dispute resolution influencing the overall efficiency of the legal process.

6.1.2. Moreover, investors and entities established in IFSC, given their international nature, require assurances that any dispute, whether with the government or a private entity, will be addressed with independence and integrity. An unimpeachable judiciary, flexible procedures and a fair and transparent framework customised to the needs of disputants would play a crucial role in instilling confidence and equity for the participants. Further, the existing court framework needs to be streamlined with an efficient procedure and upgraded with a technology-enabled justice system to create a modernised and responsive legal environment conducive to the unique needs of the IFSC.

6.1.3. To be recognised as a legitimate dispute resolution forum across the world, it is pertinent that the supporting framework of ADRC is exceptionally efficient. A well-functioning dispute resolution process from the initial stage of resolution till the final stage of appeal plays a critical role in the growth of IFSC as an optimal dispute resolution jurisdiction and a strong arbitral seat.

6.2 Approaches in Other Jurisdictions

6.2.1 With the abovementioned considerations in mind, the Committee studied the judicial frameworks supporting renowned arbitration centres worldwide. Notably, courts in various jurisdictions have implemented different measures to position themselves as premium forums for dispute resolution based on their standing in the international legal landscape. Each of the jurisdictions was found to have considerable experience in dealing with some of the issues identified in the Indian context. Interestingly, the aspect that has been given substantial thought by several of the nations when setting up a judicial framework for financial disputes catering to foreign disputants, was the need to meet the expectations of the international business community. The Committee deliberated in length and agreed that there is much to be gleaned from the judicial frameworks of foreign nations. It was agreed that understanding the thought process, intent behind

[120] Pradeep Thakur, India cuts time taken for disposal of commercial cases by 50%, The Times of India, August 22, 2022, available at: https://timesofindia.indiatimes.com/india/india-cuts-time-taken-for-disposal-of-commercial-cases-by-50/articleshow/93696747.cms (last accessed on November 30, 2023)

formation of a system, hurdles faced and overcome can be used as a springboard from which a more robust and India-specific framework can be established.

6.2.2 The UK has historically been an attractive venue for dispute resolution owing to its use of the common law, principle of freedom of contract, and the use of English language. Further, the quality, clarity, predictability, and efficiency of the system is also viewed as a vantage point by those bringing commercial disputes to English Courts.[121] Even though the UK remains one of the top destinations for legal services and dispute resolution, sustained efforts have been undertaken through the legal framework to retain the international users of dispute resolution services. A noteworthy example is the creation of the Financial List in 2015, specifically designed for handling claims related to financial markets.[122] The special statute, dedicated benches of courts, and specialist judges for financial claims falling under the financial list underline the importance given to swift adjudication of financial disputes in the UK. Moreover, the Financial List framework has even envisaged the system of a user committee, which is a feedback forum where the court can listen and respond to matters raised by litigators and other stakeholders concerned with the financial markets.[123] Additionally, the use of technology in court processes, the enforcement of English judgments in foreign courts, and the rules regarding costs[124] (where the unsuccessful party is liable to cover the costs of the successful party in a dispute) further contribute to the efficiency and attractiveness of the UK's judicial framework. More recently, as of November 2023, the UK's government has undertaken the initiative to modernise the arbitration law of the nation with the intent to solidify its position as a prime location for dispute resolution while competing with jurisdictions like Singapore.[125]

6.2.3 Singapore, on the other hand, offers a comprehensive international suite of world-class commercial dispute resolution services through three flagship dispute resolution institutions: the SIAC, the SIMC, and the SICC in its jurisdiction. The court structure devised in Singapore is such that an entire institution, i.e., SICC, was established in 2015 with the key intent of promoting Singapore's standing as a business and financial hub in Asia. This has been achieved by providing a

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[121] Factors Influencing International Litigants' Decisions to Bring Commercial Claims to the London Based Courts, Ministry of Justice Analytical Series 2015, Government of United Kingdom, available at: https://assets.publishing.service.gov.uk/media/5a7eba2640f0b6230268b27b/factors-influencing-international-litigants-with-commercial-claims.pdf (last accessed on November 30, 2023)

[122] Guide to the Financial List, Courts and Tribunals Judiciary, United Kingdom, October 1, 2015, available at: https://www.judiciary.uk/wp-content/uploads/2022/11/financial-list-guide.pdf (last accessed on November 30, 2023)

[123] Financial List: Frequent Asked Questions, Courts and Tribunals Judiciary, United Kingdom, available at: https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/financial-list/financial-list-faqs/ (last accessed on November 3, 2023)

[124] Part 44, Civil Procedure Rules (UK)

[125] Press Release, Modernised laws to secure UK as world leader in dispute resolution, Ministry of Justice, November 22, 2023, available at: https://www.gov.uk/government/news/modernised-laws-to-secure-uk-as-world-leader-in-dispute-resolution (last accessed on November 30, 2023)

neutral forum for court-based commercial dispute resolution. The underpinning values of the SICC framework are hybridisation (allowing both litigation and arbitration), internationalisation (participation by foreign lawyers and judges), and party autonomy. Further, the SICC structure has been established in a manner that it is a division of the High Court of Singapore which deals with the disputes of commercial and international nature. It is also pertinent to note that the right of appeal from SICC is also an option available to the parties that can be waived by way of an agreement.[126]

6.2.4 In addition to disputes falling under the jurisdiction of the SICC through a written jurisdiction agreement, the Singapore High Court has the authority, either independently or with the parties' consent, to transfer a case to the SICC if it is deemed "more appropriate" for SICC to adjudicate on the matter. Among many things, the unique features offered by SICC, such as prioritisation of party autonomy, procedural flexibility in terms of evidentiary rules, and choice of law, makes SICC viable for cross-border disputes.

6.2.5 The SICC focuses on resolving cross-border commercial disputes governed by foreign law, which may not be easily handled within the Singapore Courts. Within the SICC framework, issues of foreign law can be raised and then applied to resolve disputes, in contrast to domestic court proceedings where foreign law matters are determined as questions of fact relying on expert testimony. SICC also allows both local and foreign judges. The International Judges are appointed for a fixed term as specified by the Chief Justice.[127] The formal power to appoint International Judges lies with the President of Singapore,[128] who acts on the advice of the Prime Minister of Singapore, who in turn consults the Chief Justice on the appointment.[129] The diverse composition of judges in SICC enhances the court's international character, fostering a balanced and impartial adjudication process that is sensitive to the perspectives and legal traditions of both Singapore and other foreign jurisdictions.

6.2.6 Both Singapore and the UK have established judicial frameworks for financial disputes within their existing dispute resolution systems.

6.2.7 On the other hand, DIFC and ADGM stand out as prominent financial free zones established in the Middle East over the last two decades. They have experienced substantial growth, positioning themselves among the leading international financial centres in a short timeframe. To align with global standards, both DIFC and ADGM have amended their respective Constitutions.[130] The amendments

[126] Sec. 29 and Fourth Schedule (Para 3) Supreme Court of Judicature Act 1969
[127] See Article 95(5), Constitution of the Republic of Singapore
[128] Article 95(4), Constitution of the Republic of Singapore.
[129] Article 95(6), Constitution of the Republic of Singapore.
[130] Article 121, UAE Constitution of 1971 with Amendments through 2004.

empower the authorities to establish a common law framework within the zones, despite the civil law jurisdiction of their host countries.

6.2.8 To enhance public trust in the framework, DIFC has established a distinct judicial structure called the Dubai International Financial Centre Courts ("DIFC Courts"), featuring a mixed bench of experienced local judges and eminent foreign jurists from the UK and various Commonwealth countries for adjudicating disputes. The court structure in the DIFC comprises three layers of adjudication:[131]

A. **The Small Claims Tribunal ("SCT")** within the DIFC has jurisdiction in three situations:
   i. when the claim's amount or value is within AED 500,000;
   ii. in employment matters, even if the claim exceeds AED 500,000, provided all parties expressly opt for SCT resolution in writing; and
   iii. for non-employment-related claims where the amount or value does not exceed AED 1 million, and all parties choose in writing to have it heard by the SCT, which can be formally incorporated into the contract.

B. **Court of First Instance**: It comprises a single judge and has exclusive jurisdiction over civil or commercial cases and disputes involving the DIFC, any of the DIFC's bodies, or any of the DIFC's establishments. It can also exercise jurisdiction in cases and disputes arising from or related to a contract that has been fulfilled or a transaction that has been carried out, in whole or in part, in the DIFC or an incident that has occurred in the DIFC. The Court of First Instance has also been empowered by law to rule over decisions made by the DIFC's bodies and such other applications over which it has been expressly given jurisdiction by virtue of DIFC's laws and jurisdictions.

C. Court of Appeal: The Court of Appeal under the DIFC is the final layer of appeal available against judgments and awards made by the Court of First Instance at DIFC.[132] The Court of Appeal in the DIFC comprises at least three judges, with the Chief Justice or the most senior judge acting as the presiding judge. It is empowered to interpret any article of the DIFC's laws upon the request of any of the DIFC's bodies or establishments, provided that the establishment obtains leave from the Chief Justice in this regard. Such interpretations shall carry the force of law.

6.2.9 A judicial structure of a similar nature has been established in ADGM. The Abu Dhabi Global Market Courts operate on a two-tier framework, consisting of a Court of First Instance and a Court of Appeal.[133] The jurisdiction of the ADGM

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[131] The Rules of the Dubai International Financial Centre Courts 2014, available at: https://www.difccourts.ae/index.php/tools/pdf/court_rule (last accessed on November 30, 2023)
[132] Rule 44.153, The Rules of the Dubai International Financial Centre Courts 2014
[133] ADGM Courts Brochure, Abu Dhabi Global Market Courts, available at: https://www.adgm.com/documents/publications/en/adgm_courts_brochure_interactive_sp.pdf (last accessed on November 30, 2023)

Court of First Instance, as defined in the Founding Law, focuses on matters related to ADGM activities, including civil or commercial disputes involving ADGM, its authorities, or establishments.[134] Like DIFC, ADGM has no automatic right to appeal, and the parties must apply for permission to appeal to either the Court of First Instance or the Court of Appeal. The judges of ADGM Courts comprise eminent international jurists. Notably, the principles of English common law and equity serve as the foundation for its legal system. In 2015, by virtue of the enactment of the Application of English Law Regulations 2015, English common law was made directly applicable in the ADGM. A number of well-established English statutes were also adopted. The direct applicability of the judgments issued in England and Wales also provide guidance and increased certainty to both parties and judges using ADGM as a venue for dispute resolution.[135]

6.2.10 Like these global counterparts, the proposed dispute resolution framework within the ADRC seeks to curate a specific and robust structure shaped to address international commercial and financial disputes originating therefrom. The development of an appropriate court structure is crucial to realising the Government of India's strategic vision to position itself as a prominent financial hub in Asia.

6.3 Committee's Proposal for Structural Reforms

A. Need for High Court equivalent structure at IFSC

6.3.1 In order to develop an appropriate court framework to address the matters arising out of IFSC or seated at IFSC, it is essential to adequately understand the existing judicial hierarchy within the Indian court system. The Indian judicial structure can be broadly categorised into three major verticals, with the Supreme Court at the apex of the hierarchy, followed by High Courts at the State-level, and lastly, District Courts. There also exist tribunals that are specialised institutions specifically designed for speedy adjudication and having expertise on certain subject matters.[136]

6.3.2 However, all tribunals are primarily subordinate to the High Courts by virtue of constitutional provisions. Article 227 of the Constitution of India bestows every High Court with the power of superintendence over all district courts as well as

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[134] Article 13(6) of the Abu Dhabi Law No. 4 of 2013 Concerning Abu Dhabi Global Market, available at: https://www.adgm.com/documents/legal-framework/abu-dhabi-legislation/abu_dhabi_law_no_4_of_2013.pdf (last accessed on November 03, 2023)

[135] Henry Quinlan, Adam Bradshaw and Charlotte Leith, Abu Dhabi Global Market courts: framework, procedures and first judgment summary, March 1, 2018, available at: https://content.next.westlaw.com/Document/Ieb4d63e22b5911e89bf099c0ee06c731/View/FullText.ht%20ml?contextData=(sc.Default)&transitionType=Default&firstPage=true (last accessed on November 3, 2023)

[136] Assessment of Statutory Frameworks of Tribunals in India, Report No. 272, Law Commission of India, October 2017, Pages 4-5, available at: https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081632-2.pdf (last accessed on May 21, 2024)

tribunals within its territorial jurisdiction. Furthermore, in a recent judgment of Union of India v. Dinkar T. Venkatasubramanian & Ors.,[137] the specialised tribunal of National Company Law Tribunal ("NCLT") has also been treated on par with the civil courts.

6.3.3 To establish a fast-track structure for dispute resolution at IFSC, it is crucial to create a court framework with the necessary powers to block frivolous appeals and exercise its jurisdiction with authority. Therefore, in this hierarchy, the Supreme Courts and High Courts of India are best positioned to fulfill the envisioned role.

6.3.4 The rationale for positioning the court structure at high court level is further guided by the intent to prevent jurisdictional conflicts that may arise, particularly in scenarios where ambiguity persists, as exemplified in the Jotun Industries v PSL[138] case involving jurisdictional disputes between the High Court and the NCLT. The court framework for the ADRC should expedite dispute resolution within IFSCA and foster investor trust through swift redressal.

6.3.5 The proposed court structure should also be such that it can help position India as an efficient and reliable platform for resolving disputes between parties from diverse jurisdictions. To achieve this, the court structure should incorporate key attributes of other international courts in global financial centres, such as judges with specialized knowledge of international arbitration and commercial law and advanced technological integration including e-filing, video conferencing, and automated case management systems. The structure should also have the capability to adjudicate complex high-stakes cases with ease and have the necessary expertise to handle disputes involving foreign parties and international law. It should also address the issues of inordinate delays faced by Indian courts.

B. Challenges in establishing High Court equivalent structure

6.3.6 Establishing a High Court level structure for the dispute resolution centre at IFSC entails navigating several challenges including tinkering with the constitutional framework of the Indian judiciary.

6.3.7 Historically, the establishment of courts in India began with the issuance of Letters Patent, a form of written order from the British Crown, President or other head of state. The Supreme Court of Judicature at Calcutta was the first such court, set up in 1774.[139] This was followed by the Supreme Courts at Madras and

[137] 2023 SCC Online. NCLAT 283

[138] Jotun India Private Limited v. PSL Limited, 2018 SCC Online Bom 1952.

[139] Letters patent, establishing a Supreme Court of Judicature, at Fort-William, in Bengal Dated March 26, 1774

Bombay in 1800 and 1823, respectively.[140] Following the first war of independence in 1857, the India High Court Act of 1861 was enacted by the British Parliament which led to the abolishment of the three Supreme Courts at Calcutta, Madras, and Bombay and the creation of High Courts at Calcutta, Madras, and Bombay via Letters Patent. Similarly, the provinces of Delhi and Punjab used to be earlier covered under the territorial ambit of the High Court of Judicature at Lahore which was originally established in March 1919. After the nation's partition and creation of the Indian and Pakistan dominions, a new High Court was set up to exercise jurisdiction over both East Punjab (later Punjab) and Delhi (through a circuit bench). However, in light of Delhi's population, geographic location, and importance, a new High Court of Delhi was established in September 1966 by the enactment of central legislation by the Parliament, Delhi High Court Act, 1966.[141]

6.3.8 Likewise, whenever new States were formed or existing States were reorganised, new High Courts were established by way of central legislation including the respective High Court Acts and the States Reorganisation Act of 1956.[142] These central legislations provide the overall legal framework for the establishment, jurisdiction, and functioning of the respective High Courts. The establishment of new High Courts or bifurcation of existing Courts finds its constitutional backing under Article 214 of the Constitution of India which expressly lays down that there shall be a High Court for every State. Further, the power to constitute, organise, extend, and exclude the jurisdiction of a High Court is also enumerated under the Union List in the Seventh Schedule of the Constitution of India, giving the central government the authority to establish High Courts within the States.[143]

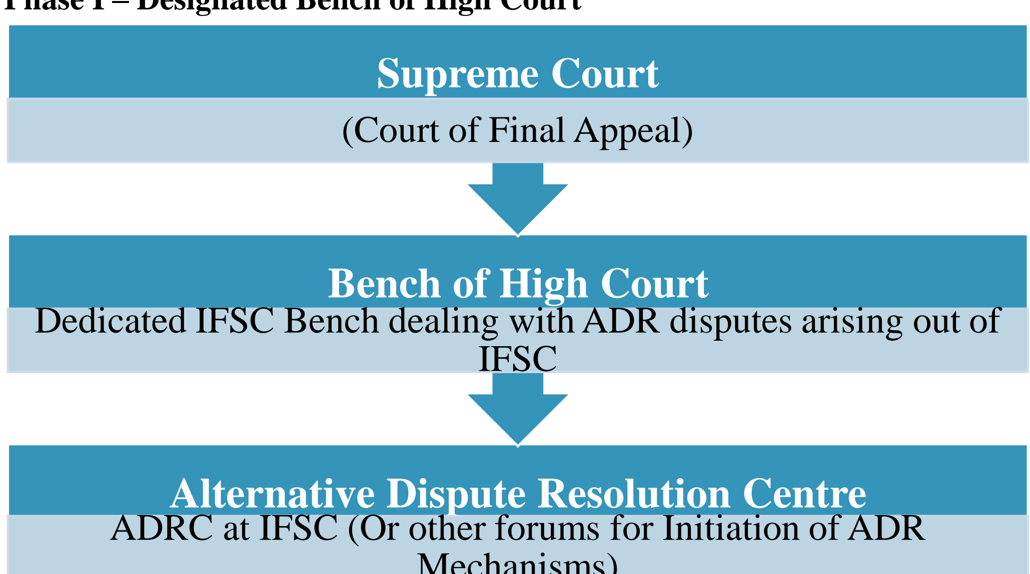
6.3.9 However, the existing constitutional provisions may not be sufficient to establish a separate High Court for the IFSC, as it is not a state or a union territory. The existing provisions and laws in place in India only permit the establishment of multiple benches of the High Court, not multiple High Courts in a single State. The High Courts and the Supreme Court are both creatures of the Constitution of India. They have been created and derived their powers and structures from the Constitution. Hence, it is pertinent to make certain modifications to the existing constitutional provisions to facilitate a High Court-level structure within the IFSC, including aspects such as who may be appointed as a judge, how and for how long.

[140] Evolution of Judiciary, Supreme Court of India, available at: https://main.sci.gov.in/pdf/Museum/m2.pdf (last accessed on May 21, 2024)
[141] History, High Court of Delhi, available at: https://delhihighcourt.nic.in/history (last accessed on May 21, 2024)
[142] Part V. High Courts, States Reorganisation Act, 1956
[143] Items 78 and 79, List I – Union List, Seventh Schedule, Constitution of India

6.3.10 Therefore, the idea of having foreign judges, as seen in courts like the SICC is not compatible with the current constitutional framework. Amending the Constitution to allow for the appointment of foreign judges would be a complex and politically sensitive process. Moreover, the independence of the judiciary is a cornerstone of the Indian legal system, and any changes to the structure or composition of the High Courts could be perceived as undermining this principle.[144]

In view of the above, the strategy proposed in the report for court reform is one which may be achieved in stages to ensure that judicial architecture applicable for disputes arising out of IFSC is adequately equipped to handle the complexities of disputes brought before the court. The proposed framework for IFSC may be achieved through a three-phased approach to fulfil the objective of constructing a judicial framework that is characterised by fairness, reliability, efficiency, and predictability—attributes essential for instilling trust among its potential users.

C. Phase I – Designated Bench of High Court



6.3.11 The primary stage, i.e., 'Phase-I' involves designating a Bench of the High Court which shall be the designated 'court' under the A&C Act, Mediation Act, and other alternative dispute resolution matters arising out of IFSC. Since all arbitrations having seat at IFSC are envisaged to be categorised as international commercial arbitrations, the 'court' under the A&C Act shall be a High Court with jurisdiction over said matters. Under the proposed framework, a bench of the High Court shall have exclusive jurisdiction over all alternative dispute resolution matters arising from the dispute resolutions at IFSC. The bench of High Court shall not have the jurisdiction to entertain civil, criminal, or such other matters that do not arise from the specified alternative dispute resolution mechanisms and

[144] M. P. Singh, securing the Independence of the Judiciary- The Indian Experience, India International and Comparative Law Review, Vol10 No. 2 (200)

enactments at the IFSC. This phase aims to leverage the existing High Court framework to handle IFSC-related disputes with efficiency and expertise.

6.3.12 It is envisaged a specialized, permanent Bench of the Gujarat High Court with no less than three judges will be instituted at GIFT City for matters arising from ADR mechanisms at GIFT–IFSC. It will possess appellate jurisdiction to handle challenges and appeals stemming from arbitrations seated at GIFT-IFSC and address related issues such as the appointment of arbitrators (where not otherwise provided for) and applications for interim relief under Section 9 of the A&C Act etc. Consequently, all arbitration and mediation-related matters will be directed to this High Court Bench from dispute resolution centres at GIFT-IFSC.

6.3.13 Further, the Chief Justice of the respective High Court in which the bench has been constituted shall be empowered to have administrative control over the allocation of cases to the judges or the benches. Hence, at the first instance, the Chief Justice of the Gujarat High Court will have the authority to assign matters to the designated Bench at GIFT-IFSC. The Chief Justice of Gujarat High Court shall exclusively allocate the ADR-related matters arising out of IFSC to the designated bench.

6.3.14 The proposed framework under Phase I facilitates the allocation of cases to specialist commercial judges with expertise in commercial disputes and international commercial arbitration, thereby enhancing the quality of services provided in the adjudication of international commercial disputes. Furthermore, recognising the important role of the court in any dispute resolution mechanism, this system expedites the adjudication process by directing all applications and appeals from arbitrations and mediation matters straight to the Designated Bench of the High Court instead of a general High Court which is already riddled with issues of pendency and delays.[145]

6.3.15 The proposed structure under Phase I aims to create a specialised court within the existing structure, tailored to the specific needs of the financial services sector within the IFSC. The amendments required in the IFSCA Act, 2019 to implement the changes envisaged under the Phase I Approach is annexed at **Annexure VII**. These amendments will be made through a dedicated chapter in the IFSCA Act, 2019, ensuring a seamless integration of the new court structure into the existing legal framework.

D. Phase II- Dedicated IFSC International Court equivalent to High Court

6.3.16 The Phase I approach aims to create a framework conducive to fostering the growth of the ADRC at a crucial period of rapid ADR development across the

[145] National Judicial Data Grid (High Courts of India), available at: https://njdg.ecourts.gov.in/hcnjdgnew/ (last accessed on November 30, 2023)

world. Nevertheless, Committee recognises that, in order to provide a competitive edge to the dispute resolution framework in IFSC, it is imperative to evolve towards a comprehensive and dedicated judicial framework at the level of the High Court. Hence, the Phase II approach has been proposed to actualise the true vision of establishing a one-stop-shop ADRC.

6.3.17 The Committee has extensively reviewed the current judicial frameworks facilitating the globally renowned arbitration centres and it was noteworthy that almost every global financial centre that has set up an international arbitration centre has also established a dedicated court framework to streamline and accelerate its adjudication process. Examples include the court structures in Singapore and Dubai, where specialised courts with fast-tracked proceedings are established. These dedicated international courts, such as SICC, are specialised carve-out within the existing structure of the High Court and Supreme Court of the country, focused solely on handling commercial and international disputes.[146] In line with these best practices, the Committee envisions a dedicated court at the level of a High Court, under the Phase II approach, which shall be named 'IFSC International Court.'

6.3.18 Keeping the above characteristics in mind, the Committee has proposed certain amendments to the Constitution of India along with the enactment of a central statute to emulate successful international frameworks.

6.3.19 It may be noted that the proposed structure suggests the exclusion of certain jurisdictions from these courts (i.e. IFSC International Courts) such as the power to issue writs even though they are the arms of the State judiciary. In the case of Minerva Mills,[147] the Supreme Court reiterated the decision in Kesavananda Bharti v. State of Kerala,[148] stating that the amending power of the Parliament is not absolute. Further, in the case of L. Chandra Kumar vs Union of India,[149] the Court held that Article 32 and Article 226 are an integral and essential feature of the basic structure of the Constitution that cannot be violated by the Parliament.[150]

6.3.20 While the proposed amendment to Article 226 of the Constitution limits the jurisdiction of the IFSC International Court, which is equivalent to a High Court, it does not diminish the overall jurisdictional power conferred on the High Court upon the territory in relation to which it exercises jurisdiction. Under the proposed framework, a proviso has been included to ensure that the said High Court, or a

[146] Role and Structure of the Supreme Court, About the Singapore Courts, Singapore Courts, Government of Singapore, available at: https://www.judiciary.gov.sg/who-we-are/role-structure-supreme-court (last accessed on May 21, 2024)
[147] 1980 3 SCC 625
[148] 1973 4 SCC 225
[149] 1997 3 SCC 261
[150] Sheela Rai, Notes and Comments: India's Tryst with Independent Tribunals and Regulatory Bodies and Role of the Judiciary, 55 JILI (2013) 215

bench of the High Court, is empowered to exercise writ jurisdiction in relevant scenarios.

6.3.21 The objective of establishing the IFSC International Court with limited powers is to ensure a rapid resolution of disputes with minimal court intervention. The intent of these amendments is not to restrict the powers of judges at the High Court but to utilize the conferred powers in a manner that aligns with the requirements of the IFSC International Court, while safeguarding the fundamental jurisdiction of the High Courts. The proposed framework aims to strike a balance between the need for expeditious dispute resolution and the preservation of the core jurisdiction of the High Courts, which is an integral part of the Constitution's basic structure.

6.3.22 In light of the above considerations, the Committee also recommends enacting a central statute to support the constitutional amendments and provide a comprehensive legal framework for the functioning of the IFSC International Court. The central statute will outline the composition, jurisdiction and procedure to be followed in the IFSC International Court in line with the constitutional provisions. The central enactment aims to provide a structured and legally sound foundation for the constitution of the International Courts at IFSCs. It shall enable the central government to notify a separate High Court level structure, namely IFSC International Court, for not only the existing IFSC at GIFT City but also for future IFSCs that may be set up in the country. The legislation also clarifies that the IFSC International Court is not bound by the Indian rules of evidence and may apply other rules of evidence as specified by the IFSC International Court Rules.

6.3.23 Establishing a court within the IFSC at the High Court level will empower the IFSC Court to formulate its own rules concerning the appointment of judges, the structure for case management, and other regulations specific to the IFSC Court, endowing it with the same powers as a High Court. These liberties are crucial for the continued growth of the IFSC as it would allow the IFSC International Court to adapt to the unique requirements of international financial disputes and alternative dispute resolution mechanisms within the IFSC.

6.3.24 The proposed amendments shall help establish a framework that not only embraces the international best practices, but also substantiates India's commitment to fostering an efficient dispute resolution mechanism within the IFSC. A copy of the proposed amendments to the Constitution of India under Phase II approach is annexed at **Annexure VIII.**

E. Phase III – International Judges for the Dedicated IFSC International Court

6.3.25 International judges play an integral role in making the judicial framework globally inclusive. As discussed earlier, jurisdictions like Singapore and Dubai have amended their constitutions to permit judges from foreign nations to preside

over their courts, thereby enhancing the credibility of their dispute resolution mechanisms.[151] The presence of international judges assures disputing parties that their appeals will be heard by experts with a deep understanding of applicable governing laws, instilling confidence among parties from diverse jurisdiction.

6.3.26 In light of the above, the Committee has envisioned that, under the Phase III approach, the IFSC International Court shall have international sitting judges having expertise and experience in dealing with international commercial arbitrations.

6.3.27 The proposed approach would also permit international jurists to assist the IFSC International Court. In instances where a contractual agreement governed by foreign law is adjudicated by an Indian judge lacking expertise in that foreign legal system, the international jurists well-versed in the applicable governing law shall aid the IFSC Court in rendering well-informed decisions. This shall help elevate the status of foreign governing law from mere evidence to juristic opinion, enhancing confidence among parties from varied jurisdictions.

6.3.28 As discussed earlier, amendments to the Constitution, particularly provisions related to the judiciary have their challenges. However, the Committee believes that such amendments are necessary to achieve the goals of the ADRC and to position India as a neutral venue for third-party dispute resolution. The current constitutional framework imposes limitations on the appointment and qualifications of judges for the High Courts, specifically under 217(2), which mandate that judges must be Indian citizens, among other criteria.

6.3.29 To mitigate this issue, the Committee has proposed amendments to the Constitution which would allow the appointment of foreign judges in the High Court. However, such foreign judges shall only be permitted to sit in the IFSC International Court. The judges of the IFSC International Court will be appointed through a rigorous process designed to ensure the highest standards of judicial competence and integrity. For the IFSC International Court, judges will be appointed by the President of India after consultation with the Chief Justice of India, the President, and the Chief Justice of the IFSC International Court within the IFSC. The judges will include both Indian and International Judges who meet the qualifications specified in the proposed constitutional amendments or law enacted by the Parliament. The process for appointing International Judges is designed to align with existing procedures to ensure that the independence of the judiciary remains unaffected.

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[151] Article 9. Appointment of Judges, DIFC Court Law, DIFC Law No. 10 of 2004 ; Judicial Code of Conduct for International Judges of the Supreme Court of Singapore, November 6, 2022, Page 2, available at: https://www.sicc.gov.sg/docs/default-source/guide-to-the-sicc/sicc-code-of-conduct-revised-version-final3-(6-nov-2020)181b9add33784d9fba61bd6b12c7ab97.pdf (last accessed on February 9, 2024)

6.3.30 Further, it is proposed that International Judges may be appointed for a specified period not exceeding two years, with the possibility of reappointment for an additional term not exceeding two years. The nature of amendments suggested by this Committee under Phase III of the judicial framework vary from countries like Singapore which has an established Court framework in the form of SICC and has made amendments to its Constitution to accommodate the needs of an effective dispute resolution system.

6.3.31 The proposed modifications to the judiciary-specific provisions of the Constitution of India under the Phase III approach shall be the key to truly creating a globally aligned judicial framework for dispute resolution within the IFSC which is on par with its global counterparts. The proposed amendments to the Constitution of India under Phase III are annexed at **Annexure IX**.

6.4 Challenges in Execution of Awards under the CPC

6.4.1 When proposing the new judicial structure for IFSC, the Committee recognised that establishing a court structure alone would not suffice to improve court efficiency. The structure must also expedite the enforcement of arbitral awards, a current concern for disputants using arbitration as their mode of dispute resolution.

6.4.2 In the present scenario, when an arbitral tribunal grants an award, it is executed according to the procedure provided under Order XXI of the CPC. The execution of awards in compliance with the provisions stipulated in the CPC remains a complex and cumbersome process. Ideally, the judgment debtor is expected to satisfy the decree/award without the need for the institution of an execution case. However, if the judgment debtor does not voluntarily satisfy the decree/award, the decree-holder must initiate execution proceedings.

6.4.3 Once an arbitral award is passed by the tribunal and the time period to challenge the award under Section 34 of the A&C Act expires, the party in whose favour the award is passed/decree-holder may approach the concerned court having jurisdiction over the judgment debtor's assets. Section 36 of the A&C Act provides that an arbitral award shall be enforced in accordance with the provisions of the CPC in the same manner as a decree of the Court. Thus, the provisions governing the execution of decrees and awards under CPC include Sections 36 to 74 which are to be read with Order XXI of the CPC.

6.4.4 Under section 36, read with section 2(1)(e)(ii) of the A&C Act, an application for execution of a domestic award rendered in an international commercial arbitration must be submitted before the high court exercising ordinary civil jurisdiction. The Court has the power to enforce the execution of the decree on the application of

the decree-holder through various modes including delivery of any property specifically decreed, attachment and sale of property, etc.[152]

6.4.5 The entire process of executing a decree under the CPC encompasses a broad range of steps. Firstly, an application for execution is to be filed by the decree-holder before the concerned court having jurisdiction over the judgment debtor's assets as per Rule 10 of Order XXI. The judgment debtor is directed by the executing court to file an affidavit containing the details of their financial assets, including movable and immovable property in accordance with Form 16A of Appendix E under Order XXI Rule 41(2). A show-cause notice is issued by the registry to the judgment debtor, providing them the opportunity to appear before the executing court and show cause as to why the decree ought not to be executed against them. The court is further empowered under Rule 23 to order the decree to be executed if the judgment debtor does not appear or if the court is not satisfied with the cause.

6.4.6 Thereafter, the court issues summons for execution to the concerned party under Rule 24. Additionally, the party has the option to raise objections against the execution of the decree and the court is mandated to consider said objections and pass an order. Once the court has decided upon the objections so raised, the decree-holder is permitted to file an application seeking the attachment of the movable and immovable property of the judgment debtor under Rules 12 and 13 respectively. Following this, the court is empowered to restrain the judgment debtor from transferring and/or disposing of the property in question.

6.4.7 The court has the power to attach the property, both movable and immovable through the officer of the court – bailiff. Bailiffs report to the Court Registrar or a designated court officer who oversees administrative and procedural functions. Bailiffs also work under the direct instructions of judges, carrying out orders issued by the court. A bailiff has a range of duties such as attaching property under judicial orders, serving legal documents such as summons, warrants, etc., receiving attachments from the court, visiting the site of the property to be attached, finding witnesses from the locality, executing decrees, realizing fines and dues imposed by the court, auctioning property and depositing the realized money in court.[153]

6.4.8 Thus, in the course of execution of proceedings, the bailiff is directed by the executing court to visit the property so disclosed and officially seal it pursuant to the failure of payment by the judgment debtor. Those residing within the property are given a notice to vacate the property after which the property is locked up and officially sealed. Subsequently, a valuation report in relation to the current value

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[152] Section 51, Code of Civil Procedure, 1908

[153] National Classification of Occupations, Division 4, Directorate General of Employment, Ministry of Labour & Employment, Government of India, July 2023, Page 14, available at: https://dge.gov.in/dge/sites/default/files/2023-07/Des-Div-4.pdf (last accessed on May 28, 2024)

of the property is prepared as per the direction of the executing court and the property is put up for auction through a virtual mode.

6.4.9 Once the property is auctioned off, the amount is paid directly to the court, which is then disbursed to the decree-holder. Lastly, the bailiff shall be responsible for handing over the possession of the property to the auction purchaser. Notably, the going concern concept shall apply when the property in question is a business whose operations will not stop in near future. In such cases, a receiver shall be appointed rather than a bailiff to ensure that it is auctioned off as a going concern.

6.4.10 Therefore, Order XXI and its extensive rules inadvertently leave numerous opportunities for delays and evasion of liability by judgment debtor through filing frivolous applications, non-appearance, raising objections, and non-disclosure of assets to name a few. Despite the objective of expediting dispute resolution, the current execution framework lacks a specific and stringent timeframe for executing awards, as a consequence of which proceedings are prolonged and inefficient.

6.4.11 Furthermore, in the landmark case of M/s Bhandari Engineers & Builders Pvt Ltd v. M/s Maharia Raj Joint Venture & Ors.,[154] the Delhi High Court made an observation relating to the non-comprehensive nature of Form 16A which negatively impacts the attachment proceedings. The High Court observed as follows:-

> *"In many developed countries, the law prescribes a comprehensive format of affidavit of assets, income, expenditure, and liabilities to be filed by the judgment-debtor at the very threshold of execution proceedings to ascertain the financial means of the judgment-debtor. However, form 16A of Page 2 of 11 Appendix E under Order XXI Rule 41(2) of the CPC is not exhaustive in ascertaining all the assets, income, expenditure, and liabilities of the judgment-debtor."*

6.4.12 The Apex Court made a concerning observation in 2022 that if arbitration awards are not efficiently enforced in India, then the nation's aspiration to become an international hub of arbitration cannot be achieved.[155] In 2021, there were a total of 14,19,298 reported execution petitions pending before the lower courts. The statistics relating to the pendency of execution petitions before the Indian High Courts are also equally concerning. Reports suggest that as of July 2023, over 32,397 execution petitions were pending before the Delhi High Court and 11,229 before the Bombay High Court.[156]

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[154] 2020 (270) DLT 582

[155] Delhi Airport Metro Express Private Limited vs. Delhi Metro Rail Corporation Ltd, SLP (C) No. 21396/2022

[156] Neetika Bajaj, Enforcement of Arbitral Awards in India: The Paradox, Live Law, July 22, 2023, available at: https://www.livelaw.in/law-firms/law-firm-articles-/arbitral-awards-adr-arbitration-and-conciliation-act-zeus-law-associates-code-of-civil-procedure-233381 (last accessed on May 28, 2024)

6.4.13 Although laws have been enacted to improve the country's arbitration law and expedite the process, executing an arbitral award in accordance with the CPC in a timely manner remains a significant challenge due to procedural complexities and substantial pendency in the courts.

Case Study: SEBI's Efforts for Expediting Execution

- Prior to 2013, SEBI faced numerous challenges concerning the recovery of penalties imposed on defaulters, due to which the powers of the securities regulator were inordinately limited. However, in 2014, SEBI was accorded the power of recovery by virtue of Section 28A pursuant to the enactment of the Securities Laws (Amendment) Act of 2014, which granted SEBI the authority to recover penalties through various means.[157] The 2014 amendment was aimed at enhancing SEBI's effectiveness as a regulator by enabling it to recover its dues in a more expeditious and efficient manner. In particular, the provision allowed SEBI to attach and sell the movable and immovable property of the defaulter without resorting to extensive court proceedings.

- Thus, under Section 28A, if a person fails to pay the penalty imposed on them or comply with SEBI's directions, the Recovery Officer is authorised to recover the proceeds from the debtors or defaulters through varied means such as – (i) by attachment of bank accounts; (ii) by attachment and sale of movable property; (iii) by attachment and sale of immovable property; (iv) by arrest and detention of the defaulter; and (v) by appointing a receiver for managing the defaulter's property. The Recovery Officer is further empowered to seek the assistance of the local district administration while exercising his powers.[158]

- It is noteworthy that SEBI has a dedicated Enforcement Department which is further divided into numerous divisions including the Division of Regulatory Action, Settlement Division, and the Special Enforcement Cell.[159] In addition, SEBI also has its own Recovery and Refund Department which handles recovery proceedings against defaulters who fail to pay the penalty imposed on them or comply with the orders of the Board.

- To further enhance the enforcement and effectiveness of SEBI, a High-Level Committee was constituted in 2017 under the chairpersonship of Retd. Justice Anil Dave. The Committee submitted its report in 2020,[160] which substantially

[157] The Securities Laws (Amendment) Act, 2014
[158] Section 28A(2) of SEBI Act 1992
[159] Enforcement Department, Functions of Departments, About SEBI, SEBI Portal, available at: https://www.sebi.gov.in/department/enforcement-department-1-6/division.html (last accessed on May 28, 2024)
[160] Report on the Measures for Strengthening the Enforcement Mechanism of the Board and Incidental Issues, Securities and Exchange Board of India (SEBI), Government of India, June 16, 2020, available at: https://www.sebi.gov.in/reports-and-statistics/reports/jun-2020/report-of-high-level-committee-under-the-chairmanship-of-justice-retd-anil-r-dave-on-the-measures-for-strengthening-the-

delved into the numerous challenges impacting effective recovery, including the prevalent practice of defaulters hiding their financial assets to escape liability by transferring their assets over to third parties during the pendency of the recovery proceedings. In this regard, the Committee made several suggestions to further strengthen the enforcement mechanism by empowering the SEBI, including defining the term 'property' to provide clarity on the kind of properties that may be attached for recovery of dues, and empowering the Recovery Officer with the power to seek information from any person that may be relevant to execution, investigation or inquiry.

- Additionally, in 2023, SEBI issued new guidelines for granting a reward to informants who provide information about hidden and untraceable assets of the defaulters.[161] The 2023 guidelines were issued with the objective of incentivising individuals to come forth and disclose accurate information about the defaulter's assets to aid in identifying and attaching the assets, thereby strengthening the existing recovery proceedings.

6.4.14 Even where the initial adjudication process is efficient, the enforcement of awards as per the CPC provisions can potentially span several years in some cases. This can be attributed to the multiple official requirements, formalities, and court officers involved, including bailiffs, sheriffs, receivers, valuation reports, frivolous applications, non-appearance of judgment debtors, and a myriad of objections and challenges raised. Notably, the provisions lack stringent and enforceable timelines for the completion of the proceedings which further contributes to the drawn-out nature of execution.

6.4.15 While time limits and case management provisions can be provided for the entire dispute resolution process to ensure that prompt but fair decisions are arrived at, changes also need to be made to the execution process, which itself takes a long time, sometimes spanning years. This delay renders all measures undertaken in the earlier stages of the dispute resolution process, futile, as a party is unable to access the benefits of a favourable decision. Hence, addressing this issue is imperative for ADRC as it directly impacts their effectiveness and credibility. Failure to enforce awards promptly can undermine the confidence of parties in choosing ADRC as a preferred venue of dispute resolution.

6.4.16 It is pertinent for the ADRC to develop a specialised and dedicated framework for the expeditious enforcement of awards, in line with SEBI's recovery

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enforcement-mechanism-of-the-board-and-incidental-issues_46863.html (last accessed on May 28, 2024)

[161] Securities And Exchange Board Of India (Grant Of Reward To Informant Under Recovery Proceedings) Guidelines, 2023, available at: https://www.sebi.gov.in/legal/guidelines/mar-2023/securities-and-exchange-board-of-india-grant-of-reward-to-informant-under-recovery-proceedings-guidelines-2023_68778.html (last accessed on May 28, 2024)

proceedings. The specific rules developed for IFSC International Court should have designated officers including bailiff and registrar for the dedicated bench or division of High Court and Supreme Court. The designated Court may also be empowered by way of rules to seek the assistance of the local district administration where necessary.

6.4.17 Additionally, the enforcement framework should include strict timelines for every stage, ensuring streamlined procedures, and imposing penalties or costs on parties and officials engaging in dilatory behaviour. It is further proposed that a stringent timeline of overall 1 year be provided for the final execution of the court's order or decree.

6.5 Committee's Proposal for Enhancing Case Management Practices

6.5.1 Different jurisdictions worldwide have incorporated different practices, processes, and laws to ensure that their judiciaries align with the pro-dispute resolution approach their ADR institutions seek to embody. One of the key points evident from the structures of foreign jurisdiction is the streamlined manner in which cases before courts are handled. As discussed earlier, the efficiency of a judicial framework is not limited to the applicable laws and structure of the institution. It is also guided the process followed when adjudicating a dispute in a particular court.

6.5.2 Effective case management practices are imperative to achieve quality dispute resolution within a specified timeframe. It not only optimises the ADR processes but also the functioning of the judicial and legislative frameworks that they work within. They allow parties to resolve their disputes faster and in a more economical manner. It also provides the parties with a better understanding of the process, the compliance requirements, and the different stages involved.

6.5.3 This is evidenced through experience of international jurisdictions such as Hong Kong, UK and Singapore which hosts some of the reputed dispute resolution centre and financial centres in the world. In Hong Kong, the rules of High Court and Practice Directions provides express and detailed provision on the case management practices to enhance the efficiency of disputes. Similarly, Civil Procedure Rules and Practice Directions, particularly Part 62 and Practice Direction 62 which exclusively deals with arbitration claims in the UK highlights the case management practices applied in cases before the courts of UK. The SICC also contain specific procedural guides detailing the process followed by their courts. The different processes and procedures followed by these jurisdictions is provided in the table below:

Tabular Comparison on Case Management Process in Hong Kong, Singapore &United Kingdom

Basis	Hong Kong	Singapore	United Kingdom
Case Management – Key features	Hong Kong's Rules of the High Court (cap. 4A), particularly Order 25, along with Hong Kong's PD 5.2, prescribe case management practices to enhance the efficiency of the process. As per the process outlined under Hong Kong's Rules of the High Court ("RHC") (cap. 4A) and the PD, parties are to fill out a Timetabling Questionnaire ("TQ") to facilitate preparation of a case timetable, providing a range of case-related information. Refusal to comply with this attracts cost sanctions. Case Management Conference ("CMC") is held based on the information collected and the date agreed upon or determined by the court. At the CMC, the court fixes a timetable for the steps to be taken by the parties to secure the case's progress. Admissions and agreements made between parties during CMC are recorded. These decisions are not generally appealable.	The SICC Procedural Guide of Singapore details the process and procedure to be followed by SICC. CMC are fixed at any time that SICC thinks fit. The parties must consider prior attempts at dispute resolution, identify issues, and submit a Case Management Bundle (containing parties' statement; pleadings, memorials, and witness statements; Case Management Plan; Pre-Trial Timetable; and List of Issues) at least 7 days prior to CMC. CMCs are held between parties and counsels with judges, based on which directions are issued to the parties. Parties may also mutually agree to do away with the right of appeal in writing. However, appeal may be brought if the decision is affected by fraud, illegality, or fundamental breach of the rules of natural justice.	Case management in the UK is generally governed by the Civil Procedure Rules & PD Part 26. Part 26 of these deals with case management at the preliminary stage. It provides different tracks for different kinds of cases based on their varied requirements and claim values: (a) the small claims track, (b) the fast track, (c) the intermediate track, and (d) the multi-track. Claims are categorised based on factors including financial value; nature of remedy sought; complexity of facts; law of evidence; number, views and circumstances of the parties; required oral evidence. Parties are required to submit such details within 14 days. Further, Cost Management Conferences are held between

			parties. Parties decide on an agreed budget and file it with the court before the CMC. Court may also make cost management orders to control parties' budgets concerning recoverable costs. Cost capping orders may be issued to limit future costs a party may recover. Cost management conferences are to be held telephonically or in writing.
Procedure of Case Management (including case management conferences (CMC) and/or cost management conference)	**Case Management Procedure:** • Timetabling Questionnaire (TQ) is filed • Consent summons by plaintiff to be filed within 14 days of TQ receipt. If no consent is reached, case summons taken out by plaintiff within 14 days of receiving TQ or the expiry of time without response from the defendant. • Plaintiff to take out summons for 1st CMC within 28 days of closing pleadings • Listing questionnaire to be submitted by parties 7 days before CMC. The Listing Questionnaire requires parties to	**CMC Procedure:** • Parties submit case management bundle 7 days prior to CMC. • Parties may apply to dispense with CMC at least 7 days prior to scheduled CMC. • CMC held on scheduled date with parties, counsels and judges, with directions issued to parties. • Parties may apply to CMC for further instructions in case of non-compliance by either of the parties. Directions are issued to the party based on discussions during the CMC. • Party seeking to object to SICC jurisdiction may apply to SICC within 14 days of	**Arbitration Claim Procedure:** • Arbitration claim form issued to relevant court. • Court permits service of claim form at party's representative address. Alternatively, claimant may serve claim form and file a certificate within 7 days of service. • Defendant to file and serve written evidence within 21 days after service of claim form. • Claimant to file and serve written

	confirm the fulfilment of the different requirements under the abovementioned process (whether their pleadings are in order and require no amendments, whether the case management directions have been complied with, whether discovery has been completed, etc.), provide additional information required, and identify the intentions of the parties going forward (whether they intend to cross-examine experts called by the other party, what their estimation for the length of the proceedings is, etc.). These assist with preparing a detailed timeline of the case during the CMC) • CMC bundle to be lodged by plaintiff 3 days before the CMC, after which 1st CMC is held. • Timeline of Case to be determined and other CMCs held if required. • Claims/counterclaims to be struck out for non-appearance of parties at CMC • Information sheet to be filed within 7 days of 1st CMC	service of defendant's statement • Defendant disputing claimant's statement may apply through summons and witness statement within 14 days of service of defendant's statement • Parties may give notice to other party within 28 days before the 1st hearing to object to witness statements • Parties to file opening statements, bundle of authorities, and trial bundle at least 7 days before trial. • This is followed by the first hearing and subsequent proceedings as per CMC directions.	evidence within 7 days after service of defendant's evidence. • Length of service and documents to be filed 5 days before estimated hearing dates. • Claimant to file and serve document bundle at least 2 days before hearing date • Defendant to file and serve skeleton argument at least 1 day before hearing date • Parties to supply witness summons • Court may decide a matter without a hearing based on evidence and submissions (e.g. question of jurisdiction) • Court may extend time limit, and defendant shall file evidence within 21 days of extension order

	• Parties set out trial actions, following which the Pre-Trial Review (PTR) is held • Parties file PTR Checklist within 28 days of PTR • Trial bundles lodged within 14 days of trial • Written submissions sent to parties within 7 days before trial • Trial commences within 28 days of the PTR		

6.5.4 In addition to the abovementioned, certain courts, such as the Hong Kong Court of Final Appeal, have enhanced the efficiency of their proceedings by placing limits on (i) the length of written materials submitted; (ii) the filing times for such materials; (iii) the length of hearings; and (iv) the length of oral submissions.

6.5.5 Notably, the procedural rules of the Court of Final Appeal require that leave be obtained to make an appeal. It utilizes an efficient procedure where Applicants use Form B from Schedule 1 of the Hong Kong Court of Final Appeal Rules to make succinct submissions about the facts and matters necessary for the Appeal Committee's consideration. Under Rule 7 of these rules, written submissions arguing why an application should not be dismissed must not exceed 5,000 words, including footnotes and appendices. Furthermore, these submissions must be printed in a 14-point or larger typeface on one-sided A4 paper and accompanied by a soft copy in Word format. Submissions that do not comply with these requirements are liable to be rejected.

6.5.6 Additionally, skeleton arguments either in favour of or opposing the grant of leave must strictly focus on determining whether grounds have been made out for the appeal to be heard. These arguments must also adhere to the 5,000-word limit. Substantive appeals, on the other hand, must not exceed 10,000 words. Oral hearings are similarly streamlined, lasting no more than an hour. If a longer hearing is necessary, applications must be made to the Registrar at least 14 days before the hearing date. Typically, the time is split with 25 minutes each for the applicant and respondent, and 10 minutes for the applicant's final reply. However, these time limits can be adjusted at the discretion of a permanent judge or the Appeal Committee.

6.5.7 These stringent and clear guidelines on the efficiency of court proceedings are not unique to Hong Kong. Word limits, time limits on filings, and restrictions on oral arguments are also integral to the Rules of the Supreme Court of the United States.[162] Certain aspects integrated into the court system for efficient management of time by Hong Kong and USA is provided below :

Sr. No.	Parameter	Hong Kong	USA
1	Word limits for documents submitted by parties to the courts	Application and skeleton arguments- 5,000 words Substantive submissions- 10,000 words	Different word limits for different kinds of documents ranging between 3,000 and 13,000 words.
2	Time limit for oral submissions without seeking extension	Total limit of case- 1 hour (parties to mutually decide on allocation of time, failing which, default split is 25 minutes in opening for applicant and respondent each and 10 minutes for the applicant to reply at the end)	Half-hour per party
3	Process to seek an extension	Apply to the Registrar at least 14 days before the hearing date. Time limits and extensions are subject to the discretion of a permanent judge or the Appeal Committee.	Request for additional time to argue is required to be presented by a motion which is considered at a scheduled Conference before the date of oral argument and no later than 7 days after the briefs on the merits are filed.
4	Whether extensions are granted regularly	No	No

6.5.8 The aforementioned practices can be tailored to the use of IFSCA and incorporated in a manner best suited for its objectives. In Chapter 4 of this Report, the Committee has already recommended amendments to Section 34 and 37 of the

[162] Rules of the Supreme Court of the United States, (Effective January 1, 2023), Supreme Court of the United States, available at: https://www.supremecourt.gov/filingandrules/2023RulesoftheCourt.pdf (last accessed on May 31)

A&C Act to limit the timeline within these provisions to 90 days from the completion date of submission of all written pleading. However, additional provisions relating to case management should be incorporated into the court framework to ensure that the proposed court structure operates effectively. Some of the key recommendations proposed by the Committee in this regard are as follows:

A. **Case Management Conferences ("CMC"):**

6.5.9 It is proposed that CMCs be held at the initiation of court proceedings. A comprehensive questionnaire should be prepared and annexed with the court rules to better understand the dispute and the parties' objectives. The responses can be used to identify potential sources of amicable and streamlined resolution before the commencement of the actual proceedings. The questionnaire can also ensure that all out-of-court remedies have been exhausted. The timeline for submitting the questionnaire should also be set to ensure that the process is expedited, with requisite documents provided at most three days before the CMC. Additionally, a fixed timeframe can be prescribed for the court to hold the CMC from the date of questionnaire submission.

6.5.10 For the proceedings stage, the questionnaire can include questions pertaining to whether the parties have complied with all the requirements outlined within the law, whether they would be bringing in experts, whether they wish to partake in cross-examinations, etc. These points can be discussed in the CMC to create a comprehensive roadmap for the proceedings. Sanctions can be imposed for non-compliance, such as not attending CMCs or failing to submit questionnaires. These can include the imposition of costs, striking off claims/counterclaims until valid reasons are provided for delay, penalties at the decision stage, etc.

6.5.11 The CMCs would provide the parties with a bird's-eye view of the process and acquaint them with it. They would also help determine the timeline of the proceedings and streamline the process. It should also be ensured that the questionnaire is not amendable after a certain point in the process so that the parties do not repeatedly alter its contents.

B. **Cost Management:**

6.5.12 It is recommended that the measures to ensure that the cost of proceedings remains in check must be provided. In line with practices in other jurisdictions, parties can be required to submit agreed and disputed budgets to the court before the CMC. Separate cost management conferences may be held if needed, and these should ideally be conducted virtually to save time and costs. Further, the courts should be empowered to issue cost management orders.

C. Case Categorization:

6.5.13 Cases can be categorised based on different factors that affect the manner in which they are required to be dealt with, and the time it would take to address them properly. The qualifying criteria can include the claim amount, the counterclaim amount (if any), the nature of the case, the subject matter of the dispute, the complexity of the facts, the parties involved, the level and amount of documentation, the length and/or number of hearings anticipated, etc. This categorization would refine the adjudication process. Additionally, separate administrative tracks can be created for each category of disputes, ensuring that the staff involved is equipped and trained to handle specific kinds of disputes expeditiously. In cases where the court lacks sufficient information to allocate the case to a particular category, it can direct the parties to submit the requisite details within a specified time of receiving such an order.

6.5.14 Lastly, to expedite proceedings and ensure that parties use their time and resources efficiently, word limits can be imposed on submissions, with applications for appeals having a prescribed format with word limit. Substantive submissions at later stages can also have word limitations. Additionally, the rules can prescribe a half-hour time limit for the arguing counsel of each party. Extensions for pleading time can be sought with a prior written request to the court at least 14 days before the scheduled hearing, where the applicant must establish that presenting their case is not possible within the given time and word limits.

6.5.15 A dedicated court structure combined with efficient enforcement officers and a clear case management system can significantly enhance the functioning of ADRC. The proposed integration and streamlining of all aspects related to the functioning of the court shall ensure that disputes are resolved swiftly and effectively, minimizing delays and maximizing the efficacy of the ADRC.

7. Road Map

7.1 The Expert Committee through this report has tried to develop the legislative, regulatory, and institutional measures required at various stages of establishing the proposed ADRC at IFSC. Given the comprehensive groundwork laid, including statutory reforms, draft rules for mediation and arbitration, and a code of ethics for dispute resolution professionals, it is imperative to kick start the setting up of the ADRC without delay and in parallel to initiating amendments in the existing statutory framework. The constitution of the ADRC must be initiated at the first instance. Preparation of standard operating procedures, constituting the various committees and panels should be undertaken. The next steps for actualizing the visions of ADRC include institutionalizing the organization by finalizing the infrastructure, securing a strategic location for its establishment at GIFT City, and developing state-of-the-art facilities equipped for mediation and arbitration proceedings. It is important that adequate time is given to developing the governance framework, standard operating procedures, organization chart, securing professional human resource and onboarding key influencers in ADR from India and internationally.

7.2 Furthermore, it is pertinent that these measures must be concurrently marketed through advocacy efforts, conferences, roadshows, and the like. This will not only help educate the potential users but also aid in establishing a strong presence among its global counterparts. This will enable ADRC to effectively communicate its vision and goals to its stakeholders. In addition, simultaneous endeavours must be made to achieve the statutory amendments outlined in the report. Only by accomplishing these parallel interventions can ADRC strive to meet the pace with which these developments are required. The establishment of ADRC is a critical component of the IFSC's ecosystem and shall play a vital role in facilitating the smooth functioning and credibility of the IFSC. Therefore, until the ADRC is fully operational and integrated into the IFSC's ecosystem, the latter will remain

7.3 A detailed manpower plan should also be devised to recruit qualified professionals and administrative staff for the centre. Training programs must be conducted to ensure all personnel are well-versed in the ADRC's procedures, code of ethics, and working process. Further, clear operational procedures and internal protocols must be defined to streamline case management, scheduling, and decision-making processes in the Centre.

7.4 It is envisaged that in the initial phase of implementation, the IFSCA will play a crucial role in driving the growth and development of the institution. Serving as the hallmark that would propel IFSCs in India towards becoming full-fledged global financial centers, it is necessary that the IFSCA takes proactive steps to facilitate the smooth establishment and effective functioning of the ADRC at IFSC.

Beyond the considerable efforts being taken to position ADRC as a hub for dispute resolution on a global stage, it is pertinent to also market and promote the proposed reforms to enhance its outreach among potential participants and users of the Centre.

7.5 Marketing measures and promotional activities may range from arranging roadshows and social media campaigns to organising conferences, workshops, and seminars on an annual or bi-annual basis. By establishing itself as a reliable institution among foreign investors and businesses, and building a strong brand identity among its target user base, the ADRC can gain visibility and recognition as a premier institute and a global hub for dispute resolution.

7.6 ADRC may arrange roadshows in major cities to highlight the capabilities of the ADRC and the advantages that the parties stand to gain from selecting the Centre for their dispute settlement. When planning roadshows, it is also possible to incorporate interactive workshops that will engage potential users and address their concerns. ADRC may also organize industry conferences to showcase the policy and regulatory framework of the Centre, discuss the benefits of opting ADRC as a forum for dispute resolution. It is also possible to hold online webinars in order to reach a wider audience and give them access to a comprehensive overview of the ADR processes, with a particular focus on the institutional rules, expedited timelines, and case management system of the ADRC.

7.7 In addition, ADRC may also utilise social media platforms for the purpose of campaigning and marketing the proposed reforms within the ADRC. Separate marketing team must be created to help scale the presence and impact of the institution among global participants. Moreover, snippet videos on procedures and processes may be shared to attract users, thereby enabling them to easily grasp the various facets of ADR and gain insight into the stages of dispute resolution proceedings.

7.8 **Engaging international personalities to enhance ADRC's international visibility**

7.8.1 The members of the International Advisory Council constituted by ADRC should be designated to represent ADRC in the international field. Inducting international personalities of eminence in the field of dispute resolution in ADRC will help build a network to facilitate foreign clients and help maintain relations with international firms. ADRC may also conduct global roadshows in the countries of such persons to enhance the Centre's visibility and broaden the reach of foreign clients. ADRC may also develop multilingual websites to cater the international clients ensuring easy access to the services for the clients. This will not only help in attracting foreign investors and business but also strengthen the overall reputation of the Centre among its international counterparts.

7.9 **Real-Time Centralised Database to be made publicly available**

7.9.1 ADRC may establish a centralized database that includes data on ongoing matters, tracks progress, and provides information on engaged dispute resolution professionals and case management officers. Notably, in 2015, the Bankruptcy Law Reforms Committee ("BLRC") envisioned having a comprehensive real-time shared database about the activities of financial agencies in relation to the Insolvency and Bankruptcy Code. This Information Utility ("IU") was aimed at facilitating a centralised data facility in an electronic form with negligible delay for the insolvency process,[163] wherein IUs shall utilise computer technology to manage a centralised repository of data; and accept and provide financial information; default evidence; and other material in digital format. It was anticipated that whenever an insolvency resolution process is initiated, in less than a day, all parties involved shall have access to comprehensive and undeniable information, thereby resolving one of the primary causes of delay.[164] A similar centralised public database for the ADRC shall help facilitate easy access to crucial information, reducing delays, and ensuring accountability.

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[163] The report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design, Insolvency and Bankruptcy Board of India, Government of India, November 2015, available at: https://ibbi.gov.in/BLRCReportVol1_04112015.pdf (last accessed on May 23, 2024)

[164] Page 204, IBC Idea, Impressions and Implementation 2022, Insolvency and Bankruptcy Board of India, Government of India, available at: https://ibbi.gov.in/uploads/whatsnew/b5fba368fbd5c5817333f95fbb0d48bb.pdf (last accessed on May 18, 2024)

7.10 Data-driven institutionalisation of legislative reforms in ADRC

7.10.1 To ensure timely and effective legislative reform within the ADRC at IFSC, a Standing Committee should be established that shall be tasked with conducting continuous reviews of legislation and operations at ADRC. The unavailability of official data such as real-time pendency rates and reasons for procedural delay has been acknowledged by the Committee as one of the key challenges hindering legislative reforms in any judicial framework. Without having access to this crucial data, addressing the challenges and implementing meaningful reforms may prove to be a difficult task. Therefore, any efforts toward legislative reform within the ADRC must be data-driven to facilitate informed decision-making and enhance the efficiency and effectiveness of the dispute-resolution process.

7.10.2 The Standing Committee should be provided with relevant data on a regular basis concerning the status of implementation and operations of the ADRC. By receiving and analysing data related to the ADRC's operations, the Standing Committee can identify areas for improvement, track progress, and make evidence-based recommendations for legislative reforms. It can act as a dedicated forum which shall aid in the regular evaluation and assessment of the ADRC's performance and the overall dispute resolution landscape at IFSC.

7.10.3 A data-driven approach shall ensure transparency in the ADRC's operations and accountability for its performance. This shall also aid in informed decision-making and implementing necessary changes to the ADRC's framework in a timely manner. In addition, the continuous process of legislative reform can help ensure that the ADRC remains competitive in the dispute resolution ecosystem among its global counterparts.

7.11 Enhancing the attractiveness of ADRC for foreign dispute resolution professionals through streamlined registration

7.11.1 Presently, the Bar Council of India ("BCI") permits foreign lawyers to practice foreign law and diverse international law and arbitration matters in India on a reciprocity basis under the Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022.[165] However, the provisions under said Rules impose a limitation on foreign lawyers and law firms to practice in India only on a 'fly in, fly out' basis not exceeding 60 days in a period of 12 months. As per said Rules, foreign law firms and lawyers are required to register themselves with the BCI in order to be eligible to practice in the country. However, they may be exempt from the mandatory registration requirements provided they engage with their clients on a 'fly-in fly-out' basis.

[165] Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022, (last accessed on May 17, 2024)

7.11.2 The fly-in fly-out model of law practice suggests that foreign lawyers and law firms need not register themselves with the BCI if they are visiting the country only temporarily for consultations or meetings to give legal advice to their clients on diverse legal issues, including foreign law. Notably, this exemption from registration shall only apply if their visit within the territory does not exceed 60 days in a period of 12 months. Concerningly, this fly-in fly-out model hinders their true engagement and ability to effectively serve their clients. This restriction on foreign lawyers and law firms poses numerous challenges including mobility challenges, disruption of service continuity, and inaccessibility for the clients.

7.11.3 In light of this, the Committee has acknowledged that there is a need for foreign lawyers and dispute resolution professionals to be treated on par with Indian lawyers at IFSC to enhance the competitiveness of ADRC in comparison to arbitral institutions in mainland India. For this purpose, it is recommended that foreign lawyers be exempt from the fly-in fly-out rule to the extent that the treatment meted out to foreign lawyers practicing in IFSC is similar to that of Indian lawyers.

7.12 Tax exemptions and concessionary policies for foreign dispute resolution professionals

7.12.1 To further enhance the attractiveness of the ADR Centre, the registration procedure for foreign lawyers and law firms shall be restructured in a manner similar to other renowned international jurisdictions. For instance, in Singapore, foreign lawyers intending to appear before the SICC are required to undertake the Foreign Practitioner Examinations ("FPE") as per the rules under the Singaporean Legal Profession Act of 1966.[166] Similarly, in India, a streamlined pathway for foreign practitioners may be instituted whereby foreign professionals may practice and appear before the courts by indicating their ongoing matters, subject to registration and other requirements as may be prescribed.

7.12.2 Specifically in terms of taxation, the Singaporean government has undertaken various measures to strengthen its position as a hub of global dispute resolution, including the facilitation of tax exemptions on the income derived by non-resident arbitrators and mediators in relation to their work carried out in Singapore. The withholding tax ("WHT") rate for non-resident professionals in Singapore is 15% (fifteen percent), however, non-resident arbitrators and mediators conducting work in Singapore are subject to a concessionary WHT rate of only 10% (ten percent) on the gross income.[167] Additionally, Singapore's international agreements with

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[166] Rule 4, Legal Profession (Foreign Practitioner Examinations) Rules 2011; Rule 5, Legal Profession (Regulated Individuals) Rules 2015 (Singapore)

[167] Updates to Withholding Tax Exemption for Non-Resident Arbitrators and Mediators, Ministry of Law, Government of Singapore, February 18, 2022, available at: https://www.mlaw.gov.sg/news/announcements/updates-to-withholding-tax-exemption-for-non-resident-arbitrators-and-mediators/ (last accessed on May 18, 2024)

other jurisdictions concerning the avoidance of double taxation further aid the non-resident arbitrators and mediators carrying out their work in Singapore.[168]

7.12.3 In this regard, the Committee has envisaged that a resident and non-resident dispute resolution professional in IFSC should be treated in the same manner with respect to income tax provisions by acting in the capacity of a deemed resident. It is suggested that a similar policy aligning with the global best practices may be introduced to facilitate concessional policies and avoidance of double taxation in order to attract foreign professionals and investors. This can substantially help India stay competitive in the international dispute resolution landscape.

7.12.4 Indian tax laws also provide for withholding of tax for non-resident Indians. At present, a withholding tax at the rate of 20% (twenty percent) is levied on non-residents professionals providing their services in India. Similarly, on the lines of Singaporean tax model, a lower withholding tax at the rate of between 10% (ten percent) to 15% (fifteen percent) may be levied on non-resident arbitrators and mediators to make IFSC an attractive destination for such non-resident professionals.

7.13 Visa and Work Pass facilitation for foreign dispute resolution professionals

7.13.1 To further facilitate the easy entry of foreign practitioners in the country, Singapore also has a work-pass exemption policy in place. Foreign arbitrators and mediators' entry within the territory is seamlessly enabled with a 'short-term visit pass' ("STVP"), without the need for the official work pass. Notably, arbitration and mediation services have been categorically identified among the Work Pass Exempt ("WPE") activities wherein non-resident arbitrators and mediators providing their services in the country need not apply for a work pass, rather they can provide their services after the issuance of the STVP.[169]

7.13.2 Similarly, in the case of visa facilitation for foreign professionals in India, it is pertinent that the processing time be minimised to ensure that the timely arrival of foreign practitioners is not restricted owing to procedural delays, thereby hindering their participation in legal activities within the country.

7.13.3 These measures can significantly aid in promoting foreign practitioners to establish a stronger presence within IFSC without continual disruptions and further result in more registrations of foreign practitioners. Visas and/or work passes for foreign

[168] Circular issued by SIAC Registrar on applicability of Withholding Tax to non-resident arbitrators, Singapore International Arbitration Centre, March 31, 2023, available at: https://siac.org.sg/wp-content/uploads/2023/04/Circular-issued-by-SIAC-Registrar-on-applicability-of-WHT-to-non-resident-arbitrators-Version-B-clean.pdf (last accessed on May 18, 2024)

[169] Eligible Activities for A Work Pass Exemption, Ministry of Manpower, Government of Singapore, March 14, 2024, available at: https://www.mom.gov.sg/passes-and-permits/work-pass-exempt-activities/eligible-activities, (last accessed on May 18, 2024)

professionals can also contribute towards strengthening ADRC's position among its global counterparts. It is suggested that further research should be undertaken to develop an enabling framework to facilitate these measures for foreign dispute resolution professionals.

Annexure I – Different View of Dr. M.S. Sahoo, Chairperson on Accreditation, Grading and Empanelment for ADRC at IFSC

A Different View by Dr. M. S. Sahoo

This note relates to two terms of reference of this expert committee. The committee was mandated to recommend a framework relating to (a) assessment criteria for accreditation, empanelment, and grading, including without limitation, arbitrators, mediators, international financial experts, counsels appearing for parties, etc; and (b) Code of conduct for mediators, arbitrators, international financial experts, to be empanelled for the GIFT-IAC. The committee (excluding me) has recommended that there must not be a framework for accreditation/ empanelment/ grading/ registration/ licensing of alternative dispute resolution professionals (ADRPs) like arbitrators, mediators and neutrals, and consequently, there is no need for a framework for de-accreditation/ withdrawal of registration of ADRPs, for the reasons elaborated in this report. They argue that party autonomy in alternative dispute resolution is supreme and the parties should have unfettered freedom to bring in any individual as an ADRP for the resolution of their disputes in the GIFT-IAC. Therefore, the provisions in the Arbitration Act, 1996, and the Mediation Act, 2023 relating to accreditation/de-accreditation of arbitrators/mediators shall not apply to arbitrators and mediators in the GIFT-IAC. However, I hold a different view, which I outline below.

Dispute resolution is a professional service. Like any other professional service, it requires practitioners providing dispute resolution services to have the competence to resolve disputes and not have conflicting interests that may impair their services. Courts are the traditional mechanisms for dispute resolution. They use a set of professionals, namely, Judges and Advocates, who are qualified in law and courtcraft, and abide by a strict code of conduct, to resolve the disputes. Since such a resolution may not be to the liking of every party to the dispute and takes unduly long, alternative dispute resolution mechanisms have developed. These typically use another set of professionals, namely, ADRPs (neutrals, arbitrators, mediators, etc.) to resolve disputes outside the formal court system. Like Judges and Advocates, ADRPs need to have competence for the job, and their conduct must be above the Board, for alternative dispute resolution mechanisms to enjoy the trust of stakeholders and serve as an effective mechanism for dispute resolution. In recognition of the need for conduct and competence, which are two main planks of any profession, the statutes relating to mediation and arbitration in India require these professionals to have a threshold level of competence and conduct. They provide for a mechanism to allow individuals, who meet the threshold level of conduct and competence, to become mediators/ arbitrators to provide dispute resolution services and disallow them when they fail to do so.

Section 38 of the Mediation Act, 2023 enumerates the duties of the Mediation Council of India. The Council shall (a) lay down the guidelines for the continuous education, certification, and assessment of mediators by the recognised mediation institutes; (b) provide for the manner of registration of mediators and renew, withdraw, suspend, or cancel registration based on conditions, as may be specified; (c) lay down standards for professional and ethical conduct of mediators; and (d) hold trainings, workshops and courses in the area of mediation in collaboration with mediation service providers, law firms and universities and other stakeholders, both Indian and international, and any other mediation institute. Similarly, section 43D of the Arbitration Act, 1996 enumerates the duties of the Arbitration Council of India. The Council may (a) recognise professional institutes providing accreditation of arbitrators; (b) review the grading of arbitral institutions and arbitrators; (c) hold training, workshops, and courses in the area of arbitration in collaboration with law firms, law universities, and arbitral institutes. Section 43J of the Act requires the Arbitration Council of India to make regulations to specify the qualification, experience, and norms for the accreditation of arbitrators. These provisions allow party autonomy in choosing an arbitrator/ mediator, but from a public list of arbitrators/ mediators who meet the standards of competence and conduct to the satisfaction of the respective regulator.

The regulators (the Arbitration Council of India and the Mediation Council of India) are yet to commence operations. However, a model in practice is available under the Insolvency and Bankruptcy Code, 2016. Section 207 of the Code enables the regulator, the Insolvency and Bankruptcy Board of India to '*specify the categories of professionals or persons possessing such qualifications and experience in the field of finance, law, management, insolvency, or such other field'* for registration as insolvency professionals to provide insolvency services. In the exercise of these powers, the regulator has notified the IBBI (Insolvency Professionals) Regulations, 2016, and the IBBI (Insolvency Professional Agencies) Regulations, 2016 which specify the threshold level of competence and conduct required for serving as an insolvency professional. These regulations provide for a process for registering professionals, who meet the threshold of competence and conduct, for rendering insolvency services, and deregistering them when they fail to do so. The regulator makes a list of insolvency professionals available in the public domain for market participants to choose from.

Development and regulation are two sides of a profession; one does not exist independently of the other. Unless a profession develops, it cannot be regulated. In the absence of regulations, a profession does not develop. Regulation is necessary to develop a profession and once the profession develops, it needs to be regulated. Thus, development and regulation feed on each other in a virtuous circle for the orderly growth of a profession. Therefore, the standard approach has been the establishment of an authority with the twin responsibility of developing and regulating a profession. The examples are the Institute of Company Secretaries of India and the National Medical Commission which have the twin responsibilities. Similarly, the Arbitration Act/

Mediation Act envisages the Arbitration Council of India/ the Mediation Council of India with the twin responsibilities of the development and regulation of the profession of arbitration/ mediation in the country.

The importance of development is much higher in the case of GIFT-IAC which aims to provide competitive alternative dispute resolution services in the global market. The core of the competitive strength is the quality of ADRPs. They need to be specifically groomed for this profession and they should practise the profession on a full-time basis like advocates and chartered accountants. This requires the development of the ADRP as an independent professional discipline and not as an extension of another profession. This profession should attract young and bright talent in the interest of quality services. Students should consider ADRP as an option while making a career choice after the 10+2 level. To start with, however, the practitioners could be drawn from different professions and they may practise the profession of ADRP on a part-time basis along with their parent profession. For example, a cost accountant may practise as a cost auditor in addition to acting as a mediator for the resolution of a few disputes. I am not getting here into the strategy of the development of the profession of ADRPs, which the concerned regulator will decide from time to time. It would suffice to say that development requires focused attention, including an ecosystem and advocacy, to produce quality ADRPs. It can happen only in the shadow of regulation, which incentivises talented individuals to join the profession. This requires a framework that prohibits unqualified and tainted individuals from rendering alternative dispute resolution services and allows only qualified and clean individuals to render such services.

It is important to appreciate the rationale behind regulation of professions. The only reason for regulation is market failure, which occurs when the market (for goods/ services, including professional services) carries any of the three ingredients, namely, information asymmetry, externalities, and market power. Most markets for professional services exhibit all three ingredients, though of different intensities. Information asymmetry arises because the professional has all the information but no clear incentive to share the same with the user. The user needs the information, but its access to the same is limited. Even where it has access, it lacks the expertise to assess the quality of service offered and evaluate pricing, given that the services are highly specialised. Further, professional services are considered 'experience goods' / 'trust goods', meaning their quality can only be assessed after they have been used, and users cannot inspect the service before the purchase. Externalities arise when the impact of services provided by a professional goes much beyond the professional and the user. Businesses make critical finance, investment, and other strategic decisions based on the reliability of contract enforcement and the effectiveness of dispute resolution mechanisms. The overall ease of doing business benefits significantly from the availability of effective and reliable alternative dispute resolution mechanisms, while the absence of such mechanisms is detrimental. There is potential for the abuse of market power, particularly if it is self-regulated. Fellow professionals, formally organised or not, tend

to act in the interest of one another, giving them control over quality and prices. Organised professional firms, particularly networked ones, could have market power. In comparison, individual users often find themselves at a considerable disadvantage, with little power to influence the market dynamics.

An additional consideration that weighs in favour of the regulation of professions is the recognition that users of professional services often lack adequate information and expertise, making them vulnerable to manipulation by professionals. The users typically are unaware of the options available to them; they often do not know how to assess the quality and price of services; they are misled by advertisements and promotions; they are not organised as a group and lack bargaining power; etc. Specialisation and advances in knowledge further complicate their ability to judge the quality of professional services. Consequently, a regulator, as an agent of all existing and prospective users of professional services, is expected to protect their interests. An example is the National Financial Reporting Authority which is mandated to protect the public interest and the interests of investors, creditors, and others associated with the companies by establishing high-quality standards of accounting and auditing. This role of the regulator is extremely important, especially considering that users of professional services are not protected under the Consumer Protection Act, 2019.

There are a host of standard measures to address market failures and protect the interests of users of professional services. Information asymmetry is mitigated by requiring professionals to provide comprehensive information, including disclosures of conflicts of interest and adherence to minimum service standards. These measures ensure users are protected even if they lack the expertise to fully process the information. Externality is managed by ensuring that capable, public-spirited, and fit and proper individuals join the profession and are held accountable for their services. This ensures that the broader impacts of professional services are positive and in the public interest. Market power is addressed by allowing free entry to/ exit from the profession. Individuals who meet the eligibility criteria can join the profession, and they can leave it at their discretion, subject to a defined process. This prevents the concentration of power and promotes competition. The accreditation/ de-accreditation process helps to address market failures arising from all three factors, in addition to protecting the interests of users of the professional services and attracting the best talent to the profession.

The objective of regulation of the profession has been changing over the years from the protection of the interests of professionals to the protection of the interests of users. It is not possible to protect the interests of users if anyone can render professional services without establishing her credentials. A system of registration is a primary regulatory tool to verify the credentials of a prospective professional. A formal registration process ensures that the regulator assesses the suitability of individuals entering a profession, allowing only eligible, qualified, and deserving candidates to join. This process helps maintain a comprehensive register of professionals authorised to offer services, making it easier for users to select a professional when needed. While the regulator may

establish an individual’s capability and suitability at the time of registration, there is no assurance that her conduct will remain exemplary over time. Therefore, an objective framework is essential for removing professionals from the register who fall short in competence or conduct. This system ensures ongoing quality and integrity within the profession, protecting users and maintaining trust in professional services.

Implementing a system of accreditation and de-accreditation of ADRPs will significantly enhance the quality and credibility of the GIFT-IAC. Such a system ensures that ADRPs are not only well-trained but also uphold ethical standards and are held accountable. This benefits not only the parties directly involved in dispute resolution, but also the wider community by fostering effective and equitable dispute resolution. Here's how:

Quality assurance: Accreditation ensures that the ADRPs meet specific standards of competence and professionalism, which in turn assure high-quality services for users.

Professional development: Accreditation often involves ongoing education and training motivating ADRPs to continuously enhance their skills and knowledge, thus improving the overall quality of dispute resolution services.

Ethical standards: Accredited ADRPs are required to adhere to a code of ethics, which includes maintaining neutrality, confidentiality, and integrity, which in turn fosters trust in the dispute resolution mechanism.

Accountability: A formal accreditation system establishes a framework for holding ADRPs accountable for their conduct and performance. If any of them fails to adhere to professional standards, she can be de-accredited, safeguarding the public and preserving the profession's credibility.

Public trust: An accreditation system instills confidence in alternative dispute resolution mechanisms. Knowing that professionals are vetted and held to high standards encourages more people to use such resolution services.

Consistency and reliability: Accredited ADRPs are more likely to apply consistent and reliable practices, reinforcing the reliability of alternative dispute resolution as a dependable alternative to litigation,

Consumer protection: De-accrediting ADRPs who fall short of standards protects consumers from unqualified or unethical practitioners, ensuring they receive competent and ethical dispute resolution services.

Recognition and professionalism: Accreditation formalises alternate dispute resolution as a recognised profession. This professional status attracts talented individuals to the field, improves career development opportunities, and solidifies alternative dispute resolution as a credible career path.

Considering the above, I strongly advocate for a framework for the accreditation/de-accreditation of ADRPs. The provisions governing such accreditation/ de-accreditation in the Arbitration Act/ Mediation Act should extend to arbitrators/mediators offering alternative dispute resolution services in the GIFT-IAC. However, these provisions may require customisation to align with the unique role envisioned for the GIFT-IAC. Doing away with these provisions will do more harm than good, potentially leading to market

failure. I refrain from discussing the agency that should accredit/ de-accredit ADRPs. It could be done by the GIFT-IAC/ IFSCA/ Arbitration Council of India/ Mediation Council of India. The agency could adopt any of the existing models of accreditation/ de-accreditation available in the country, with necessary adjustments to suit the context of the GIFT-IAC.

This note borrows heavily from the 2019 'Report of the Committee of Experts to Examine the Need for an Institutional Framework for Regulation and Development of Valuation Professionals' of the Ministry of Corporate Affairs of which I was Chairperson. The said report is available at: https://ibbi.gov.in/uploads/resources/ed6bf110d4c26d3dc9a2e40053cf53c6.pdf.

File No. 497/IFSCA/IAC/2021-22 May 25, 2023

OFFICE MEMORANDUM

Subject: Constitution of Expert Committee for drafting Institutional Arbitral Rules for proposed International Arbitration Centre (IAC) at GIFT-IFSC and matters incidental thereto

This has reference to the Union Budget 2021-22, wherein the Finance Minister made an announcement on setting up of International Commercial Arbitration Centre(IAC) in the GIFT IFSC for timely settlement of disputes under international jurisprudence.

2. In the report submitted by Gujarat National Law University (GNLU) on setting up dispute resolution facilities at IFSC, it was highlighted that one of the stand-out features for the success of top international arbitration centres is that they have a modern and updated arbitration rules based upon best practices and latest developments in international arbitration. The proposed IAC at GIFT-IFSC would have to develop best-in-class arbitral rules to make it competitive with major international arbitration centres. The Justice B.N. Srikrishna Committee also observed that world-class institutional arbitral rules are essential for international arbitration institutions. Furthermore, the international arbitration rules are often differentiated with the help of unique features/ innovations that give it a competitive edge over other jurisdictions and make it the preferred destination. It was observed that, the major arbitral institutions across the globe will assign the task of drafting arbitral rules and other allied important works to panel of legal luminaries who are experts in the field of international arbitration.

3. In view of the above, an Expert Committee is hereby constituted as under for drafting the arbitral rules for IAC.

Sl. No.	Members	Designation
(i)	Dr. M. S. Sahoo, Distinguished Professor, NLU Delhi & Former Chairperson of IBBI	Chairman
(ii)	Shri Bahram Vakil (Founder and Senior Partner, AZB and Partners)	Member
(iii)	Shri J. Ranganayakulu (Former Executive Director, SEBI)	Member
(iv)	Ms. Shaneen Parikh (Partner and Head of International Arbitration at Cyril Amarchand Mangaldas)	Member
(v)	Shri Naresh Thacker (Partner and Practice Head of Litigation, Arbtiration and Dispute Resolution at Economic Law Practices)	Member

(vi)	Shri Praveen Trivedi (Executive Director, IFSCA)	Member
(vii)	Shri Ranveer Kumar (AGM, IFSCA)	Co-Ordinator

4. The Terms of Reference (ToR) of the above Committee shall be as follow: -

(i) To suggest and guide in preparing a roadmap for making GIFT-IAC a hub for alternative dispute resolution of international financial and commercial disputes.

(ii) To suggest regulatory design, legal framework including regulations, and procedures of the proposed dispute resolution centre in relation to:

a) Institutional framework for the legal and administrative structure of the proposed GIFT-IAC and the roles and responsibilities of its Governing Body

b) Institutional rules for arbitration, mediation, and other hybrid mechanisms of alternative dispute resolution, such as mediation-arbitration, arbitration-mediation-arbitration, neutral evaluation, etc.;

c) Institutional framework for online dispute resolution, third-party funding in alternative dispute resolution proceedings and technology-related services existing in major established dispute resolution centres,;

d) Assessment criteria for accreditation, empanelment, and grading including without limitation arbitrators, mediators, international financial experts, counsels appearing for the parties, etc;

e) Code of Conduct of mediators, arbitrators, international financial experts, to be empanelled for the GIFT-IAC;

f) To develop a set of core standards for case management to strengthen the quality of services and ensuring effective management of proceedings as per international standards; and

g) Amendments or modifications, if any, needed in any existing enactments or policy changes.

h) The Committee may also examine and address any other relevant matter by its own or as may be referred to it by the Chairperson, IFSCA.

(iii)The Committee may devise its own procedures for conducting its business/ meetings/ field visits/ delegation/ constitution of sub-groups;

5. The Chairman of the committee may also invite or co-opt any other practitioners, experts (subject specific) who have knowledge or experience in the field of ADR and representatives from other Ministries or regulators under intimation to IFSCA.

6. The Committee may submit its report within 6 months from the date of its constitution.

7. **Meetings:**

(i) The Committee shall meet at such times and places as it considers expedient.

(ii) The Chairman of the Expert Committee shall decide the agenda for the meetings and preside over the meetings of the committee.

(iii) In the absence of the Committee Chairman, the Committee members shall elect one among themselves as the Committee Chairman.

8. **Sitting Fee:**

(i) Members of the Committee shall be entitled to a sitting fee of Rs.10,000/- for each formal sitting of the Committee. Official members are not entitled to a sitting fee.

(ii) The Committee Members shall be entitled to reimbursement of expenses on his travel and accommodation for attending the meetings of the Committee at par with the entitlement of Member of the Authority.

9. **Conduct:**

i) No Member of the Committee, including the Chairman shall communicate with the press or any other public media regarding issues that have been or are currently being considered by the Committee, without prior approval from the IFSCA.

ii) In case any Member of the Committee has a direct or indirect interest in any issues to be discussed at a meeting of the Committee, (s)he shall disclose the nature of this interest to the Committee as well as to the IFSCA.

10. **Secretarial Assistance:**
The Department of Legal Policy and Legal Affairs will provide secretarial assistance to the Expert Committee. The nodal point of contact for this purpose is Shri Ranveer Kumar, Assistant General Manager (Email: kumar.ranveer@ifsca.gov.in, Mobile number: +91 9769181222).

11. This issues with the approval of the Competent Authority.

25/05/2023
(Sathyaraj C M)
General Manager(Admin.)

To
All Members of the Committee

Copy to:
1. Office of Chairperson IFSCA
2. ED(Legal)
3. Shri Ranveer Kumar, AGM
4. Office order file

Annexure III – Proposed Amendments to Statutory Framework

The International Financial Services Centres Authority (Amendment) Bill, 2023
1. (1) This Act may be called the International Financial Services Centres Authority (Amendment) Act, 2023. *(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:* ***Provided** that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.*
2. In the International Financial Services Centres Authority Act, 2019 (hereafter referred to as the principal Act), in section 3, in sub-section (1), (a) clause (a) shall be renumbered as clause (ab); (b) before the renumbered clause (ab), the following clauses shall be inserted, namely: – *"(a) 'alternative dispute resolution mechanism' means a process whereby parties attempt to reach a resolution of their disputes including settlement through methods other than court-led adjudication, and includes:* *(i) negotiation, neutral evaluation, mediation, conciliation, and arbitration,* *(ii) any other alternative dispute resolution mechanism as may be notified, and* *(iii) any hybrid of the alternate dispute mechanism;* *(aa) 'alternative dispute resolution enactment' means an enactment that governs the conduct of alternative dispute resolution mechanism, and includes:* *(i) the Arbitration and Conciliation Act, 1996 (26 of 1996);* *(ii) the Mediation Act, 2023 (32 of 2023); or* *(iii) any other enactment that provides for alternative dispute resolution mechanism;"*
3. In section 12 of the principal Act, in sub-section (2), after clause (c), the following clause shall be inserted, namely: – *"(ca) promoting the development of, and regulating the alternative dispute resolution mechanisms in the International Financial Services Centres."*
4. In the principal Act, after chapter III, the following chapter shall be inserted, namely:- ***"Chapter IIIA*** ***Alternative Dispute Resolution Mechanisms***

13A. ***Functions of Authority in relation to alternative dispute resolution mechanisms***
The Authority shall promote the development of, and regulate alternative dispute resolution mechanisms, and matters connected therewith or incidental thereto, in International Financial Services Centres.

"13B. ***Alternative dispute resolution mechanisms at International Financial Services Centre***
Notwithstanding anything contained in any other law for the time being in force:
(a) Arbitrations having its seat at an International Financial Services Centre; and
(b) All alternative dispute resolution mechanisms other than arbitration conducted at an International Financial Services Centre

shall be conducted in accordance with the provisions of the alternative dispute resolution enactments as modified and notified under the IFSCA Act, if any."

5. In the principal Act, in section 28, in sub-section (2), after clause (g), the following clause shall be inserted, namely:-

"(ga) alternative dispute resolution mechanism having a seat or venue at an International Financial Services Centre, and matters connected or incidental thereto."

6. In the principal Act, after section 33, the following section shall be inserted, namely:-

"33A. ***Amendments to certain other enactments****.-*
The enactments specified in the Third Schedule shall be amended in the manner specified therein."

Or

6. In the principal Act, in section 31, in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely:-
"(a) shall not apply to International Financial Services Centre; or
(b) shall apply to International Financial Services Centre with such exceptions, modifications, and adaptations, as may be specified in the notification."

Or

6. In the principal Act, in section 31,
(a) after sub-section (1), the following sub-section shall be inserted, namely:-
"(1A) *"The Central Government may, by notification, direct that any of the provisions of any alternative dispute resolution enactment shall not apply or apply, with such exceptions, modifications or adaptations, as may be specified in the notification, to alternative dispute resolution having the seat at an International Financial Services Centre.";*

(b) in sub-section (2), for the words 'sub-section (1)', 'this section' shall be substituted.
7. In the principal Act, after the Second Schedule, the following Schedule shall be inserted, namely:- **"THE THIRD SCHEDULE** **(See Section 33A)** **AMENDMENT TO CERTAIN OTHER ENACTMENTS** **PART - I** **AMENDMENTS TO THE ARBITRATION AND CONCILIATION ACT, 1996** (26 of 1996) After Part IV, the following Part shall be inserted, namely:- **"PART V** **ARBITRATION HAVING SEAT AT INTERNATIONAL FINANCIAL SERVICES CENTRE** 88. The provisions of this Act shall apply to an arbitration having the seat at an International Financial Services Centre with the following modifications: (1) In section 2, in sub-section (1), (a) after clause (d), the following clause shall be inserted, namely:- *"'authority' means the International Financial Services Centres Authority established under sub-section (1) of section 4 of the International Financial Services Centres Authority Act, 2019 (50 of 2019)*"; (b) in clause (e), after sub-clause (ii), the following proviso shall be inserted, namely:- *"Provided that the court shall mean IFSC Bench of High Court defined in clause (ga), subsection (1) of Section 3 of the International Financial Services Centres Authority Act, 2019(50 of 2019) where the seat of arbitration is at International Financial Services Centre."* (c) after clause (e), the following sub-clause shall be inserted, namely: *"(ea) 'documents-only' in respect of a proceeding means a proceeding where (a) no oral hearing is held; and* *(b) proceeding is conducted on the basis of written submissions and documentary evidence."* (d) in clause (f), after sub-clause (iv), the following shall be inserted namely:

"*(v) a Unit setup in an International Financial Services Centre in India; Notwithstanding anything contained in this Act, all the provisions applicable to an international commercial arbitration in this Act shall mutatis mutandis apply to all arbitrations having seat at International Financial Services Centre, and to that extent reference to 'international commercial arbitration' in this Act shall be construed to include arbitrations having seat at International Financial Services Centre.*"

(e) after clause (f), the following clauses shall be inserted, namely:-

"*(fa) 'International Financial Services Centre' shall have the meaning as assigned to it in the International Financial Services Centres Authority Act, 2019 (50 of 2019);*
(fb) 'International Financial Service Centres Authority' means the International Financial Services Centres Authority established under section 4 of the International Financial Services Centres Authority Act, 2019 (50 of 2019);"

(2) In Section 28, the following changes may be made:
(a) Clause (b) of sub section (1) shall be modified as:

"(b) in international commercial arbitrations ***or arbitrations seated at International Financial Services Centre****,-*

(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 (a) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute."

(b) After sub- section (1) of section 28, the following Explanation shall be inserted, namely

"Explanation : For the purposes of this Act and notwithstanding anything contained in any other law for the time being in force, where parties have chosen the seat at an International Financial Services Centre, any agreement or contract entered into between such parties, irrespective of their nationality, domicile, or place of business, in which they expressly agree in writing to govern the contract or the arbitral proceedings by the law of any jurisdiction other than the laws of India, shall not be deemed illegal, void, or opposed to public policy of India."

(3) In section 34,
(a) after sub-section (1), the following proviso shall be inserted, namely:-

"*Provided that a party may file an application to set aside the award passed in an arbitration having the seat at an International Financial Services*

Centre, through documents only, where the parties have agreed in writing prior to the date of the award or where the rules of the institution chosen by them so provide."

(b) after sub-section (3), the following provisos shall be inserted, namely:-

"*Provided that in case of an award passed in an arbitration having the seat at an International Financial Services Centre, the Court shall not admit an application if it is made beyond a period of twenty-one days from receipt of the arbitral award:*

Provided further that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period, it may entertain the application within a further period of twenty-one days, but not thereafter."

(c) *after sub-section (6), the following proviso shall be inserted, namely:-* *"Notwithstanding anything contained in this section, in case of an award passed in an arbitration having a seat at an International Financial Services Centre, an application under this section shall be disposed of expeditiously within a period of 90 days from the date of completion and submission of all written pleadings.*

Provided also that if the Court is unable to adhere to this timeline for the reasons attributable to one or more of the parties, then, it shall have the discretion to impose exemplary costs on such party or parties under Section 31A"

(4) In section 36, after sub-section (2), the following proviso shall be inserted namely:

"Provided that a party may file an application for stay of an operation of an award passed in an arbitration having the seat at an International Financial Services Centre, through documents only, where the parties have agreed in writing prior to the date of the award or where the rules of the institution chosen by them so provide."

(5) In section 37,

(a) in sub-section (1), after clause (c), the following proviso shall be inserted, namely:-

"*Provided that no appeal shall be filed under this clause against an award passed in an arbitration having its seat at an International Financial Services Centre."*

(b) After sub-section (3), the following shall be inserted namely:

"(4) An application under this section against an award passed in an arbitration having its seat at an International Financial Services Centre shall

be disposed of expeditiously and in any event, within a period of 90 days from the date of completion and submission of all written pleadings.

Provided that if the Court is unable to adhere to this timeline for the reasons attributable to one or more of the parties, then, it shall have the discretion to impose exemplary costs on such party or parties under Section 31A."

(6) In section 42A, the following proviso shall be inserted, namely:-
"Provided that in the case of an arbitration having seat at an International Financial Services Centre, a party may disclose such information to such persons in such manner on such conditions as may be prescribed."

(7) Section 2(1)(j) and Sections 43A to 43M shall be deleted.

(8) For section 84, the following section shall be substituted, namely:-

"84. ***Power to make rules and regulations***
(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
(2) The International Financial Services Centres Authority may, by notification in the Official Gazette, make regulations for carrying out the provisions of this Act in respect of arbitrations seated at an International Financial Services Centre.
(3) Every rule and regulation made under this Act shall be laid, as soon as may be, after it is made before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation."

PART II
AMENDMENT TO THE SPECIAL ECONOMIC ZONES ACT, 2005 (28 of 2005)

1. In section 42, after sub-section 3, the following sub-section shall be inserted, namely: -

   "4. *Nothing contained in this section apply to an International Financial Services Centre."*

PART III
AMENDMENT TO THE MEDIATION ACT, 2023 (32 of 2023)

"After Chapter XI, the following Chapter shall be inserted, namely:-

“CHAPTER XII

MEDIATION CONDUCTED IN AN INTERNATIONAL FINANCIAL SERVICES CENTRE

66. The provisions of this Act shall apply to a mediation conducted at an International Financial Services Centre with the following modifications:

(1) In section 3,

(a) Before clause (a), the following clause shall be inserted, namely:-
“(aa) ‘authority’ means the International Financial Services Centres Authority established under sub-section (1) of section 4 of the International Financial Services Centres Authority Act, 2019 (50 of 2019)”;

(b) After clause (d), the following proviso may be inserted, namely:
“Provided that the court shall mean IFSC Bench of High Court defined in clause (ga), subsection (1) of Section 3 of the International Financial Services Centres Authority Act, 2019(50 of 2019) where the place of mediation is at an International Financial Services Centre.”

(c) After clause (f), the following clauses shall be inserted, namely:-
“(fa) ‘International Financial Services Centre’ shall have the meaning as assigned to it in the International Financial Services Centres Authority Act, 2019 (50 of 2019);
(fb) ‘International Financial Service Centres Authority’ means the International Financial Services Centres Authority established under sub-section (1) of section 4 of the International Financial Services Centres Authority Act, 2019 (50 of 2019); ”

(d) After clause (i), the following proviso may be inserted, namely:
“Provided that where place of mediation is at an International Financial Services Centre, such mediator shall not be required to be registered with the Council.”

(e) After clause (y) the following may be inserted, namely:
“Explanation: “Specified” shall mean specified by regulations made by the Council under this Act, except where the place of mediation is at an International Financial Services Centre.”

(2) In Section 8, after sub-section (5), of the following may be inserted, namely :
“Notwithstanding anything contained in this section, where the place of mediation is at an International Financial Services Centre:

(a) The mediator shall not be required to possess the qualifications, experience, and accreditation specified by the Council.
(b) In case the parties are unable to reach an agreement as to the appointment of a mediator or the mediator agreed by them refuses to act as a mediator, a mediator from the panel maintained by the mediation service provider at the IFSC may be appointed, with his consent."

(3) In Section 20, after proviso of the subsection (1), the following may be inserted, namely:
"Provided further that the mediation settlement agreement under this section may be registered with the mediation service provider where the place of mediation is at an International Financial Services Centre."

(4) Sections 31 to 39 and Section 42, 45, 46, 47 and 52(2) shall be deleted.

(5) In Section 40, after sub-section (2), the following may be inserted, namely:
"Notwithstanding anything contained in this section, where the place of mediation is at an International Financial Services Centre, the mediation service provider shall not be required to be recognised by the Council so long as the mediation service provider is registered as a Unit at International Financial Services Centre."

(6) In Section 41, after clause (f), the following may be inserted, namely:
"Provided that, notwithstanding anything contained in this section, clause (a) shall not be applicable to mediation service providers where the place of mediation is at an International Financial Services Centre."

(7) In section 52, for subsection (1), the following sub-sections shall be substituted, namely:-
"(1) Subject to sub-section (1A), the Council may, with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.
(1A) The International Financial services Centres Authority may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act where the place of mediation is at an International Financial Services Centre."

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INTRODUCTORY PROVISIONS

1. Scope and Application of Rules

1.1. The Alternative Dispute Resolution Centre of the International Financial Services Centre Authority (“**IFSCA**”) is the independent dispute resolution body set up by IFSCA.

1.2. These rules may be called the **Alternative Dispute Resolution Centre Rules (“ADRC Rules”).**

1.3. Where parties have agreed in writing to refer or submit their disputes to the Alternative Dispute Resolution Centre for arbitration in accordance with the ADRC Rules, the parties shall be deemed to have agreed that the arbitration shall be conducted and administered by ADRC in accordance with these Rules.

1.4. These Rules govern the arbitration, except that, where any such rule is in conflict with any provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

1.5. When parties agree to arbitrate under these Rules, or when they provide for arbitration of an international dispute by the ADRC without designating particular rules, they thereby authorize the ADRC to administer the arbitration.

1.6. These Rules shall come into force on [Insert the date] and, unless otherwise agreed by the parties, shall apply to any arbitration which is commenced on or after that date.

2. Interpretation of Rules

2.1. The following words and phrases shall have the meaning assigned to them unless the context indicates otherwise:

a. “ADRC” means the Alternative Dispute Resolution Centre.

b. "Award" means the decision of the Tribunal on a particular dispute and includes an interim or final Award or an Award of an emergency arbitrator;

c. “Claimant” includes one or more claimants, “Respondent” includes one or more respondents, and “Additional party” includes one or more additional parties.

d. “Committee of the Executive Council” means a committee consisting of not less than two members of the Executive Council appointed by the

Chief Executive Officer (which may include the Chief Executive Officer)

e. "Counterclaim" means any claim or defence by way of set-off submitted by the Respondent.

f. "Emergency Arbitrator" means an arbitrator appointed in accordance with Article 40

g. "Executive Council" means the Executive Council of Alternative Dispute Resolution Centre and includes and Committee of the Executive Council.

h. "Party" includes all parties acting as claimants or as respondents.

i. "Practice Notes" mean the guidelines published by the Registrar from time to time to supplement, regulate and implement these Rules.

j. "Registrar" means the Registrar of the ADRC and includes any Deputy Registrar;

k. "Rules" means the Arbitration Rules of the Alternative Dispute Resolution Centre.

l. "Third-party Funding Arrangement or Third-Party Funding Agreement" means an arrangement between an independent third party (whether an individual or body corporate) and one of the parties to the arbitration which confers on that third party an economic benefit which is linked to the outcome of the arbitration and may involve the receipt of a share of the proceeds of any award.

m. "Tribunal" includes a sole arbitrator or all the arbitrators where more than one arbitrator is appointed.

Any pronoun shall be understood to be gender-neutral. Words importing the singular noun include, where the context admits or requires, the plural number and vice versa.

3. Notice and Calculation of Time Limits

3.1. For the purposes of these Rules, any notice, communication or proposal shall be in writing. Any such notice, communication or proposal may be delivered by hand, registered post or courier service, or transmitted by any form of electronic communication (including electronic mail and facsimile), or delivered by any other appropriate means that provides a record of its delivery. Any notice,

communication or proposal shall be deemed to have been received if it is delivered:

a. to the addressee personally or to its authorised representative;

b. to the addressee’s habitual residence, place of business or designated address;

c. to any address agreed by the parties;

d. according to the practice of the parties in prior dealings; or

e. if, after reasonable efforts, none of these can be found, then at the addressee’s last-known residence or place of business.

3.2. Any notice, communication or proposal shall be deemed to have been received on the day it is delivered in accordance with Article 3.1. In the case of electronic communication, it shall be deemed to have been delivered when transmitted, with reference to the recipient's time zone.

3.3. For the purpose of calculating any period of time under these Rules, such period shall begin to run on the day following the day when a notice, communication or proposal is deemed to have been received. When the next day following such date is a non-business day at the place of receipt, the time period commences on the first following business day. If the last day of such period is a non-business day at the place of receipt, the period is extended until the first business day which follows. Non-business days occurring during the running of the period of time are included in calculating the period.

3.4. The parties shall file with the Registrar a copy of any notice, communication or proposal concerning the arbitral proceedings.

3.5. Except as provided in these Rules, the Registrar may at any time extend or abbreviate any time limits prescribed under these Rules.

COMMENCEMENT OF ARBITRATION

4. Notice of Arbitration

4.1. Any party wishing to initiate arbitration (“**Claimant**”) shall give written Notice of Arbitration to the Registrar and at the same time to the party against whom a claim is being made (“**Respondent**”). The party may also initiate the arbitration online through the ADRC Registrar’s WebFile at [*Insert web link*] or via email at [*Insert email address*].

4.2. The date on which the Registrar receives the Notice of Arbitration shall, for all purposes, be deemed to be the date of the commencement of the arbitration.

4.3. The Notice of Arbitration shall contain the following information:

a. a demand that the dispute be referred to arbitration;

b. the names (in full), addresses, telephone numbers, facsimile number electronic mail addresses and other contact details, if known, of the parties to the arbitration and their representatives, if any;

c. a copy of the written arbitration clause or the separate arbitration agreement invoked by the Claimant;

d. a reference to the contract or other legal instrument out of or in relation to which the dispute arises and a copy of it;

e. a brief description of the nature and circumstances of the dispute giving rise to the claims and of the basis upon which the claims are made;

f. a statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;

g. a proposal for the number of arbitrators if not specified in the arbitration agreement;

h. unless otherwise agreed by the parties, the nomination of an arbitrator if the arbitration agreement provides for three arbitrators, or a proposal for a Sole Arbitrator if the arbitration agreement provides for a Sole Arbitrator; and

i. all relevant particulars and any observations or proposals as to the place of arbitration, the applicable rules of law and the language of the arbitration;

j. The claimant may submit such other documents or information with the Request as it considers appropriate or as may contribute to the efficient resolution of the dispute.

4.4. The Notice of Arbitration may also include the Statement of Claim referred to in Article 16.2.

4.5. Along with the Notice of Arbitration, the claimant shall:

a. make payment of the appropriate filing fee specified under [*Insert Annexure I* (“**Arbitration Cost and Fees**”)]

b. submit sufficient number of copies of the Notice of Arbitration for each party, each arbitrator and the Registrar where the Claimant requests transmission of the Notice of Arbitration by delivery against receipt, registered post or courier.

In the event that the claimant fails to comply with either of these requirements, the ADRC Registrar may fix a time limit within which the claimant must comply, failing which the file shall be closed without prejudice to the Claimant's right to submit the same claims at a later date by way of a fresh request.

4.6. Upon receipt of the Notice of Arbitration, the Registrar shall communicate with all parties with respect to the arbitration and shall acknowledge the commencement of the arbitration.

4.7. If any information or particulars regarding the arbitration agreement furnished by Claimant with the notice for arbitration are found to be incorrect or false, at any time subsequently, the Registrar shall have the power to reject the application for arbitration.

5. Response to the Request for Arbitration and Counterclaims

5.1. Within 14 days of receipt of Notice of Arbitration, or such lesser or greater period to be determined by the Tribunal upon application by any party or upon its own initiative, the Respondent shall submit to the ADRC a Response which shall include the following:

a. its full name, nationality, address and other contact details, including telephone and email address of itself and of its representative (if any);

b. its preliminary comments as to the nature and circumstances of the dispute giving rise to the claim;

c. its preliminary response to the claim and the relief sought by the Claimant as well as to the sum claimed or in dispute in light of the Claimant's estimate;

d. any preliminary objections concerning the validity, existence, scope or applicability of the agreement to arbitrate;

e. any comments concerning the number of arbitrators and their choice in light of the Claimant's proposals and in accordance with the relevant provisions of Articles 10 and 13, and if the agreement to arbitrate calls

for the parties to nominate arbitrators, the name and contact details of the Respondent's nominee;

f. any comments concerning the seat and the language of the arbitration in light of the Claimant's proposals and in accordance with Articles 19 and 20; and

g. any comments on the applicable rules of law.

5.2. The Response (including all accompanying documents) may also be submitted to the ADRC Registrar in electronic form, where expedient to do so.

5.3. The Response may also include the Statement of Defence and a Statement of Counterclaim, as referred to in Article 17.3 and 17.4.

5.4. The Respondent shall, at the same time as it files the Response with the Registrar, send a copy of the Response to the Claimant, and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

MULTIPLE PARTIES, MULTIPLE CONTRACTS AND CONSOLIDATION

6. Joinder of Additional Parties

6.1. A party wishing to join an additional party to the arbitration shall submit its request for arbitration against the additional party ("Request for Joinder") to the Registrar. The date on which the Request for Joinder is received by the Registrar shall, for all purposes, be deemed to be the date of the commencement of arbitration against the additional party. Any such joinder shall be subject to the provisions of agreement and contracts between parties. Unless all parties, including the additional party, otherwise agree, or as provided for in Article 6.5, no additional party may be joined after the confirmation or appointment of any arbitrator. The Registrar may fix a time limit for the submission of a Request for Joinder.

6.2. The Request for Joinder shall contain the following information:

a. the case reference number of the existing arbitration;

b. the name in full, description, address and other contact details of each of the parties, including the additional party; and

c. whether the additional party is to be joined as a Claimant or Respondent;

d. the information specified under Article 4.3;

e. a brief statement of the facts and legal basis supporting the application;

f. any relief or remedy sought;

g. the existence of any funding agreement and the identity of any third-party funder pursuant to Article 41; and

h. The party filing the Request for Joinder may submit therewith such other documents or information as it considers appropriate or as may contribute to the efficient resolution of the dispute.

6.3. The provisions of payment of claim and sharing of documents with respondents as required under Article 4 shall apply, mutatis mutandis, to the Request for Joinder.

6.4. The additional party shall submit a Response or written statements in accordance, mutatis mutandis, with the provisions of Article 5. The additional party may make claims against any other party in accordance with the provisions of Article 7.

6.5. Any Request for Joinder made after the confirmation or appointment of any arbitrator shall be decided by the arbitral tribunal once constituted and shall be subject to the additional party accepting the constitution of the arbitral tribunal and agreeing to the Terms of Reference, where applicable. In deciding on such a Request for Joinder, the arbitral tribunal shall take into account all relevant circumstances, which may include whether the arbitral tribunal has prima facie jurisdiction over the additional party, the timing of the Request for Joinder, possible conflicts of interests and the impact of the joinder on the arbitral procedure. Any decision to join an additional party is without prejudice to the arbitral tribunal's decision as to its jurisdiction with respect to that party.

6.6. Any Request for Joinder shall be raised no later than in the Statement of Defence, except in exceptional circumstances.

7. Multiple Contracts

7.1. Where there are disputes arising out of or in connection with more than one contract, the Claimant may:

a. file a Notice of Arbitration in respect of each arbitration agreement invoked and concurrently submit an application to consolidate the arbitrations pursuant to Article 8.1; or

b. file a single Notice of Arbitration in respect of all the arbitration agreements invoked which shall include a statement identifying each contract and arbitration agreement invoked and a description of how the applicable criteria under Article 8.1 are satisfied. The Claimant shall be deemed to have commenced multiple arbitrations, one in respect of each arbitration agreement invoked, and the Notice of Arbitration under this Article 7.1(b) shall be deemed to be an application to consolidate all such arbitrations pursuant to Article 8.1.

7.2. Where the Claimant has filed two or more Notices of Arbitration pursuant to Article 7.1(a) of this Rules, the Registrar shall accept payment of a single filing fee under these Rules for all the arbitrations sought to be consolidated. Where the Court rejects the application for Arbitration Rules of the consolidation, in whole or in part, the Claimant shall be required to make payment of the requisite filing fee under these Rules in respect of each arbitration that has not been consolidated.

7.3. Where the Claimant has filed a single Notice of Arbitration pursuant to Article 7.1(b) and the Court rejects the application for consolidation, in whole or in part, it shall file a Notice of Arbitration in respect of each arbitration that has not been consolidated, and the Claimant shall be required to make payment of the requisite filing fee under these Rules in respect of each arbitration that has not been consolidated.

8. Consolidation

8.1. Prior to the constitution of any Tribunal in the arbitrations sought to be consolidated, a party may file an application with the Registrar to consolidate two or more arbitrations pending under these Rules into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated:

a. all parties have agreed to the consolidation;

b. all the claims in the arbitrations are made under the same arbitration agreement; or

c. the arbitration agreements are compatible, and: (i) the disputes arise out of the same legal relationship(s); (ii) the disputes arise out of contracts

consisting of a principal contract and its ancillary contract(s); or (iii) the disputes arise out of the same transaction or series of transactions.

8.2. An application for consolidation under Article 8.1 shall include:

a. the case reference numbers of the arbitrations sought to be consolidated;
b. the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of all parties and their representatives, if any, and any arbitrators who have been nominated or appointed in the arbitrations sought to be consolidated;
d. the information specified in Article 4.1(c) and Article 4.1(d);
e. if the application is being made under Article 8.1(a), identification of the relevant agreement and, where possible, a copy of such agreement; and
f. a brief statement of the facts and legal basis supporting the application.

8.3. The party applying for consolidation under Article 8.1 shall, at the same time as it files an application for consolidation with the Registrar, send a copy of the application to all parties and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

8.4. The Executive Council shall, after considering the views of all parties, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for consolidation under Article 8.1. The Executive Council's decision to grant an application for consolidation under Article 8.4 is without prejudice to the Tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision. The Executive Council's decision to reject an application for consolidation under Article 8.4 in whole or in part, is without prejudice to any party's right to apply to the Tribunal for consolidation pursuant to Article 8.7. Any arbitrations that are not consolidated shall continue as separate arbitrations under these Rules.

8.5. Where the Executive Councill decides to consolidate two or more arbitrations under Article 8.4, the arbitrations shall be consolidated into the arbitration that is deemed by the Registrar to have commenced first, unless otherwise agreed by all parties or the Executive Council decides otherwise having regard to the circumstances of the case.

8.6. Where an application for consolidation is granted under Article 8.4, the Executive Council may revoke the appointment of any arbitrators appointed prior to the decision on consolidation. Unless otherwise agreed by all parties, Article 9 to 12 shall apply as appropriate, and the respective timelines thereunder shall run from the date of receipt of the Executive Council's decision under Article 8.4.

8.7. After the constitution of any Tribunal in the arbitrations sought to be consolidated, a party may apply to the Tribunal to consolidate two or more arbitrations pending under these Rules into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated:

a. all parties have agreed to the consolidation;

b. all the claims in the arbitrations are made under the same arbitration agreement, and the same Tribunal has been constituted in each of the arbitrations or no Tribunal has been constituted in the other arbitration(s); or

c. the arbitration agreements are compatible, the same Tribunal has been constituted in each of the arbitrations or no Tribunal has been constituted in the other arbitration(s), and: (i) the disputes arise out of the same legal relationship(s); (ii) the disputes arise out of contracts consisting of a principal contract and its ancillary contract(s); or (iii) the disputes arising out of the same transaction or series of transactions.

8.8. Subject to any specific directions of the Tribunal, the provisions of Article 8.2 shall apply, mutatis mutandis, to an application for consolidation under Article 8.7.

8.9. The Tribunal shall, after giving all parties the opportunity to be heard, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for consolidation under Article 8.7. The Tribunal's decision to grant an application for consolidation under Article 8.9 is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision. Any arbitrations that are not consolidated shall continue as separate arbitrations under these Rules.

8.10. Where an application for consolidation is granted under Article 8.9, the Executive Council may revoke the appointment of any arbitrators appointed prior to the decision on consolidation.

8.11. The Executive Council's decision to revoke the appointment of any arbitrator under Article 8.6 or Article 8.10 is without prejudice to the validity of any act done or order or Award made by the arbitrator before his appointment was revoked.

8.12. Where an application for consolidation is granted under Article 8.4 or Article 8.9, any party who has not nominated an arbitrator or otherwise participated in the constitution of the Tribunal shall be deemed to have waived its right to nominate an arbitrator or otherwise participate in the constitution of the Tribunal, without prejudice to the right of such party to challenge an arbitrator pursuant to Article 14.

ARBITRAL TRIBUNAL

9. Number and Appointment of Arbitrators

9.1. The parties to a dispute are free to determine whether the Arbitral Tribunal shall be constituted by a Sole Arbitrator or by three Arbitrators. In no case, the number of Arbitrators shall exceed three.

9.2. If the parties have not agreed on the number of arbitrators, one arbitrator shall be appointed unless the Registrar determines that three arbitrators are appropriate because of the size, complexity, or other circumstances of the case.

9.3. In all cases, the arbitrators nominated by the parties, or by any third person including by the arbitrators already appointed, shall be subject to appointment by the Executive Council in its discretion.

9.4. The Executive Council shall appoint an arbitrator as soon as practicable. Any decision by the Executive Council to appoint an arbitrator under these Rules shall be final and not subject to appeal.

9.5. The Executive Council may appoint any nominee whose appointment has already been suggested or proposed by any party.

9.6. The Registrar shall fix the terms of appointment of each arbitrator in accordance with these Rules and any Practice Notes for the time being in force, or in accordance with the agreement of the parties.

10. Appointment of Sole Arbitrator

10.1. If a sole arbitrator is to be appointed, either party may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator. Where the parties have reached an agreement on the nomination of a sole arbitrator, Article 9.3 shall apply.

10.2. Subject to Article 9.3, if within 14 days after the date of commencement of the arbitration, or within the period otherwise agreed by the parties or set by the Registrar, the parties have not reached an agreement on the nomination of a sole arbitrator, or if at any time either party so requests, the Executive Council shall appoint the sole arbitrator.

10.3. Where there are more than two parties in the arbitration, and one arbitrator is to be appointed, all parties are to agree on the arbitrator. If all parties are not able to jointly nominate the sole arbitrator within 28 days of the date of commencement of the arbitration or within the time limit agreed by the parties or set by the Registrar, the Executive Council shall appoint the arbitrator.

10.4. Where the parties have agreed on a different procedure for designating the sole arbitrator and such procedure does not result in a designation within a time limit agreed by the parties or set by ADRC, ADRC shall appoint the sole arbitrator.

11. Three Arbitrators

11.1. Where the agreement provides for the appointment of three Arbitrators, the Claimant shall appoint its Arbitrator at the time of filing the request and the Respondent shall appoint its Arbitrator at the time of filing of its response to the Notice of Arbitration, and the two Arbitrators shall within 30 days, appoint the Presiding Arbitrator.

11.2. Where the parties fail to appoint their respective Arbitrators or where the Arbitrators appointed by the parties fail to appoint the Presiding Arbitrator, in terms of Article 11.1, then within 15 days after receipt of a party’s nomination of an arbitrator, or within the period otherwise agreed by the parties or set by the Registrar, the Executive Council shall appoint the Arbitrator / Presiding Arbitrator as the case may be.

11.3. Where there are more than two parties to the arbitration, and three arbitrators are to be appointed, the Claimant(s) shall jointly nominate one arbitrator and the Respondent(s) shall jointly nominate one arbitrator. The third arbitrator,

who shall be the presiding arbitrator, shall be appointed in accordance with Article 11.1. In the absence of both such joint nominations having been made within 30 days of the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the Registrar, the Executive Council shall appoint all three arbitrators and shall designate one of them to be the presiding arbitrator.

12. Nationality of Arbitrators and Parties

12.1. . Upon request of the Registrar, the parties shall each inform the Registrar and all other parties of their nationality. Where the parties are of different nationalities, a sole arbitrator or the presiding arbitrator shall not have the same nationality as any party unless the parties who are not of the same nationality as the arbitrator candidate all agree in writing otherwise.

12.2. For the purposes of Article 12.1, in the case of a natural person, nationality shall mean citizenship, whether acquired by birth or naturalisation or other requirements of the nation concerned. In the case of a legal person, nationality shall mean the jurisdiction in which it is incorporated and has its seat of effective management. A legal person that is incorporated in one jurisdiction but has its seat of effective management in another shall be treated as a national of both jurisdictions. The nationality of a party that is a legal person shall be treated as including the nationalities of its controlling shareholders or interests.

12.3. A person who is a citizen of two or more States shall be treated as a national of each State; citizens of the European Union shall be treated as nationals of its different Member States and shall not be treated as having the same nationality; a citizen of a State’s overseas territory shall be treated as a national of that territory and not of that State; and a legal person incorporated in a State’s overseas territory shall be treated as such and not (by such fact alone) as a national of or a legal person incorporated in that State.

13. Qualification of Arbitrator

13.1. An arbitral tribunal confirmed under these Rules shall be and remain at all times impartial and independent of the parties.

13.2. Before confirmation or appointment, a prospective arbitrator shall

a. sign a statement confirming his or her availability to decide the dispute and his or her impartiality and independence; and

b. disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, once confirmed or appointed and throughout the arbitration, shall disclose without delay any such circumstances to the parties unless they have already been informed by him or her of these circumstances.

13.3. No party or its representatives shall have any ex parte communication relating to the arbitration with any arbitrator, or with any candidate to be designated as arbitrator by a party, except to advise the candidate of the general nature of the dispute, to discuss the candidate's qualifications, availability, impartiality or independence, or to discuss the suitability of candidates for the selection of a third arbitrator where the parties or party-nominated arbitrator are to participate in that selection of arbitrator. No party or its representatives shall have any ex parte communication relating to the arbitration with any candidate for presiding arbitrator.

14. Challenge of Arbitrator

14.1. Any Arbitrator may be challenged only before the ADRC and only if circumstances exist that give rise to justifiable doubts as to the Arbitrator's impartiality or independence, or if the Arbitrator does not possess any requisite qualification on which the parties have previously agreed, or if the Arbitrator becomes de jure or de facto unable to fulfill his/her functions or is not fulfilling those functions in accordance with the Rules or within the prescribed time limits.

14.2. A party may challenge the Arbitrator nominated by him only for reasons of which he/she becomes aware after the appointment has been made.

14.3. A party who intends to challenge an Arbitrator shall send a notice of challenge within 14 days after the receipt of the notice of appointment of the Arbitrator who is being challenged or within 14 days after the circumstances giving rise to the challenge become known to the party. Failure by a party to challenge an arbitrator within the stipulated time period constitutes a waiver of the right to make a challenge.

14.4. The notice of challenge shall be submitted to ADRC and be simultaneously sent to the other party, the Arbitrator(s) being challenged and the other members, if any, of the Tribunal. The notice of challenge shall be in writing and shall state the reasons for the challenge. The Registrar may order a suspension of the arbitration until the challenge is resolved, but will not be obliged to do so.

14.5. The party making the challenge shall pay the requisite challenge fee under these Rules in accordance with the applicable Schedule of Fees. If the party making the challenge fails to pay the challenge fee within the time limit set by the Registrar, the challenge shall be considered as withdrawn.

14.6. If the challenge to the arbitrator is substantiated and upheld, the challenge fee shall be waived off and promptly returned to the party initiating the challenge.

14.7. When an arbitrator is challenged by one party, the other party may agree to the challenge and the arbitrator shall be removed if all parties agree to the challenge. The challenged arbitrator may also withdraw voluntarily from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

14.8. If an arbitrator is removed or withdraws from office in accordance with Article 15.7, a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced. This procedure shall apply even if, during the process of appointing the challenged arbitrator, a party failed to exercise its right to nominate an arbitrator. The time limits applicable to the nomination and appointment of the substitute arbitrator shall commence from the date of receipt of the agreement of the other party to the challenge or the challenged arbitrator's withdrawal from office.

14.9. If the other party does not agree to the challenge and the arbitrator who is being challenged does not withdraw voluntarily in a period of 7 days after the receipt of notice of challenge, the Executive Council shall decide the challenge. The Executive Council may request comments on the challenge from the parties, the challenged Arbitrator and the other members of the Tribunal (or if the Tribunal has yet not been constituted, any appointed Arbitrator) within a period of 10 days from the date of such notice.

14.10. If the Executive Council accepts the challenge to an arbitrator, the Executive Council shall remove the arbitrator, and a substitute arbitrator shall be appointed

in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced. The time limits applicable to the nomination and appointment of the substitute arbitrator shall commence from the date of the Registrar's notification to the parties of the decision by the Executive Council. In contrast, if the Executive Council rejects the challenge to an arbitrator, the challenged arbitrator shall continue with the arbitration.

14.11. The Executive Council's decision on any challenge to an arbitrator under this Article shall be reasoned, unless otherwise agreed by the parties, and shall be issued to the parties by the Registrar. Any such decision on any challenge by the Executive Council shall be final and not subject to appeal.

15. Replacement of Arbitrator

15.1. An arbitrator shall be replaced upon death, upon acceptance by the Executive Council of the arbitrator's resignation, upon acceptance by the Executive Council of a challenge, or upon acceptance by the Executive Council of a request of all the parties.

15.2. An arbitrator shall also be replaced on the Executive Council's own initiative when it decides that the arbitrator is prevented de jure or de facto from fulfilling the arbitrator's functions, or that the arbitrator is not fulfilling those functions in accordance with the Rules or within the prescribed time limits.

15.3. When, on the basis of information that has come to its attention, the Executive Council considers applying Article 15.2, it shall decide on the matter after the arbitrator concerned, the parties and any other members of the arbitral tribunal have had an opportunity to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.

15.4. When an arbitrator is to be replaced, the Executive Council has the discretion to decide whether or not to follow the original nominating process. Once reconstituted, and after having invited the parties to comment, the arbitral tribunal shall determine if and to what extent prior proceedings shall be repeated before the reconstituted arbitral tribunal.

15.5. Subsequent to the closing of the proceedings, instead of replacing an arbitrator who has died or been removed by the Executive Council pursuant to Articles 15.1 or 15.2, the Executive Council may decide, when it considers it appropriate, that the remaining arbitrators shall continue the arbitration. In

making such a determination, the Executive Council shall take into account the views of the remaining arbitrators and of the parties and such other matters that it considers appropriate in the circumstances.

CONDUCT OF PROCEEDINGS

16. Submission by the Parties

16.1. Unless the Tribunal determines otherwise, the submission of written statements shall proceed as set out in this Article.

16.2. Unless already submitted pursuant to Article 4, the Claimant shall, within a period of time to be determined by the Tribunal, send to the Respondent and the Tribunal a Statement of Claim setting out in full detail:

a. a statement of facts supporting the claim;

b. the legal grounds or arguments supporting the claim; and

c. the relief claimed together with the amount of all quantifiable claims.

16.3. Unless already submitted pursuant to Article 5, the Respondent shall, within a period of time to be determined by the Tribunal, send to the Claimant and the Tribunal a Statement of Defence setting out in full detail:

a. a statement of facts supporting its defence to the Statement of Claim;

b. the legal grounds or arguments supporting such defence; and

c. the relief claimed.

16.4. If a Statement of Counterclaim is made, the Claimant shall, within a period of time to be determined by the Tribunal, send to the Respondent and the Tribunal a Statement of Defence to Counterclaim setting out in full detail:

a. a statement of facts supporting its defence to the Statement of Counterclaim;

b. the legal grounds or arguments supporting such defence; and

c. the relief claimed.

17.1. A party may amend its claim, counterclaim or other submissions unless the Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim or counterclaim may not be amended in such a manner that

the amended claim or counterclaim falls outside the scope of the arbitration agreement.

16.5. The Tribunal shall decide which further submissions shall be required from the parties or may be presented by them. The Tribunal shall fix the periods of time for communicating such submissions.

16.6. All submissions referred to in this Article shall be accompanied by copies of all supporting documents which have not previously been submitted by any party.

16.7. If the Claimant fails within the time specified to submit its Statement of Claim, the Tribunal may issue an order for the termination of the arbitral proceedings or give such other directions as may be appropriate.

16.8. If the Respondent fails to submit its Statement of Defence, or if at any point any party fails to avail itself of the opportunity to present its case in the manner directed by the Tribunal, the Tribunal may proceed with the arbitration.

17. Party Representation

17.1. Any party may be represented by legal practitioners or any other authorised representatives. The Registrar and/or the Tribunal may require proof of authority of any party representatives.

17.2. After the constitution of the Tribunal, any change or addition by a party to its representatives shall be promptly communicated in writing to the parties, the Tribunal and the Registrar.

17.3. Each party must promptly inform the Registrar, the arbitral tribunal and the other parties of any changes in its representation.

17.4. The arbitral tribunal may, once constituted and after it has afforded an opportunity to the parties to comment in writing within a suitable period of time, take any measure necessary to avoid a conflict of interest of an arbitrator arising from a change in party representation, including the exclusion of new party representatives from participating in whole or in part in the arbitral proceedings.

18. Seat and Venue of Arbitration

18.1. The parties may agree in writing the seat of their arbitration at any time before the formation of the Arbitral Tribunal and, after such formation, with the prior written consent of the Arbitral Tribunal.

18.2. In default of any such agreement, the seat of the arbitration shall be IFSC, Gandhinagar, unless and until the Arbitral Tribunal orders, in view of the circumstances and after having given the parties a reasonable opportunity to make written comments to the Arbitral Tribunal, that another arbitral seat is more appropriate. Such default seat shall not be considered as a relevant circumstance by the Registrar in appointing any arbitrator or Emergency Arbitrator.

18.3. The Tribunal may hold hearings and meetings by any means it considers expedient or appropriate and at any location it considers convenient or appropriate.

19. Language

19.1. Unless otherwise agreed by the parties, the Tribunal shall determine the language to be used in the arbitration. In so determining, the Arbitral Tribunal shall have due regard to all relevant circumstances and shall give the parties an opportunity to submit comments.

19.2. If a party submits a document written in a language other than the language(s) of the arbitration, the Tribunal, or if the Tribunal has not been constituted, the Registrar, may order that party to submit a translation in a form to be determined by the Tribunal or the Registrar.

19.3. All communications with ADRC and all communications with the Arbitral Tribunal prior to the determination shall be in English.

20. Jurisdiction

20.1. If any party objects to the existence or validity of the arbitration agreement or to the competence of ADRC to administer an arbitration, before the Tribunal is constituted, the Registrar shall determine if such objection is to be referred to the Executive Council. If the Registrar so determines, the Executive Council shall decide if it is prima facie satisfied that the arbitration shall proceed. The arbitration shall be terminated if the Executive Council is not so satisfied. Any decision by the Registrar or the Executive Council that the arbitration shall proceed is without prejudice to the power of the Tribunal to rule on its own jurisdiction.

20.2. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to arbitrability, to the existence, scope, or validity of the arbitration agreement(s), or with respect to whether all of the claims, counterclaims, and setoffs made in the arbitration may be determined in a single arbitration, without any need to refer such matters first to a court.

20.3. The tribunal shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the tribunal that the contract is null and void shall not, for that reason alone, render invalid the arbitration clause.

20.4. A party must object to the jurisdiction of the tribunal or to arbitral jurisdiction respecting the admissibility of a claim, counterclaim, or setoff no later than the filing of the Response, as provided in Article 5, to the claim, counterclaim, or setoff that gives rise to the objection. The tribunal may extend such time limit and may rule on any objection under this Article as a preliminary matter or as part of the final award.

20.5. A party may rely on a claim or defence for the purpose of a set-off to the extent permitted by these Rules and the applicable law.

21. Applicable Law

21.1. The arbitral tribunal shall apply the substantive law(s) or rules of law agreed by the parties as applicable to the dispute. Failing such an agreement by the parties, the tribunal shall apply such law(s) or rules of law as it determines to be appropriate.

21.2. In arbitrations involving the application of contracts, the tribunal shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.

21.3. The tribunal shall not decide as amiable compositeur or ex aequo et bono unless the parties have expressly authorized it to do so.

21.4. A monetary award shall be in the currency or currencies of the contract unless the tribunal considers another currency more appropriate, and the tribunal may award such pre-award and post-award interest, simple or compound, as it considers appropriate, taking into consideration the contract and applicable law(s).

22. Conduct of Proceedings

22.1. Subject to these Rules and any agreement between the parties, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate.

22.2. Under the Arbitration Agreement, the Arbitral Tribunal's general duties at all times during the arbitration shall include:

22.3. a duty to act fairly and impartially as between all parties, giving each a reasonable opportunity of putting its case and dealing with that of its opponent(s); and

22.4. a duty to adopt procedures suitable to the circumstances of the arbitration, avoiding unnecessary delay and expense, so as to provide a fair, efficient and expeditious means for the final resolution of the parties' dispute.

22.5. As soon as practicable after the appointment of all arbitrators, the Tribunal shall conduct a case management conference with the parties (in person or by any other means), to discuss the procedures that will be most appropriate and efficient in the case. During or following such meeting, the Arbitral Tribunal after consultation with the parties, shall develop a procedural timetable for the conduct of the arbitration. The Arbitral Tribunal shall send a copy of the timetable to the parties and to the Arbitrator. All changes and modifications to the timetable must be communicated to the Registrar and the parties.

22.6. To ensure continued effective case management, the arbitral tribunal, after consulting the parties by means of a further case management conference or otherwise, may adopt further procedural measures or modify the procedural timetable.

22.7. Case management conferences may be conducted through a meeting in person, by video conference, telephone or similar means of communication. In the absence of an agreement of the parties, the arbitral tribunal shall determine the means by which the conference will be conducted. The arbitral tribunal may request the parties to submit case management proposals in advance of a case management conference and may request the attendance at any case management conference of the parties in person or through an internal representative.

22.8. The Tribunal may, in its discretion, direct the order of proceedings, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence and

direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

22.9. Unless otherwise agreed by the parties, the presiding arbitrator may make procedural rulings alone, subject to revision by the Tribunal.

22.10. The Tribunal may proceed with the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions, or any partial or interim Award or to attend any meetings or hearings, and may impose such sanctions as the Tribunal deems appropriate in such circumstances.

22.11. Upon the request of any party, the arbitral tribunal may make orders concerning the confidentiality of the arbitration proceedings or of any other matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.

23. Terms of reference

23.1. As soon as it has received the file from the Registrar, the arbitral tribunal shall draw up, on the basis of documents or in the presence of the parties and in the light of their most recent submissions, a document defining its Terms of Reference. This document shall include the following particulars:

a. the names in full, description, address and other contact details of each of the parties and of any person(s) representing a party in the arbitration;
b. the addresses to which notifications and communications arising in the course of the arbitration may be made;
c. a summary of the parties' respective claims and of the relief sought by each party, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;
d. unless the arbitral tribunal considers it inappropriate, a list of issues to be determined;
e. the names in full, address and other contact details of each of the arbitrators;
f. the place of the arbitration; and
g. particulars of the applicable procedural rules and, if such is the case, reference to the power conferred upon the arbitral tribunal to act as amiable compositeur or to decide ex aequo et bono.

23.2. The Terms of Reference shall be signed by the parties and the arbitral tribunal. Within 30 days from the date of receipt of case documents from the Executive Council, the arbitral tribunal shall communicate and share with the Executive Council the Terms of Reference signed by it and by the parties. The Executive Council may extend this time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so.

23.3. If any of the parties refuses to take part in the drawing up of the Terms of Reference or to sign the same, they shall be submitted to the Executive Council for approval. When the Terms of Reference have been signed in accordance with Article 24.2 or approved by the Executive Council, the arbitration shall proceed.

23.4. After the Terms of Reference have been signed or approved by the Executive Council, no party shall make new claims which fall outside the limits of the Terms of Reference unless it has been authorized to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances.

24. Early Disposition

24.1. A party may request leave from the arbitral tribunal to submit an application for disposition of any issue presented by any claim or counterclaim in advance of the hearing on the merits ("**Early Disposition**"). The tribunal shall allow a party to submit an application for early disposition if it determines that the application:

a. has a reasonable possibility of succeeding,
b. will dispose of, or narrow, one or more issues in the case, and
c. that consideration of the application is likely to be more efficient or economical than leaving the issue to be determined with the merits.

24.2. Each party shall have the right to be heard and a fair opportunity to present its case regarding whether or not such application should be heard and, if permission to make the application is given, whether early disposition should be granted.

24.3. The arbitral tribunal shall have the power to make any order or award in connection with the early disposition of any issue presented by any claim or

counterclaim that the tribunal deems necessary or appropriate. The tribunal shall provide reasoning for any award.

25. Exchange of Information

25.1. The arbitral tribunal shall manage the exchange of information between the parties with a view to maintaining efficiency and economy. The tribunal and the parties should endeavour to avoid unnecessary delay and expense while at the same time avoiding surprise, assuring equality of treatment, and safeguarding each party's opportunity to present its claims and defences fairly.

25.2. The parties may provide the tribunal with their views on the appropriate level of information exchange for each case, but the tribunal retains final authority. To the extent that the parties wish to depart from this Article, they may do so only by written agreement and in consultation with the tribunal.

25.3. The parties shall exchange all documents upon which each intends to rely on the schedule set by the tribunal.

25.4. The tribunal may, upon application, require a party to make available to another party documents in that party's possession not otherwise available to the party seeking the documents, that are reasonably believed to exist and to be relevant and material to the outcome of the case. Requests for documents shall contain a description of specific documents or classes of documents, along with an explanation of their relevance and materiality to the outcome of the case.

25.5. The tribunal may condition any exchange of information subject to claims of commercial or technical confidentiality on appropriate measures to protect such confidentiality.

25.6. In the event a party fails to comply with an order for information exchange, the tribunal may draw adverse inferences and may take such failure into account in allocating costs.

26. Hearing

26.1. Unless the parties have agreed on a documents-only arbitration or as otherwise provided in these Rules, the Tribunal shall, if either party so requests or the Tribunal so decides, hold a hearing for the presentation of evidence and/or for oral submissions on the merits of the dispute, including any issue as to jurisdiction.

26.2. The Arbitral Tribunal shall be authorised to decide the dispute on written pleadings, documents and written submissions filed by the parties without any oral evidence provided the parties file an undertaking before the Tribunal stating that the requirement of oral evidence may be dispensed with. A model agreement of such nature is provided under **Annexure II**.

26.3. The Tribunal shall, after consultation with the parties, set the date, time and place of any meeting or hearing or agree on a virtual hearing by conference call, videoconference and shall give the parties reasonable notice.

26.4. If any party fails to appear at a meeting or hearing without showing sufficient cause for such failure, the Tribunal may proceed with the arbitration and may make the Award based on the submissions and evidence before it.

26.5. The arbitral tribunal may make directions for the translation of oral statements made at a hearing and for a record of the hearing if it deems that either is necessary in the circumstances of the case.

26.6. Unless otherwise agreed by the parties, all meetings and hearings shall be in private, and any recordings, transcripts, or documents used in relation to the arbitral proceedings shall remain confidential.

27. Witnesses and Evidence

27.1. The arbitral tribunal may determine the manner in which a witness or expert is examined.

27.2. Before any hearing, the Tribunal may require the parties to give notice of the identity of witnesses, including expert witnesses, whom the parties intend to produce, the subject matter of their testimony and its relevance to the issues.

27.3. The Tribunal may, in its discretion limit the number of witnesses providing oral testimony at a hearing or disallow any witness from providing oral evidence. Oral evidence provided by witnesses may be subject to questioning by the parties, party representatives or the Tribunal. The Tribunal may determine the manner in which such questioning is to take place.

27.4. The Tribunal may direct the testimony of witnesses to be presented in written form, either as signed statements or sworn affidavits or any other form of recording. Subject to Article 27.2, any party may request that such a witness should attend for oral examination. If the witness fails to attend for oral examination, the Tribunal may place such weight on the written testimony as

it thinks fit, disregard such written testimony, or exclude such written testimony altogether.

28. Tribunal Appointment Expert

28.1. The arbitral tribunal, after consultation with the parties, may appoint one or more independent experts to report to it, in writing, on issues designated by the tribunal and communicated to the parties.

28.2. The parties shall provide such an expert with any relevant information or produce for inspection any relevant documents or goods that the expert may require. Any dispute between a party and the expert as to the relevance of the requested information or goods shall be referred to the tribunal for decision.

28.3. Upon receipt of an expert's report, the tribunal shall send a copy of the report to all parties and shall give the parties an opportunity to express, in writing, their opinion of the report. A party may examine any document on which the expert has relied in such a report.

28.4. Unless otherwise agreed by the parties, if the Tribunal considers it necessary or at the request of any party, the Tribunal shall provide the parties with an opportunity to question the expert at a hearing. At this hearing, parties may present expert witnesses to testify on the points at issue.

29. Closing of the Proceedings

29.1. When it is satisfied that the parties have had a reasonable opportunity to present their case, whether in relation to the entire proceedings or a discrete phase of the proceedings, the arbitral tribunal shall declare the proceedings or the relevant phase of the proceedings closed. Thereafter, no further submissions or arguments may be made, or evidence produced in respect of the entire proceedings or the discrete phase, as applicable, unless the arbitral tribunal reopens the proceedings or the relevant phase of the proceedings in accordance with Article 29.4.

29.2. Once the proceedings are declared closed, the arbitral tribunal shall inform the Registrar and the parties of the anticipated date by which an award will be communicated to the parties. The date of rendering the final award shall be no later than 60 days from the date when the arbitral tribunal declares the entire proceedings or the relevant phase of the proceedings closed, as applicable. This

time limit may be extended by agreement of the parties or, in appropriate circumstances, by ADRC.

29.3. Article 29.2 shall not apply to any arbitration conducted pursuant to the Expedited Procedure.

29.4. The arbitral tribunal may, if it considers it necessary, decide, on its own initiative or upon application of a party, to reopen the proceedings at any time before the award is made.

30. Additional Power of Arbitral Tribunal

30.1. Unless otherwise agreed by the parties, in addition to the other powers specified in these Rules, and except as prohibited by the mandatory rules of law applicable to the arbitration, the Tribunal shall have the power to:

a. order the correction or rectification of any contract, subject to the law governing such contract;

b. except as provided in these Rules, extend or abbreviate any time limits prescribed under these Rules or by its directions;

c. conduct such enquiries as may appear to the Tribunal to be necessary or expedient;

d. order the parties to make any property or item in their possession or control available for inspection;

e. order the preservation, storage, sale or disposal of any property or item which is or forms part of the subject matter of the dispute;

f. order any party to produce to the Tribunal and to the other parties for inspection, and to supply copies of, any document in their possession or control which the Tribunal considers relevant to the case and material to its outcome;

g. issue an order or Award for the reimbursement of unpaid deposits towards the costs of the arbitration;

h. direct any party or person to give evidence by affidavit or in any other form;

i. direct any party to take or refrain from taking actions to ensure that any Award which may be made in the arbitration is not rendered ineffectual by the dissipation of assets by a party or otherwise;

j. order any party to provide security for legal or other costs in any manner the Tribunal thinks fit;

k. order any party to provide security for all or part of any amount in dispute in the arbitration;
l. proceed with the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions or any partial Award or to attend any meeting or hearing, and to impose such sanctions as the Tribunal deems appropriate in relation to such failure or refusal;
m. decide, where appropriate, any issue not expressly or impliedly raised in the submissions of a party provided such issue has been clearly brought to the notice of the other party and that other party has been given adequate opportunity to respond;
n. determine the law applicable to the arbitral proceedings; and
o. determine any claim of legal or other privileges.

31. Waiver

31.1. A party who knows of any non-compliance with any provision or requirement of the Rules or the arbitration agreement, and proceeds with the arbitration without promptly stating an objection in writing, waives the right to object.

32. Default

32.1. If either one of the parties fails to submit a written statement in accordance with Article 5, without sufficient cause for such failure the arbitral tribunal may proceed with the arbitration.

32.2. If a party, duly notified under these Rules, fails to appear at a hearing without showing sufficient cause for such failure, the tribunal may proceed with the hearing.

32.3. If a party, duly invited or ordered to produce evidence or take any other steps in the proceedings, fails to do so within the time established by the tribunal without showing sufficient cause for such failure, the tribunal may make the award on the evidence before it.

INTERIM AND EMERGENCY MEASURES

33. Interim Measures

33.1. A party may apply for urgent interim relief ("**Emergency Relief**") prior to the constitution of the arbitral tribunal pursuant to Article 39.

33.2. The Tribunal may, upon an application by a party, order interim relief on terms that it considers appropriate in the circumstances, and issue a preliminary order in support of such measures. The Tribunal shall give summary reasons for any such order in writing.

33.3. Such interim measures may take the form of an interim order or award, and the tribunal may require security for the costs of such measures.

33.4. A request for interim relief addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

MAKING OF AWARD

34. Time limit for final award

34.1. The time limit within which the arbitral tribunal must render its final award is no later than 60 days from the date upon which the arbitration was concluded by the Arbitral Tribunal.

34.2. The Executive Council may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so.

35. Award

35.1. Before making any Award, the Tribunal shall submit such Award in draft form to the Registrar. Unless the Registrar extends the period of time or unless otherwise agreed by the parties, the Tribunal shall submit the draft Award to the Registrar not later than 45 days from the date on which the Tribunal declares the proceedings closed. The Registrar may, as soon as practicable, suggest modifications as to the form of the Award and, without affecting the Tribunal's liberty to decide the dispute, draw the Tribunal's attention to points of substance. No Award shall be made by the Tribunal until it has been approved by the Registrar as to its form.

35.2. Unless otherwise agreed by the parties, the Award shall be in writing and shall state the reasons upon which it is based.

35.3. The Tribunal may make separate Awards on different issues at different times.

35.4. If any arbitrator fails to cooperate in the making of the Award, having been given a reasonable opportunity to do so, the remaining arbitrators may proceed. The remaining arbitrators shall provide written notice of such refusal or failure to the Registrar, the parties and the absent arbitrator. In deciding whether to proceed with the arbitration in the absence of an arbitrator, the remaining arbitrators may take into account, among other things, the stage of the arbitration, any explanation provided by the absent arbitrator for his refusal to participate and the effect, if any, upon the enforceability of the Award should the remaining arbitrators proceed without the absent arbitrator. The remaining arbitrators shall explain in any Award made, the reasons for proceeding without the absent arbitrator.

35.5. Where there is more than one arbitrator, the Tribunal shall decide by a majority. Failing a majority decision, the presiding arbitrator alone shall make the Award for the Tribunal.

35.6. The Award shall be delivered to the Registrar, who shall transmit certified copies to the parties upon full settlement of the costs of the arbitration.

35.7. The Tribunal may award simple or compound interest on any sum which is the subject of the arbitration at such rates as the parties may have agreed or, in the absence of such agreement, as the Tribunal determines to be appropriate, in respect of any period which the Tribunal determines to be appropriate.

35.8. Subject to Article 36 and Article 39 by agreeing to arbitration under these Rules, the parties agree that any Award shall be final and binding on the parties from the date it is made, and undertake to carry out the Award immediately and without delay. The parties also irrevocably waive their rights to any form of appeal, review or recourse to any State court or other judicial authority with respect to such Award insofar as such waiver may be validly made.

35.9. ADRC may, with the consent of the parties and the Tribunal, publish any Award with the names of the parties and other identifying information redacted.

36. Correction of Awards, Interpretation of Awards and Additional Awards

36.1. Within 30 days of receipt of an Award, a party may, by written notice to the Registrar and the other party, request the Tribunal to correct in the Award any error in computation, any clerical or typographical error or any error of a similar nature. If the Tribunal considers the request to be justified, it shall make the correction within 30 days of receipt of the request. Any correction, made in the original Award or in a separate memorandum, shall constitute part of the Award.

36.2. The Tribunal may correct any error of the type referred to in Article 36.1 on its own initiative within 30 days of the date of the Award.

36.3. Within 30 days of receipt of an Award, a party may, by written notice to the Registrar and the other party, request the Tribunal to make an additional Award as to claims presented in the arbitration but not dealt with in the Award. If the Tribunal considers the request to be justified, it shall make the additional Award within 30 days of receipt of the request.

36.4. Within 30 days of receipt of an Award, a party may, by written notice to the Registrar and the other party, request that the Tribunal give an interpretation of the Award. If the Tribunal considers the request to be justified, it shall provide the interpretation in writing within 30 days after receipt of the request. The interpretation shall form part of the Award.

36.5. The Registrar may, if necessary, extend the period of time within which the Tribunal shall make a correction of an Award, interpretation of an Award or an additional Award under this Rule.

36.6. The provisions of Article 35 shall apply in the same manner with the necessary or appropriate changes in relation to a correction of an Award, interpretation of an Award and to any additional Award made.

FEES AND COSTS OF THE ARBITRATION

37. Costs of the Arbitration

37.1. The fees payable to the Tribunal and the administrative costs of ADRC shall be fixed in accordance with the Annexure I on Arbitration Cost and Fees.

37.2. The Tribunal shall specify in the award the total amount of the costs of the arbitration. Unless the parties have agreed otherwise, the Tribunal shall

determine in the award the apportionment of the costs of the arbitration among the parties.

37.3. The parties may agree to alternative methods of determining the Tribunal's fees prior to the constitution of the Tribunal.

37.4. The Tribunal shall have the authority to order in its award that all or part of the legal or other costs of a party be paid by another party.

37.5. The Tribunal may take into account such circumstances as it considers relevant, including the extent to which the party has conducted the arbitration in an expeditious and cost-effective manner.

37.6. The Costs of the Arbitration consist of:

a. The Fees of the Arbitral Tribunal including Emergency Arbitrator where applicable;
b. The Administrative Fees and expense;
c. the costs of any expert appointed by the Tribunal and of any other assistance reasonably required by the Tribunal; and
d. any other expenses incurred in connection with the arbitral proceedings and award.

38. Advance on Costs

38.1. The Registrar shall fix the amount of deposits payable towards the costs of the arbitration. Unless the Registrar directs otherwise, 50% of such deposits shall be payable by the Claimant and the remaining 50% of such deposits shall be payable by the Respondent. The Registrar may fix separate deposits on costs for claims and counterclaims, respectively.

38.2. Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, a provisional estimate of the costs of the arbitration shall be made by the Registrar. Such estimate may be based on the nature of the controversy and the circumstances of the case. This estimate may be adjusted in light of such information as may subsequently become available.

38.3. The Registrar may from time-to-time direct parties to make further deposits towards the costs of the arbitration.

38.4. Parties are jointly and severally liable for the deposits as directed by the Centre. Any party is free to pay the whole of the deposits for costs of the arbitration in

respect of the claim or the Counter-Claim should the other party fail to pay its share.

38.5. If a party fails to make the deposits as directed within 30 days from the date on which it is due, ADRC may either terminate the arbitration where the Tribunal is yet to be constituted or where the Tribunal has been constituted, direct the Tribunal to terminate the arbitration with respect to the Claim or Counter-Claims, as the case may be. This shall however be without prejudice to the party reintroducing the same Claims or Counter-Claims in another proceeding, in accordance with law.

38.6. All deposits shall be made to and held by the ADRC. Any interest which may accrue on such deposits may be retained by the ADRC.

38.7. In exceptional circumstances, the Registrar may direct the parties to pay an additional fee, in addition to that prescribed in the applicable Schedule of Fees, as part of ADRC's administration fees.

OTHER PROVISIONS

39. Emergency Arbitrator

39.1. A party may apply for emergency relief before the constitution of the arbitral tribunal by submitting a written application to the Registrar and to all other parties setting forth:

a. the nature of the relief sought;
b. the reasons why such relief is required on an emergency basis before the tribunal is appointed;
c. the reasons why the party is likely to be found to be entitled to such relief; and
d. what injury or prejudice the party will suffer if relief is not provided.

The application shall be submitted concurrent with or following the submission of a Notice of Arbitration. Such application may be filed by email, or as otherwise permitted by Article 4 and must include payment of any applicable fees and a statement certifying that all parties have been notified or an explanation of the steps taken in good faith to notify all parties.

39.2. Within 1 business day of receipt of the application for emergency relief as provided in Article 39.1, and upon being satisfied that the requirements of

Article 39.1 have been met, the Registrar shall appoint a single emergency arbitrator. Upon accepting appointment, a prospective emergency arbitrator shall, in accordance with Article 13.1 and 13.2, disclose to the Registrar any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within 1 business day of the communication by the Registrar to the parties of the appointment of the emergency arbitrator and the circumstances disclosed.

39.3. The emergency arbitrator shall as soon as possible, and in any event within 2 business days of appointment, establish a schedule for consideration of the application for emergency relief. Such schedule shall provide a reasonable opportunity to all parties to be heard and may provide for proceedings by telephone, video, written submissions, or other suitable means, as alternatives to an in-person hearing. The emergency arbitrator shall have the authority vested in the arbitral tribunal as per its jurisdiction, including the authority to rule on the emergency arbitrator's jurisdiction, and shall resolve any disputes over the applicability of this Article.

39.4. The emergency arbitrator shall have the power to order or award any interim or conservatory measures that the emergency arbitrator deems necessary, including injunctive relief and measures for the protection or conservation of property. Any such measures may take the form of an interim award or an order. The emergency arbitrator shall give reasons in either case. The emergency arbitrator may modify or vacate the interim award or order.

39.5. Any interim award or order shall have the same effect as an interim measure made pursuant to Article 33 and shall be binding on the parties when rendered. The parties shall undertake to comply with such an interim award or order without delay.

39.6. The emergency arbitrator shall have no further power to act after the arbitral tribunal is constituted. Once the tribunal has been constituted, the tribunal may affirm, reconsider, modify, or vacate the interim award or order of emergency relief issued by the emergency arbitrator. The emergency arbitrator may not serve as a member of the tribunal unless the parties agree otherwise.

39.7. Any interim award or order of emergency relief may be conditioned on provision of appropriate security by the party seeking such relief.

39.8. A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with this Article 39 or with the agreement to arbitrate or a waiver of the right to arbitrate.

39.9. The costs associated with applications for emergency relief shall be addressed by the emergency arbitrator, subject to the power of the arbitral tribunal to determine finally the allocation of such costs.

40. Third-Party Funding of Arbitration

40.1. If a funding agreement is made, the funded party shall communicate a written notice to all other parties, the arbitral tribunal, any emergency arbitrator and ADRC of:

a. the fact that a funding agreement has been made; and

b. the identity of the third-party funder.

c. whether or not the funder has committed to an adverse costs liability.

40.2. The notice referred to in Article 40.1 must be communicated:

a. in respect of a funding agreement made on or before the commencement of the arbitration, in the application for the appointment of an emergency arbitrator, the Notice of Arbitration, the Response to the Notice of Arbitration, the Request for Joinder or the Response to the Request for Joinder (as applicable); or

b. in respect of a funding agreement made after the commencement of the arbitration, as soon as practicable after the funding agreement is made.

40.3. After the constitution of the Tribunal, the parties shall not enter into a Third-party Funding Arrangements if the consequence of that arrangement will or may give rise to a conflict of interest between the third-party funder and any member of the Tribunal.

40.4. Any funded party shall disclose any changes to the information referred to in Article 40.1 that occur after the initial disclosure.

40.5. The Tribunal may take into account the existence of any third-party adverse costs liability when apportioning the costs of the arbitration between the parties.

41. Confidentiality

41.1. Unless otherwise agreed by the parties, all parties partaking in the arbitral proceedings shall at all times treat all matters relating to the proceedings and

the Award as confidential. The discussions and deliberations of the Tribunal shall be confidential.

41.2. Unless otherwise agreed by the parties, no person shall, without the prior written consent of the parties, disclose to a third party any such matter except:

a. for the purpose of making an application to any competent court of any State to enforce or challenge the Award;
b. pursuant to the order of or a subpoena issued by a court of competent jurisdiction;
c. for the purpose of pursuing or enforcing a legal right or claim;
d. in compliance with the provisions of the laws of any State which are binding on the party making the disclosure or the request or requirement of any regulatory body or other authority;
e. pursuant to an order by the Tribunal on application by a party with proper notice to the other parties; or
f. for the purpose of any application under Article 7 and 9 of ADRC.

41.3. In Article 41.1 “matters relating to the proceedings” includes the existence of the proceedings, and the pleadings, evidence and other materials in the arbitral proceedings and all other documents produced by another party in the proceedings or the Award arising from the proceedings, but excludes any matter that is otherwise in the public domain.

41.4. The Tribunal has the power to take appropriate measures, including issuing an order or Award for sanctions or costs, if a party breaches the provisions of this Article.

42. Exclusion of Liability

42.1. The arbitrators, any person appointed by the arbitral tribunal, the emergency arbitrator, the Executive Council and its members, ADRC and its employees and representatives shall not be liable to any person for any act or omission in connection with the arbitration, except to the extent such limitation of liability is prohibited by applicable law.

43. Modified Time Limits

43.1. The parties may agree to shorten the various time limits set out in the Rules. Any such agreement entered into subsequent to the constitution of an arbitral

tribunal shall become effective only upon the approval of the arbitral tribunal.

43.2. The Executive Council, on its own initiative, may extend any time limit if it decides that it is necessary to do so for the Tribunal or the ADRC to comply with its responsibilities under the Rules or to give effect to parties' agreement to arbitrate.

44. Decisions of ADRC, Executive Council and Registrar

44.1. Except as provided in these Rules, the decisions of the ADRC, Executive Council and the Registrar with respect to all matters relating to an arbitration shall be conclusive and binding upon the parties and the Tribunal. The ADRC, the Executive Council and the Registrar shall not be required to provide reasons for such decisions, unless the Executive Council determines otherwise or as may be provided in these Rules. The parties agree that the discussions and deliberations of the Executive Council are confidential.

44.2. Save in respect of Article 14 and Article 20, the parties waive any right of appeal or review in respect of any decisions of the ADRC, the Executive Council and the Registrar to any State court or other judicial authority

44.3. In all matters not expressly provided for in these Rules, ADRC, Executive Council and Registrar and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure fair and expeditious arbitration.

44.4. The Registrar may, from time to time, issue practice directions to supplement, regulate and implement these Rules for the purpose of facilitating the administration of arbitrations governed by these Rules.

EXPEDITED PROCEDURE

45. Expedited Procedure

45.1. Prior to the constitution of the Tribunal, a party may file an application with the Registrar for the arbitral proceedings to be conducted in accordance with the Expedited Procedure under this Rule, provided that any of the following criteria is satisfied:

a. the amount in dispute does not exceed the equivalent amount of 50,00,000, representing the aggregate of the claim, counterclaim and any defence of set-off;

b. the parties so agree in writing; or

c. in cases of exceptional urgency as determined by the Executive Council upon an application by a party

and in all cases if considered appropriate by the Arbitration Court, based on the relevant circumstances.

45.2. The party applying for the arbitral proceedings to be conducted in accordance with the Expedited Procedure under this Article 45.1 shall, at the same time as it files an application for the proceedings to be conducted in accordance with the Expedited Procedure with the Registrar , send a copy of the application to the other party and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

45.3. Where a party has filed an application with the Registrar under Article 45.1, and where the Executive Council determines, after considering the views of the parties, and having regard to the circumstances of the case, that the arbitral proceedings shall be conducted in accordance with the Expedited Procedure, the following procedure shall apply:

a. the Registrar may abbreviate any time limits under these Rules;

b. the case shall be referred to a sole arbitrator, unless the President determines otherwise;

c. the Tribunal may, in consultation with the parties, decide if the dispute is to be decided on the basis of documentary evidence only, or if a hearing is required for the examination of any witness and expert witness as well as for any oral argument;

d. the final Award shall be made within six months from the date when the Tribunal is constituted unless, in exceptional circumstances, the Registrar extends the time for making such final Award; and

e. the Tribunal may state the reasons upon which the final Award is based in summary form, unless the parties have agreed that no reasons are to be given.

45.4. By agreeing to arbitration under these Rules, the parties agree that, where arbitral proceedings are conducted in accordance with the Expedited Procedure under this Article 45, the rules and procedures set forth in Article 45.3 shall apply even in cases where the arbitration agreement contains contrary terms.

45.5. Upon application by a party, and after giving the parties the opportunity to be heard, the Tribunal may, having regard to any further information as may subsequently become available, and in consultation with the Registrar, order that the arbitral proceedings shall no longer be conducted in accordance with the Expedited Procedure. Where the Tribunal decides to grant an application under this Article 45.5, the arbitration shall continue to be conducted by the same Tribunal that was constituted to conduct the arbitration in accordance with the Expedited Procedure.

ANNEXURE I : ARBITRATION COST AND FEES (“SCHEDULE OF FEES”)

ANNEXURE II : Model Agreement For Documents-Only Arbitration Proceedings

This agreement is between ___________________ (name and address of the initiating party) and _____________ (name and address of the other party or parties).

IN THE MATTER RELATING TO ____________________.

The parties to this Agreement agree as follows:

WHEREAS the parties desire to resolve their disputes by the Alternative Dispute Resolution Centre through Documents -Only Procedure.

WHEREAS the parties hereby undertake to dispense with the requirement of oral evidence and agree that the arbitration proceedings be held on the basis of documents only.

WHEREAS the parties hereby waive their right to present oral evidence and agree that the award made by the Arbitral Tribunal following this procedure shall be final and binding on the parties.

IN WITNESS WHEREOF, THIS Agreement has been signed on this ________ Day of ______ Month of ____________ a _____________ by:

1. _______________ for and on behalf of
   ____

2. _______________ for and on behalf of
   ____

Annexure V – Draft Mediation Rules of Alternative Dispute Resolution Centre at IFSC

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GENERAL PROVISIONS

1. Introduction

1.1 The Alternative Dispute Resolution Centre ("**ADRC**") of the International Financial Services Centre Authority ("**IFSCA**") is the independent dispute resolution body set up by IFSCA.

1.2 The ADRC shall be solely responsible for the administration of disputes in accordance with these Mediation Rules.

1.3 These rules may be called the **Alternative Dispute Resolution Centre Mediation Rules ("Rules")** and it shall come into force on [Insert Date].

1.4 These Rules shall be applicable where the parties have an agreement in writing which provides for settlement of disputes between the parties under these Rules. Such agreement may have been:

a. Entered into before the dispute arose, such as, in the contractual documents itself; or

b. Arrived at after the emergence of the dispute on the invitation of one party and acceptance by the other parties;

c. Arrived at on the invitation of ADRC.

1.5 These Rules may also be applied where the parties are requested to consider mediation as part of any court pre-action protocol or specifically recommended by a court of law.

1.6 The Rules provide for the appointment of a neutral third party ("**Mediator**") to assist the parties in settling their dispute.

1.7 Mediation shall be used under the Rules unless, prior to the confirmation or appointment of the Mediator or with the agreement of the Mediator, the parties agree upon a different settlement procedure or a combination of settlement procedures. The term "mediation" as used in the Rules shall be deemed to cover such settlement procedure or procedures and the term "Mediator" shall be deemed to cover the neutral who conducts such settlement procedure or procedures.

1.8 In exceptional cases if the parties wish to modify or waive any provision of the Rules when applicable to them, the parties shall be required to make such request to the Mediator. If the Mediator endorses such a modification or waiver, the Mediator shall inform ADRC in writing of such request. ADRC may accept

the request in whole or part or reject the request in writing stating reasons within 14 working days of receipt of such request.

2. Interpretation and Application of Rules

2.1 The mediator shall interpret and apply these Rules insofar as they relate to the mediator's duties and responsibilities. All other procedures shall be interpreted and applied by ADRC.

2.2 Proceedings shall be initiated only for disputes that meet the mediation suitability criteria specified in the First Schedule of the Mediation Act 2023.

COMMENCEMENT OF MEDIATION

3. Commencement of Proceedings when there is Agreement to Mediate

3.1. Any party or parties to a dispute wishing to initiate mediation may do so by filing a written request for mediation ("**Request**") to the Registrar of ADRC (**"Registrar"**) via electronic form.

3.2. A request for mediation must contain the following:

a. the names, addresses, telephone numbers, email addresses and any other contact details of the parties to the dispute and of any person(s) representing the parties in the proceedings;

b. a description of the dispute including, if possible, an assessment of its value;

c. any agreement to use a settlement procedure other than mediation, or, in the absence thereof, any proposal for such other settlement procedure that the party filing the Request may wish to make;

d. any agreement as to time limits for conducting the mediation, or, in the absence thereof, any proposal with respect thereto;

e. any agreement as to the language(s) of the mediation, or, in the absence thereof, any proposal as to such language(s);

f. any agreement as to the location of any physical meetings, or, in the absence thereof, any proposal as to such location;

g. any joint nomination by all of the parties of a Mediator or any agreement of all of the parties as to the attributes of a Mediator to be appointed by the ADRC where no joint nomination has been made, or, in the absence of any such agreement, any proposal as to the attributes of a Mediator;

h. if the Request is made pursuant to an agreement to mediate, evidence of such agreement must be attached along with the Request.

3.3. Under no circumstances, the parties or mediator shall be permitted to extend the proceedings beyond the timeline prescribed under the Mediation Act 2023.

3.4. Together with the Request, the party or parties filing the Request shall pay the filing fee in force on the date the Request is filed. The Schedule of Costs and Fees is provided at [Insert Annexure 1].

3.5. The party or parties filing the Request shall simultaneously send a copy of the Request to all other parties, unless the Request has been filed jointly by all parties.

3.6. ADRC shall acknowledge receipt of the Request and of the filing fee in writing to the parties.

3.7. Where there is an agreement to refer to the Rules, the date on which the Request is received by ADRC shall, for all purposes, be deemed to be the date of the commencement of the Proceedings.

3.8. Where the parties have agreed that a time limit for settling the dispute pursuant to the Rules shall start running from the filing of a Request, such filing, for the exclusive purpose of determining the starting point of the time limit, shall be deemed to have been made on the date ADRC acknowledges receipt of the Request or of the filing fee, whichever is later.

4. Commencement of Proceedings when there is no Prior Agreement

4.1. In the absence of an agreement of the parties to refer their dispute to the Rules, any party that wishes to propose referring the dispute to the Rules to another party may do so by sending a written Request to ADRC in the manner mentioned in Article 3.2.

4.2. The written request shall contain the information specified in Article 3.2 subclause (a)-(g). Upon receipt of such Request, ADRC shall inform all other parties of the proposal and may assist the parties in considering the proposal.

4.3. The party or parties filing the Request shall pay the filing fee provided under Annexure I along with the Request on the date the Request is filed.

4.4. Where the parties reach an agreement to refer their dispute to the Rules, the Proceedings shall commence on the date on which ADRC sends written confirmation to the parties that such an agreement has been reached.

4.5. Where the parties do not reach an agreement to refer their dispute to the Rules within 15 days from the date of the receipt of the Request by the ADRC or within such additional time as may be reasonably determined by ADRC, the Proceedings shall not commence.

MEDIATOR

5. Appointment of Mediator

5.1. The Mediator shall be appointed either by joint nomination or by ADRC.

5.2. If the Parties have any criteria for the choice of mediator, they should indicate such criteria to ADRC as promptly as possible and ADRC may take them into consideration.

5.3. ADRC shall provide a list of Mediators to the parties. When compiling the list, ADRC shall consider the prospective Mediator's attributes, including but not limited to nationality, language skills, training, qualifications and experience, and the prospective Mediator's availability and ability to conduct the mediation in accordance with the Rules. Each party may strike up to two names and will number the remaining name(s) in the order of preference to indicate their preferences among those provided in the list circulated by ADRC. In light of the parties' expressed preferences, ADRC shall appoint the mediator.

5.4. Each party shall return the marked list to ADRC within 5 days after the date of receipt of the list. Any party failing to return a marked list within that period of time shall be deemed to have assented to all candidates appearing on the list.

5.5. If the list returned by parties do not indicate a person who is acceptable as mediator to both parties, ADRC shall be authorized to appoint the mediator.

5.6. Normally, a single mediator will be appointed, unless the parties agree otherwise. ADRC may recommend co-mediators in appropriate cases

6. Disqualification of Mediator

6.1 No person shall act as a mediator in any dispute in which that person has any financial or personal interest.

6.2 Before confirmation or appointment, a prospective mediator shall make a written declaration of his or her acceptance, availability, impartiality and independence, and shall also immediately disclose to the parties any known

actual or potential conflicts of interest which could reasonably raise any question of his or her impartiality and independence.

6.3 Upon receipt of the information on conflict of interest, ADRC shall immediately communicate the same to the parties for their comments. If any party takes objection to the proposed mediator within 7 days, he shall not be appointed. In such case the ADRC shall nominate another suitable accredited mediator within 5 days of receipt of objection.

6.4 Any party may object to the appointment of the mediator on the basis of any disclosed actual or potential conflict, or choose to waive the conflict.

CONDUCT OF THE MEDIATION

7. Appointment of Case Manager

7.1 ADRC shall appoint a Case Manager within 2 days from the commencement of mediation proceedings under the Rules. A notification containing the details of the Case Manager, and the proposed date and time for pre-mediation call shall also be shared in the same time period.

7.2 Case Manager shall host a pre- mediation call with the parties within 3 days of the said notification where the parties shall be informed of the manner and procedure for the conduct of the mediation, including setting relevant timelines.

8. Communications

8.1 The party requesting the mediation shall submit the Request for Mediation to the Registrar in electronic form. This can be done through email or any other electronic means, including utilizing an electronic filing system operated by the ADRC. Prior written approval must be obtained from the Registrar, acting on behalf of the ADRC before submitting the Request for Mediation through an alternative method.

8.2 Unless otherwise directed by ADRC or by the mediator, all written communications shall be made electronically. It is important to note that the Registrar or the mediator must be informed if there is a possibility that a particular communication may not be received by a party, including cases where there is an electronic delivery failure notification.

8.3 A party shall inform the ADRC, the mediator and all other parties as soon as reasonably practical of any changes to its full name and contact details (including email address, postal address and telephone number) or to those of its authorised representatives.

9. Conduct of Mediation

9.1. The mediator may conduct the mediation in such manner he or she considers appropriate, taking into account the circumstances of the case, the wishes of the parties and the need for speedy settlement of the dispute within the ambit of these Rules.

9.2. After ascertaining the manner in which mediation is to be conducted, the Mediator shall provide the parties with a written note informing them of the manner in which the mediation shall be conducted. In establishing and conducting the mediation, the Mediator shall be guided by the wishes of the parties and shall treat them with fairness and impartiality.

9.3. In establishing procedures for the case, the mediator and the parties may conduct all or part of the mediation via video, audio, or other electronic means to increase the efficiency and economy of the proceedings.

9.4. The mediator is authorized to conduct both joint and separate meetings with the parties and/or their representatives, before, during, and after any scheduled mediation conference.

9.5. If requested, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.

9.6. In the event that a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation conference(s), the mediator may continue to communicate with the parties for a period of time in an ongoing effort to facilitate a complete settlement.

9.7. Early in the proceeding or at the preparatory conference, the mediator and the parties shall consider cybersecurity, privacy, and data protection to provide for an appropriate level of security and compliance in connection with the proceeding.

9.8. Each party shall notify the other party and the mediator of the number and identity of those persons who will attend any meeting (whether in person,

virtually by conference call, videoconference or using other communications technology, or a combined form) convened by the mediator.

9.9. Each party shall identify a representative of that party who is authorised to settle the dispute on behalf of that party, and shall confirm that authority in writing.

9.10. The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties' negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.

9.11. Each party shall act in good faith throughout the mediation.

10. Duties and Responsibilities of the Mediator

10.1 The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.

10.2 The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute.

10.3 Nothing which is communicated to the mediator in private during the course of the mediation shall be repeated to the other party or parties, without the express consent of the party making the communication.

10.4 The mediator is not a legal representative of any party and has no fiduciary duty to any party.

10.5 The mediator may obtain expert advice or assistance in technical matters with the parties' prior consent and the parties shall bear any expenses incurred in this regard.

11. Responsibilities of the Parties

11.1 The parties shall ensure that appropriate representatives of each party, having authority to commit to the execution of a settlement agreement, attend the mediation conference.

11.2 Prior to and during the scheduled mediation conference(s), the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

12. Case Summary

12.1 Each Party shall provide to the Mediator, the other Party and the ADRC the following:

a. Case Summary containing name of the party (including all authorised representatives), brief facts of the case, key issues to be mediated, relationship between the parties, the party's main concerns, previous settlement efforts and outcomes, and the proposed resolution;

b. Mediation Documents that the Party wishes to rely on at the Mediation.

12.2 A Party may submit only to the Mediator any information which that Party does not wish to disclose to the other Party ("**Confidential Information**"). The Confidential Information shall be in writing and identified as being information which is provided only to the Mediator and shall be provided to the Mediator together with the Case Summary and Mediation Documents.

13. Place of Mediation

13.1. In the absence of an agreement of the parties, ADRC may determine the location of any physical meeting (if any) of the Mediator and the parties or may invite the Mediator to do so after the Mediator has been confirmed or appointed.

14. Language of Mediation

14.1. In the absence of an agreement of the parties, the ADRC may determine the language(s) in which the mediation shall be conducted or may invite the Mediator to do so after the Mediator has been confirmed or appointed.

15. Conclusion of the Mediation

15.1 The mediation shall conclude when either:

a. a settlement agreement signed by all parties in accordance with Article 16; or

b. the parties advise the mediator that in their view a settlement cannot be reached, and they wish to conclude the mediation; or

c. the mediator advises the parties that in her or his judgement, the mediation process will not resolve the issues in dispute; or

d. the time limit for mediation in the agreement between the parties has expired and the parties have not agreed to extend the time limit.

16. Settlement Agreement

16.1 Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, the parties. For the avoidance of doubt, a settlement agreement may take the form of an electronic record, and be signed by electronic signature.

16.2 By signing the settlement agreement, the parties agree to be bound by its terms.

16.3 Where any settlement agreement has been reached, the mediator shall promptly notify ADRC of the same, and provide ADRC with a copy of such agreement.

16.4 The copy of settlement agreement shall be retained by ADRC for a term of three years from the date of execution of settlement agreement for the purpose of record.

16.5 The mediator shall draw up or assist the parties in drawing up the settlement agreement. The mediator shall authenticate the settlement agreement (and each original thereof) and furnish an authenticated original to each of the parties.

16.6 In cases where the parties fail to reach an agreement, regardless of the cause, the mediator is required to prepare a non-settlement report detailing the reasons for the dispute's non-settlement and must promptly submit this report to the ADRC.

MISCELLANEOUS PROVISIONS

17. Confidentiality and Privacy

17.1 All information, records, reports or other documents received by a mediator while serving in that capacity will be confidential. The mediator will not be compelled to divulge such records or to testify or give evidence in regard to the mediation in any adversary proceeding or judicial forum.

17.2 The parties will maintain the confidentiality of the mediation and will not rely upon or introduce as evidence in any arbitral, judicial or other proceeding:

a. any admissions, proposals or views expressed by the parties or the Mediator during the mediation; or

b. admissions made by another party in the course of the mediation proceedings relating to the merits of the dispute; or

c. the fact that another party had or had not indicated a willingness to accept a proposal for settlement made by another party or by the mediator.

17.3 All mediation sessions shall be private and attended only by the mediator, the parties and their representatives.

17.4 There shall be no recording or transcript of the mediation (or any part of it) in any form.

17.5 The mediation process and all negotiations, statements and documents prepared for the purposes of the mediation shall be confidential and covered by without prejudice privilege and/or any equivalent privilege to the greatest extent permitted by any applicable law.

17.6 The Mediator will not voluntarily act or agree to act as a witness, expert, consultant or in any other capacity in any litigation, arbitration or other proceedings relating to or arising out of the dispute or the mediation.

17.7 Facts, documents or other things otherwise admissible in evidence in any arbitral, judicial or other proceeding will not be rendered inadmissible by reason of their use in the mediation.

17.8 The parties shall not make any application to call the Mediator as a witness in any such proceedings relating to or arising out of the dispute or the mediation, or require the Mediator to produce into evidence any notes, documents or records relating to the mediation.

17.9 Notwithstanding the provisions above, if any party makes an application or request in relation to any of the matters set out above, the party (or parties) making the application or request agree to indemnify and hold the Mediator harmless in respect of all costs and expenses (including reasonable legal costs and the reimbursement of the Mediator's time at their usual hourly rate) incurred in responding to or resisting such an application or request.

17.10 Each person involved in the mediation, including, in particular, the mediator, the parties and their representatives and advisors, any independent experts and any other persons present during the meetings of the parties with the mediator, shall respect the confidentiality of the mediation and may not, unless otherwise agreed by the parties and the mediator, use or disclose to any outside party any information concerning, or obtained in the course of, the mediation. Each such

person shall sign an appropriate confidentiality undertaking prior to taking part in the mediation.th

18. Fees and Costs

18.1 The party or parties filing a Request shall pay ADRC a non-refundable filing fee, as set out in Annexure I. No request shall be processed unless accompanied by the filing fee.

18.2 Following the receipt of a Request, ADRC may request that the party filing the Request pay a deposit in advance of the mediation conference such sums of money as it, in consultation with the mediator, deems necessary to cover the costs and expenses of the mediation.

18.3 ADRC may stay or terminate the Proceedings under the Rules if any requested deposit is not paid.

18.4 Upon termination of the mediation, ADRC shall fix the total costs of the mediation and reimburse the parties for any excess payment or bill the parties for any balance required pursuant to the Rules.

18.5 The amount and currency of the fees of the mediator and the modalities and timing of their payment shall be fixed by ADRC, after consultation with the mediator and the parties.

19. Expenses

19.1 All expenses of the mediation, including required travel and other expenses or charges of the mediator, shall be borne equally by the parties unless agreed otherwise. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

20. Arbitral or Judicial Proceedings

20.1. The parties undertake not to initiate, during the mediation, any arbitral or judicial proceedings in respect of a dispute that is the subject of the mediation, except that a party may initiate arbitral or judicial proceedings when, in its opinion, such proceedings either are necessary to toll a limitations period, including a statute of limitations that may be applicable, or are necessary otherwise to preserve its rights in the event that the mediation is unsuccessful.

20.2. In the event any arbitral or judicial proceedings are initiated by the parties as provided above, the mediation shall stand suspended till the parties do not inform the court or arbitral tribunal of the mediation and obtain stay or adjournment on such proceedings till completion of mediation.

20.3. All details of commencement of arbitration or judicial proceedings and next date of hearing granted by the court/ tribunal shall be provided in writing by the parties to ADRC within seven days of filing or court order as the case may be.

21. Limitation of Liability and Jurisdiction Clause

21.1. The mediator, ADRC and its employees shall not be liable to any person for any act or omission in connection with the mediation, unless there is fraudulent or wilful misconduct.

21.2. The Proceedings shall be governed by, construed and take effect in accordance with the governing and applicable law of contract.

ANNEXURE 1 : SCHEDULE OF COSTS AND FEES

Annexure VI – Draft Code of Ethics for Dispute Resolution Professionals of ADRC

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PREAMBLE

This Code of Ethics is published on [Date] pursuant to the Rules of the Alternative Dispute Resolution Centre at the International Financial Services Centre so that the dispute resolution professionals may be reminded of the professional and moral principles that should at all times govern their conduct.

This Code sets forth generally accepted standards of ethical conduct for the guidance of dispute resolution professionals in international commercial disputes, in the hope of contributing to maintaining high standards and continued confidence in the dispute resolution process. The Code sets out, in a number of Rules, the minimum standards of conduct that dispute resolution professionals should observe.

The purpose of adopting a Code of Ethics for dispute resolution professionals involved in alternative dispute resolution is to serve not only as a guide but also as a point of reference for users of the process and to promote public confidence in dispute resolution techniques. The Code itself is a reflection of internationally acceptable guidelines.

A significant breach of the Code amounts to professional misconduct which would result in such person being disentitled to continue as a dispute resolution professional at the Alternative Dispute Resolution Centre at International Financial Services Centre.

1. Applicability

1.1. The Code of Ethics shall be applicable to all those individuals who shall act as a dispute resolution professional in the Alternative Dispute Resolution Centre ("ADRC") of the International Financial Services Centre ("IFSC").

1.2. This Code shall be applicable to all such proceedings in which disputes or claims are submitted for decision to one or more dispute resolution professionals appointed in a manner provided by an agreement of the parties, or by the applicable Rules of the ADRC.

2. Dispute Resolution Professional

2.1. A *'dispute resolution professional'* shall include arbitrators, mediators, negotiators, conciliators, neutrals, and such other professionals for any other alternative dispute resolution mechanism as may be notified.

3. General Ethics

3.1. The dispute resolution professional shall at all times uphold the dignity and integrity of the office bestowed upon him/her.

3.2. The dispute resolution professional shall not make false or deceptive representations while advertising or soliciting his/her dispute resolution work.

3.3. The dispute resolution professional shall not engage in unfair and indecisive conduct, which can compromise fair and equitable dispute resolution proceedings.

3.4. The dispute resolution professional shall have to maintain strict timelines, to expedite the process of dispute resolution.

3.5. The dispute resolution professional shall not permit external pressure, biases, fear of criticism, or any form of self-interest to affect their conduct.

4. Appointment

4.1. A prospective dispute resolution professional before accepting the appointment shall conduct his/her due diligence to verify if there may be any inherent biases, that will curtail his/her independence as a dispute resolution professional.

4.2. The prospective dispute resolution professional before accepting the appointment shall make sure that he/she has understood the dispute at hand and thereafter conforms to devote the time and attention that the parties to the dispute are reasonably entitled to expect.

4.3. After such acceptance of the appointment, the dispute resolution professional is expected to plan a work schedule so that present and future commitments will be fulfilled in a timely manner.

4.4. Should the prospective dispute resolution professional be aware of any potential time constraints in the next 12 months in his/her ability to discharge duties if he/she is appointed as a dispute resolution professional, he/she shall, without breach in any existing confidentiality considerations and/or obligations, disclose details of such time constraints to the Registrar of ADRC.
ADRC reserves the right to refuse to appoint the prospective dispute resolution professional should it take the view that the prospective dispute resolution professional will not be able to discharge his/her duties due to such potential time constraints.

4.5. The prospective dispute resolution professional shall confirm that he/she understands that the Registrar of ADRC will take into account any failure by the prospective dispute resolution professional to discharge his/her duties to ensure the fair, expeditious, economical and final determination / settlement of the dispute when fixing the quantum of fees payable to the dispute resolution professional.

5. Disclosure

5.1. A prospective dispute resolution professional shall not only conduct his/her due diligence on the prospect of conflict of interest but shall also disclose the same to the ADRC, to maintain the sanctity of the proceeding.

5.2. Both before and throughout the dispute resolution process, a dispute resolution professional shall disclose all interests, relationships and matters likely to affect the dispute resolution professional's independence or impartiality or which might reasonably be perceived as likely to do so.
Where a dispute resolution professional is or becomes aware that he or she is incapable of maintaining the required degree of independence or impartiality, the dispute resolution professional shall promptly take such steps as may be required in the circumstances, which may include resignation or withdrawal from the process.

5.3. The disclosure shall be made by such dispute resolution professional in accordance with the form specified in the law for the time being in force.

5.4. Failure to make such disclosure may create an appearance of bias and may be a ground for disqualification.

6. Bias and Impartiality

6.1. Any close personal relationship or current direct or indirect business relationship between a dispute resolution professional and a party, or any representative of a party, or with a person who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective dispute resolution professional's impartiality or independence. Past business relationships will only give rise to justifiable doubts if they are of such magnitude or nature likely to affect a prospective dispute resolution professional's judgment.

6.2. A dispute resolution professional shall at all times make sure to follow the principle of natural justice and only in certain situations, which shall be in writing of reasons, it can move ex-parte against such party.

6.3. There shall be no private communications between a dispute resolution professional and any party, regarding substantive issues in the case. All communications, other than proceedings at a hearing, should be in writing. Any correspondence shall remain private and confidential and shall not be copied to anyone other than the parties to the dispute, without the agreement of the parties.

6.4. The dispute resolution professional shall not collude with any of the parties, showing his/her inherent interest in the outcome of the dispute resolution proceeding.

6.5. A dispute resolution professional shall not accept any gift or substantial hospitality, directly or indirectly, from any party to the dispute resolution proceedings, except in the presence of the other parties and/or with their consent.

Notwithstanding any rules contained towards the protection of just and fair conduct of dispute resolution professional; such a dispute resolution professional shall be removed in case it has been found that such dispute resolution professional has inherent interest in the outcome of the dispute resolution proceeding.

7. Conduct and Confidentiality

7.1. The dispute resolution professional shall follow the due process established by the ADRC.

7.2. The dispute resolution professional shall make the parties to the dispute aware of the dispute resolution proceedings.

7.3. The dispute resolution professional shall at all times maintain confidentiality of facts, circumstances, and information of both parties and shall not disclose the same at any point during the dispute resolution proceeding.

7.4. The dispute resolution professional shall not unduly delay the completion of the dispute resolution process.

7.5. The dispute resolution professional shall not employ hostile, demeaning, or humiliating terms in written or oral communications with parties to the dispute.

8. Awards & Settlement

8.1. A dispute resolution professional is expected to conduct a fair and well-reasoned enforceable award or settlement, which shall be free from possible conflict of interest.

8.2. A dispute resolution professional while awarding shall look into the parties' convenience to enforce such settlement agreement or award.

8.3. This Code of Ethics is not intended to provide grounds for the setting aside of any award or settlement agreement as the case may be.

9. Professional Conduct Issues and Complaints

9.1. The dispute resolution professional may consult the ADRC about any professional or ethical dilemmas.

9.2. Where the dispute resolution professional is subject to the Code, a party to the dispute who believes there has been a lack of compliance with this Code may submit a complaint to this effect to the ADRC on the dispute resolution professionals conduct and assessment.

9.3. The dispute resolution professional will respond to, and cooperate with, any complaints procedure initiated by a Party through ADRC in relation to the process in which the dispute resolution professional acted, including attending (without charging a fee or claiming any expenses for attending) any meeting convened by ADRC as part of that complaints procedure.

Annexure VII – Proposed Amendments to the Judicial Framework under Phase I

Sl. No.	Amendments related to IFSC Court
1)	In Section 3, after sub section (1), clause g, the following clause shall be inserted, namely : *"(ga) International Financial Services Centres Bench of High Court means the IFSC Bench of High Court constituted under sub-section (1) of section (5A)."*
2)	After Section 5, the following shall be inserted, namely : - *"5A. <u>Constitution of IFSC Bench of High Court</u>* *(1) In all High Court, the Chief Justice of the High Court may, by order, constitute IFSC Bench of High Court having one or more benches consisting of such judges for the purpose of exercising the jurisdiction and powers conferred on it under this Act.* *(2) The Chief Justice of the High Court shall nominate such judges of the High Court who have experience in dealing with commercial disputes or international commercial arbitration related matters to be the judges of the IFSC Bench of High Court.* *5B. <u>Jurisdiction of IFSC Bench of High Court</u>:* *Notwithstanding anything to the contrary contained in any other law for the time being in force, the IFSC Bench of High Court shall have jurisdiction to entertain or dispose of all applications or appeals arising from alternative dispute resolution mechanism and enactments at International Financial Services Centre.*

	Explanation: The IFSC Bench of High Court shall not have jurisdiction over civil, criminal, or such other jurisdiction, conferred to a High Court by law, that do not arise from the specified alternative dispute resolution mechanisms and enactments at the International Financial Services Centre. *5C. Exclusion of jurisdiction of civil courts* *Notwithstanding anything contained in any other law in force, no civil court shall have the jurisdiction to entertain any suit or proceeding in respect of any matter which the IFSC Bench of High Court is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.* *5D. Permanent Bench of High Court at IFSC* *Without prejudice to the provisions of Section 51 of the State Reorganisation Act, such judges of the High Court of Gujarat, being not less than three in number, as the Chief Justice of the High Court of Gujarat may from time to time nominate, shall sit at GIFT City, Gujarat in order to exercise the jurisdiction and power for the time being vested in the IFSC Bench of High Court in respect of cases arising out of alternative dispute resolution mechanism and enactments at International Financial Services Centre."*

ANNEXURE VIII- JUDICIAL FRAMEWORK PHASE II (DEDICATED IFSC COURT)

THE INTERNATIONAL FINANCIAL SERVICES CENTRES INTERNATIONAL COURT BILL, 2024 [THE CONSTITUTION (ONE HUNDRED AND TWENTY NINTH AMENDMENT) BILL, 2024]

A Bill

further to amend the Constitution of India

1. (1) This Act may be called the Constitution (One hundred and Twenty-ninth Amendment) Act, 2024.
   (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In Article 214, the following proviso shall be inserted:-
   "Notwithstanding anything contained in this Article, the Central Government shall have the power to establish a High Court, also known as the IFSC International Court for every IFSC set up within the country, for all matters in relation to the IFSC."

3. In Article 215, the following proviso shall be inserted:-
   "Provided that nothing in this article shall apply to the IFSC International Courts established under the IFSCA Act, 2019."
   [Comment: the name of the statute shall change if we are enacting a separate statute for IFSC International Courts]

4. In Article 218, the following proviso shall be inserted:-
   "Provided that nothing in this article shall apply to the IFSC International Courts established under the IFSCA Act, 2019."
   [Comment: the name of the statute shall change if we are enacting a separate statute for IFSC International Courts]

5. In Article 225, the following proviso shall be inserted:-
   "Provided that nothing in this article shall apply to the IFSC International Courts established under the IFSCA Act, 2019."
   [Comment: the name of the statute shall change if we are enacting a separate statute for IFSC International Courts]

6. In Article 226, after clause (4), the following clause (5) shall be inserted :
   "(5) Notwithstanding anything contained in this Article, the IFSC International Courts established under the International Financial Services Centres Authority Act, 2019 [Comment : the name of the statute shall change if we are enacting a separate statute for IFSC International Courts] *shall not have the power to issue writs throughout the territories in relation to which it exercises jurisdiction.*

Provided that the High Court exercising jurisdiction in the said territory shall have the authority to issue writs with respect to any matter concerning the International Financial Services Centres."

7. In Article 227, the following proviso may be inserted:-
   "Provided that nothing in this article shall confer power to IFSC International Courts established under the International Financial Services Centres Authority Act, 2019 to exercise superintendence over other courts throughout the territories in relation to which it exercises jurisdiction unless otherwise specified in the International Financial Services Centres Authority Act, 2019 [Comment : the name of the statute shall change if we are enacting a separate statute for IFSC International Courts]."

8. In Article 228, after Clause (b) the following proviso may be inserted:-
   "Provided that nothing in this article shall apply to the IFSC International Courts established under the International Financial Services Centres Authority Act, 2019."
   [Comment : the name of the statute shall change if we are enacting a separate statute for IFSC International Courts]

9. In Article 229, after Clause (3), the following proviso may be inserted:-
   "Provided that nothing in this article shall apply to the IFSC International Courts established under the International Financial Services Centres Authority Act, 2019."
   [Comment : the name of the statute shall change if we are enacting a separate statute for IFSC International Courts]

10. In Article 230, after Clause (2), the following proviso may be inserted:-
    "Provided that nothing in this article shall apply to the IFSC International Courts established under the International Financial Services Centres Authority Act, 2019."
    [Comment : the name of the statute shall change if we are enacting a separate statute for IFSC International Courts]

11. In Article 231, Clause (1) may be substituted with the following:-
    "Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court *or a common IFSC International Court* for two or more States or for two or more States and a Union territory."

12. In Article 366, after sub-clause (a) of Clause (14), the following sub-clause may be substituted, namely:-
    "(aa) any Court constituted or reconstituted under the IFSCA Act, 2019 as an IFSC International Court, and"

THE INTERNATIONAL FINANCIAL SERVICES CENTRES (IFSC)
INTERNATIONAL COURT BILL, 2024

An Act to provide for the constitution of IFSC International Courts at IFSCs, equivalent to a High Court, for adjudicating alternative dispute resolution disputes and matters connected therewith and incidental thereto

1. (1) This Act may be called the International Financial Services Centres (IFSC) International Court Act, 2024.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

*2. **Definitions:** (1) In this Act, unless the context otherwise requires –*

(a) "Judge" means a judge of IFSC International Court including the Chief Justice;

(b) "International Court" means the International Financial Services Centres (IFSC) International Court constituted under Section 3 of this Act.

(c) IFSC International Court Rules means the rules of court prescribed under this Act.

(2) The words and expressions used and not defined in this Act but defined in the Constitution of India and the International Financial Service Centres Authority Act, 2019 shall have the meanings respectively assigned to them in that Act.

3. International Financial Services Centre (IFSC) International Court

(1) As from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be International Financial Services Centres International Court (hereinafter referred to as IFSC International Court) for all matters in relation to the IFSC for the purpose of exercising the jurisdiction and powers conferred on it under this Act.

(2) The Chief Justice of IFSC International Court may appoint a High Court judge who have experience in dealing with commercial disputes or international commercial arbitration related matters to be the judge of the IFSC International Court.

4. Jurisdiction of IFSC International Court

Notwithstanding anything to the contrary contained in any other law for the time being in force, the IFSC International Court shall have jurisdiction to entertain or dispose of all applications or appeals arising from alternative dispute resolution mechanisms and enactments at International Financial Services Centre.

Explanation: The IFSC International Court shall not have jurisdiction over civil, criminal, or such other jurisdiction, conferred to a High Court by law, except those matters that arise from the specified alternative dispute resolution mechanisms and enactments at the International Financial Services Centre.

5. Reference of a Dispute to IFSC international Court

(1) Subject to Sub-section (2), parties to an agreement to submit to the jurisdiction of the IFSC International Court are deemed to have agreed –

(a) to submit to the exclusive jurisdiction of the IFSC International Court;

(b) to enforce any judgment or order of the IFSC International Court without undue delay; and

(c) to waive any recourse to any court or tribunal outside India against any judgment or order of the IFSC International Court, and against the enforcement of the judgment or order, insofar as the recourse can be validly waived.

(2)Subject to an express provision to the contrary in the agreement , Subsection (1)(a), (b) and (c) shall apply.

(3) Notwithstanding anything contained in subsection (1) of this Section, parties can submit to the jurisdiction of the IFSC International Court provided the subject matter of the dispute arises out of agreements in relation alternative dispute resolution mechanism at IFSC.

6. Rules of evidence in certain cases before the IFSC International Court

(1) The IFSC International Court shall not be bound to apply the rule of evidence under the Indian law in such cases and to such extent the IFSC International Court Rules may provide.

(2) The IFSC International Court may, in those cases, apply other rules of evidence (whether such rules are found under any foreign law or otherwise) in accordance with the IFSC International Court Rules.

*7. **Determination of foreign law on submissions***

(1) The IFSC International Court, as prescribed by the IFSC International Court Rules, may order that any question of foreign law be determined based on submissions instead of proof.

(2) For the purpose of determination of any question of foreign law on submissions, the IFSC International Court may consider such matters as prescribed by the IFSC International Court Rules.

8. Exclusion of jurisdiction of civil courts

Notwithstanding anything contained in any other law in force, no civil court shall have the jurisdiction to entertain any suit or proceeding in respect of any matter which the IFSC International Court is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

ANNEXURE IX- JUDICIAL FRAMEWORK PHASE III (DEDICATED IFSC COURT WITH INTERNATIONAL JUDGES)

THE CONSTITUTION (ONE HUNDRED AND THIRTIETH AMENDMENT) BILL, [●]

A Bill

further to amend the Constitution of India

1. (1) This Act may be called the Constitution (One Hundred and Thirtieth Amendment) Act, 2024.
   (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In Article 216 of the Constitution, for the words "shall consist of Chief Justice and such other Judges", the words "shall consist of Chief Justice, International Judges and such other judges" shall be substituted.

3. In Article 217 of the Constitution, after clause (2), the following proviso shall be inserted:
   "Provided that the qualifications specified for the Judge of the High Court under Article 217(2) shall not extend to an International judge appointed under Article 217 A"

4. In Article 217, after clause (3), the following clause (4) shall be inserted, namely :
   "Notwithstanding anything in this Article, where an international judge is to be appointed at the International Financial Services Centre International Court, such international judge shall be subject to Article 217A."

5. After Article 217 of the Constitution, the following Article shall be inserted:

   Article 217 A: Appointment and conditions of the office of an International Judge of a High Court *—(1) Every International Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the President and the Chief Justice of the IFSC International Court, and shall hold office for a specified period not exceeding two years as he may specify.*

   (2) A person shall not be qualified for appointment as an International Judge of the IFSC International Court, unless he/ she –
   (a) has, for at least ten years held a judicial office in India or such equivalent superior court in foreign jurisdiction;
   (b) has been for at least ten years been an advocate of a High Court or such equivalent superior court in foreign jurisdiction or of two or more such courts in succession;
   (c) is not an acting judge in any other court in any other jurisdiction as on the date of appointment.

(3) An International Judge must be a person with necessary qualifications, experience and professional standing to be an International Judge at the IFSC International Court.

(4) Parliament may by law determine the qualifications and experience of an International judge and the class of cases that may be heard and determined by an International Judge.

(5) Subject to clause (4) and clause (1) of Article 217A, an International Judge may be appointed for a specific period to hear and determine any specific case, or such classes of cases as the Chief Justice may specify.

(6) An International Judge appointed for a specified period may exercise the powers and perform the functions of a Judge of a High Court in such cases or classes of cases the Chief Justice specifies under clause (5) of Article 217A.

(7) Anything done by an International Judge when acting in accordance with the terms of his appointment shall have the same validity and effect as if done by a Judge of the High Court and, in respect thereof, the International Judge shall have the same powers and immunities of Judge of the High Court.."

OR

In Article 224 of the Constitution,

(a) in clause (1), for the words "or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional Judges of the Court", the words, figures and letter "or by reason of arrears of work therein, or for the appointment of International Judges for International Financial Services Centre (IFSC) International Court, it appears to the President that the number of Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional judges or International Judges of the Court" shall be substituted.

(b) in clause (3), for the words "as an additional or acting Judge of a High Court", the words, figures and letter "as an additional, acting, or International Judge of a High Court" shall be substituted.

(c) After clause (3), the following proviso shall be inserted :
"Provided that nothing in this clause shall apply to an International Judge appointed to the IFSC International Court."

(d) After clause (3), the following shall be inserted:
(5) An International Judge must possess the necessary qualifications, experience, and professional standing to serve as an International Judge at the IFSC International Court.

(6) Parliament may, by law, determine the qualifications, experience, and the class of cases that an International Judge may hear and determine.

(7) Subject to clause (6) of Article 224, an International Judge may be appointed for a specific period to hear and determine specific cases or classes of cases as specified by the Chief Justice.

(8) An International Judge may exercise the powers and perform the functions of a Judge of a High Court in the cases or classes of cases specified by the Chief Justice under clause (7) of Article 217A.

(9) Any person, who holds the office of an International Judge of a High Court shall, while in office, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of a Judge of the High Court.

6. In Article 222, after Clause 2, the following proviso may be inserted:-
   "Provided that nothing in this article shall apply to the IFSC International Courts established under the International Financial Services Centres Authority Act, 2019.
   [Comment : the name of the statute shall change if we are enacting a separate statute for IFSC International Courts] *"*

7. In Article 223, the following proviso may be inserted:-
   "Provided that nothing in this article shall apply to the IFSC International Courts established under the International Financial Services Centres Authority Act, 2019."
   [Comment : the name of the statute shall change if we are enacting a separate statute for IFSC International Courts]

8. In Article 224, after Clause 3, the following proviso may be inserted:-
   "Provided that nothing in this article shall apply to the IFSC International Courts established under the International Financial Services Centres Authority Act, 2019."
   [Comment : the name of the statute shall change if we are enacting a separate statute for IFSC International Courts]

9. In Article 224-A, the following proviso may be inserted:-
   "Provided that nothing in this article shall apply to the IFSC International Courts established under the International Financial Services Centres Authority Act, 2019."
   [Comment : the name of the statute shall change if we are enacting a separate statute for IFSC International Courts]

10. In the Third Schedule of the Constitution, after Form or Oath VIII, the following shall be inserted:
    " *Form or Oath or affirmation to be made by the International Judge : -*
    I, A.B., having been appointed the Judge of High Court at (or of) _____ do appointed to the office of ...., do swear in the name of God/ solemnly affirm that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the laws of India."

THE INTERNATIONAL FINANCIAL SERVICES CENTRES (IFSC) INTERNATIONAL COURT (AMENDMENT) BILL, [●]

An Act further to amend the International Financial Services Centres (IFSC) International Court Act, 2024

1. *(1) This Act may be called the International Financial Services Centres (IFSC) International Court (Amendment) Act, [●].*

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

2. *(1) In the IFSC International Court Act, 2024 (hereinafter referred to as the principal Act), in Section 2, Clause (a) of Sub-Section (1) shall be substituted to, namely:*

> *"(a) "Judge" means a judge of IFSC International Court including the Chief Justice or an International Judge;"*

(2) In Section 2, after Clause (b), the following clause shall be inserted:-

> *"(ba) "International Judge" means a judge of IFSC International Court appointed under Article* [Article number to be inserted based on where the provision on appointment of international judge is being incorporated in the Constitution] *of the Constitution."*

3. *After Section 7 of the principal Act, the following Section shall be inserted:-*

> *"**7A. International Judges at IFSC International Court***
> *Unless otherwise agreed upon by the parties, a person of any nationality may be a Judge at IFSC International Court."*

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