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The International Comparative Legal Guide to:

Insurance & Reinsurance 2016

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A practical cross-border insight into insurance and reinsurance law

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General Chapters:

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Chapter 17

India


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1 Regulatory

1.1 Which government bodies/agencies regulate insurance (and reinsurance) companies?

The Insurance Regulatory and Development Authority of India (IRDAI) governs all insurance and reinsurance companies in India.

1.2 What are the requirements/procedures for setting up a new insurance (or reinsurance) company?

Insurance business in India can only be undertaken by an Indian insurance company or a reinsurance company/reinsurance branch office that is registered with the IRDAI. Insurers registered in India can undertake life insurance business, general insurance business, and/or health insurance business in accordance with the terms of their registration. Reinsurance companies/reinsurance branches can undertake reinsurance business in accordance with the terms of their registration.

In order to secure registration, an applicant must, along with other formalities, have a minimum paid up equity capital of Rs.1 billion in the case of life and general insurers, Rs.2 billion in the case of a reinsurer, and a minimum net worth of Rs.50 million in the case of a reinsurance branch. Foreign investment in the Indian insurance sector is permitted up to 49 per cent, whereas any foreign investment above 26 per cent will require prior government approval.

1.3 Are foreign insurers able to write business directly or must they write reinsurance of a domestic insurer?

Overseas non-admitted insurers cannot write direct insurance business in India.

Purchasing of insurance from overseas insurers by Indian residents is prohibited in India, unless the purchase falls within the general or specific approval of the Reserve Bank of India (RBI).

Non-admitted insurers can write reinsurance of India risks in accordance with the IRDAI's regulations on the reinsurance of life and general insurance business.

1.4 Are there any legal rules that restrict the parties' freedom of contract by implying extraneous terms into (all or some) contracts of insurance?

Indian insurers are given the liberty to decide their own policy terms and conditions, but insurance products can only be offered if the terms and conditions have been approved by the IRDAI under its file and use procedure.

There are extraneous rules that will impact policy terms. For example, the Insurance Act 1938 gives the policyholder a right to override contrary policy terms in favour of Indian law and jurisdiction, and Indian policyholders cannot be stopped from approaching the Consumer Courts.

1.5 Are companies permitted to indemnify directors and officers under local company law?

Under the Companies Act 2013, there is no ban on companies indemnifying directors and officers. The premium paid on such insurance is not to be treated as the remuneration payable to the officer. However, if such a person is proved to be guilty of negligence, default, misfeasance, breach of duty or breach in relation to the company, the premium paid on insurance will be treated as part of the remuneration.

1.6 Are there any forms of compulsory insurance?

The following legislation provides for compulsory insurance:

- Public Liability Insurance Act 1991: accidental cover for those handling hazardous substances and environmental issues.
- Motor Vehicles Act 1988: compulsory third party liability insurance.
- Deposit Insurance and Credit Guarantee Corporation Act 1961: insurance taken by the banks functioning in India (DICGC is an RBI subsidiary).
- IRDAI (Insurance Brokers) Regulations 2013: professional indemnity insurance covering errors and omission, dishonesty and fraudulent acts by employees, and liability arising from loss of documents or property.
- Carriage by Air Act 1972: requires parties to maintain adequate insurance covering any liabilities that may arise.
- Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995: insurance scheme for employees with disabilities.
- Personal Injuries (Compensation Insurance) Act 1963: employer's liability for workers that sustain injuries.
- Employees State Insurance Act 1948: insurance for employees in case of sickness, maternity and employment injury.
- Payment of Gratuity Act 1972: insurance for gratuity payments to employees.

- War Injuries (Compensation Insurance) Act 1943: for workmen sustaining injury in war.
- Marine Insurance Act 1963: on the lives of crew members.
- Merchant Shipping Act 1958: on the lives of crew members.
- Inland Vessels Act 1917: insurance of mechanically propelled vessels.
- The Companies Act 2013: insurance of deposits accepted by companies (not enforced yet).
- IRDAI (Registration of Corporate Agents) Regulations 2015: professional indemnity insurance covering errors and omission, negligence, dishonesty and fraudulent acts by employees, and liability arising from loss of documents or property.
- IRDAI (Web Aggregators) Regulations 2013: professional indemnity insurance covering errors and omission, negligence, dishonesty and fraudulent acts by employees, and liability arising from loss of documents or property.
- IRDAI (Guidelines on Repositories and Electronic Issue of Insurance Policies) 2011: professional indemnity insurance covering errors and omission, negligence, dishonesty and fraudulent acts by employees, and liability arising from loss of documents or property.
- IRDAI (Registration of Insurance Marketing Firm) Regulations 2015: professional indemnity insurance covering errors and omission, negligence, dishonesty and fraudulent acts by employees, and liability arising from loss of documents or property.

2 (Re)insurance Claims

2.1 In general terms, is the substantive law relating to insurance more favourable to insurers or insureds?

The statutory framework in India favours insurers more than insureds, but the regulatory framework and the interpretation of applicable law is possibly more favourable to the insured. For example:

- The Insurance Act 1938 restricts the ability of insurers to call a life insurance policy into question after three years on any grounds.
- The IRDAI (Protection of Policyholders' Interests) Regulations 2002 provide, amongst other obligations, that insurers follow certain practices at the point of sale of the policy so that: the insured can understand its terms properly; they have proper procedures and mechanisms to hear any grievances of the insured; they clearly state the policy terms (such as warranties, conditions, insured's obligations, cancellation provisions, etc.); they follow certain claims procedures to expeditiously process claims; and pay interest at the rate of two per cent above the prevalent bank rate in cases of delayed payment, etc.
- On 20 September 2011, the IRDA issued certain guidelines for condoning delay in claim intimation and submission of documents in relation to certain types of policies and policyholders to the effect that insurers should not reject claims on the basis of delayed notification if the delay was unavoidable, unless the insurer is satisfied that the claim would have been rejected in any event.
- Following the IRDAI's directions in its Circular of 31 March 2009, general insurers and health insurers can decline the renewal of a health insurance policy only on grounds of fraud, moral hazard or misrepresentation. Renewal cannot be denied on grounds such as an adverse claims history.
- The IRDAI has also directed that all health insurance policies offer portability benefits whereby policyholders are given credit for the waiting periods already served under previous health insurance policies with that insurer or any other Indian insurer.
- The IRDAI has introduced standard form definitions for health insurance and critical illness policies, and a standard claim form for health insurance policies.

There is one other feature of the Indian insurance sector that is worth mentioning. This concerns government-owned insurers, who are considered an instrument of the State and are thus expected to act justly, fairly, and reasonably.

2.2 Can a third party bring a direct action against an insurer?

As a general rule, Indian law recognises the principle of privity of contract and thus a third party would be unable to bring a direct action against an insurer. Motor cases, however, are the exception to the norm:

- It is common practice for third parties to name the defendant's insurer in motor accident-related proceedings.
- The Motor Vehicles Act 1988 (MVA) provides that the rights of an insured under a policy are transferred to a third party claiming against the insured in the event of the insured's insolvency.

The MVA empowers the Motor Claims Tribunal to seek the insurers' involvement in a third party action against the insured if the Tribunal believes the claim is collusive or if the insured fails to contest the claim.

2.3 Can an insured bring a direct action against a reinsurer?

There is no specific provision which allows an insured to bring a direct action against a reinsurer. There is, however, no legislation to prevent an insured from attempting to sue a reinsurer. The other exception where an insured may bring a direct action against a reinsurer would be if the contractual arrangements permitted it, for example through a "cut through" clause, although no such clause has been tested in the Indian Courts so far.

2.4 What remedies does an insurer have in cases of either misrepresentation or non-disclosure by the insured?

Indian law mandates that a contract for insurance be one of the utmost good faith. Insurers are therefore entitled to a fair presentation of the risk prior to inception, and if there has been a misrepresentation or non-disclosure of a material fact, then an insurer may avoid the policy *ab initio*. Unless the misrepresentation or non-disclosure was fraudulent, the premium must be paid back to the policyholder. For life insurance policies, however, the policy cannot be called into question on any grounds (including fraud) after three years from the issuance or the revival of the policy, whichever is the latter.

2.5 Is there a positive duty on an insured to disclose to insurers all matters material to a risk, irrespective of whether the insurer has specifically asked about them?

The Indian Marine Insurance Act 1963 requires that an insured make a full and frank disclosure prior to inception, and the Supreme Court has said that this is to be done through the proposal form. Although there is an argument that an insurer may limit the insured's duty by limiting the questions in the proposal form, the proposal forms used

in India contain a statement that serves to negate any restriction of the disclosure obligation by reference to the questions asked. The IRDAI (Protection of Policyholders' Interests) Regulations 2002 also impose an obligation on the insured to disclose all material information.

2.6 Is there an automatic right of subrogation upon payment of an indemnity by the insurer or does an insurer need a separate clause entitling subrogation?

The right to subrogation is recognised both by law as well as by the courts. No separate contractual clause is required to trigger the right to subrogation, but as a matter of practice, policies do contain subrogation clauses and insurers will frequently obtain "subrogation letters" and the right to an "assignment" of a third party claim from the insured. The IRDAI (Protection of Policyholders' Interests) Regulations 2002 also obligate an insured to assist its insurer in recovery proceedings.

3 Litigation – Overview

3.1 Which courts are appropriate for commercial insurance disputes? Does this depend on the value of the dispute? Is there any right to a hearing before a jury?

An insured has the option to approach a Court of Civil Jurisdiction or (if the dispute qualifies) a Consumer Court, whereas the insurer could only approach a Civil Court for recourse. Both the Civil and Consumer Courts have pecuniary and territorial jurisdiction, so actions brought before them need to be initiated keeping in mind the geographical location of the defendant/cause of action and also the value of claim.

Both the Civil Court and Consumer Courts have a three-tier hierarchy. The hierarchy structure of the Consumer Courts is usually as follows (in ascending order): District; State; and National Consumer Dispute Redressal Commission. There are 629 District Consumer Dispute Redressal Commissions (NCDRC) that can accept claims up to a value *circa* US$3,600, and 35 State Consumer Dispute Redressal Commission that can accept claims over *circa* US$3,600 and up to a value of US$186,000, and also appeals against the order of the District Commissions. At the apex lies the NCDRC which accepts matters with a value of over *circa* US$186,000 and appeals against the decisions of the State Commissions.

Similarly, the broad ascending hierarchy of the Civil Courts are also similar. This comprises *circa* 600 District Courts, 24 High Courts and the Supreme Court of India (the highest court in India). Amongst the 24 High Courts, four are termed charter High Courts (i.e. Delhi, Bombay, Madras and Calcutta High Court) which have original jurisdiction to accept and hear matters which fall above certain pecuniary thresholds, exempting the District Courts from hearing these matters due to higher pecuniary limit. The rest of the District Courts have unlimited pecuniary jurisdiction, so do the competent Courts of first instance to hear any insurance dispute falling under the territorial jurisdiction. There is no right to a hearing before a Jury in India and the cases are heard and decided by Judges.

3.2 How long does a commercial case commonly take to bring to court once it has been initiated?

Indian litigation is slow and time consuming. This is attributed to the number of reported pending cases which is presently close to 30 million in Courts across in India. In fact, the Supreme Court has begun the process of clearing this huge backlog by issuing directions to all Courts across India to decide the trial of the cases within a span of five years excluding the time taken in appeals. This is seen from the reduction of pending cases in the Supreme Court from 63,330 to 61,300 matters, out of which 17,743 matters are yet to be listed for a final hearing after completion of pleadings; whereas the pendency before the High Court and the District Courts in India still remains high with no accurate figures to determine.

However, the Ministry of Law and Justice has taken steps to reduce the present pendency by formulating the National Litigation Policy to reduce the average pendency of cases from 15 to three years. The practice of adjournments is quite prevalent in Indian cases, although the Supreme Court has taken steps to curb this practice (see *Raju Rajak v Jokulal* [MANU/MP/0774/2015]).

If both the parties are cooperative, it would still take a minimum of four to six years for a Court of first instance to reach a decision. The appeal from the order would take another five years to resolve. If the litigant is uncooperative, then this could take more time.

4 Litigation – Procedure

4.1 What powers do the courts have to order the disclosure/discovery and inspection of documents in respect of (a) parties to the action and (b) non-parties to the action?

The power of discovery or summoning of documents are governed by the Code of Civil Procedure, 1908 (CPC). The Courts, on a motion by either of the parties to litigation or on its own accord, direct the parties to summon documents which are required to decide the dispute at hand. The relevancy of the documents sought under the discovery would depend on the issue at hand. On a motion so made for the discovery of documents, the Court would direct the party who has so made a reference to produce the document or to give the same for inspection to the requested party.

Non-compliance with such an order for discovery of documents can lead to dismissal of the action or defence as may be.

Non-parties to the Action

CPC allows any party who would be in possession of the document to produce the documents that are important to the dispute even if the person is not arrayed as party to the ongoing litigation.

4.2 Can a party withhold from disclosure documents (a) relating to advice given by lawyers or (b) prepared in contemplation of litigation or (c) produced in the course of settlement negotiations/attempts?

The provisions under the Indian Evidence Act, 1872 protect communications between lawyer and his client. Unless an express permission is given by the client, the lawyer is estopped from disclosing such communications unless the same is in furtherance of an illegal purpose. The Evidence Act further safeguards the rights of a person against being compelled to reveal information between him and his lawyer, unless the same is produced with his consent and is required to establish his testimony.

The Supreme Court and various High Courts in India have given various guidelines recognising the privilege of communications between lawyer and his clients over documents made in furtherance of a litigation. The privilege attributed to these documents is similar to English law.

As regards documents prepared in the course of settlement negotiations/attempts, it is common for the parties to mark them "without prejudice", but these are not expressly protected as privileged documents under the Evidence Act, and as matter of practice, are commonly produced before Courts.

4.3 Do the courts have powers to require witnesses to give evidence either before or at the final hearing?

Yes. The Courts have the power to call for witnesses within their jurisdiction to give evidence during the course of the litigation before the final orders are reserved. The non-compliance of the summoning would even lead to arrest of the person evading such direction from the Court. The Court may not compel a person who is not a resident within its jurisdiction to be present for giving evidence. In such cases, CPC provides for the Court to issue commissions or interrogatories to the parties whose evidence cannot be obtained easily in order to determine the issue at hand.

The non-compliance of the order to give evidence to determine the issue would lead to dismissal of the plaint or defence as may be.

4.4 Is evidence from witnesses allowed even if they are not present?

As per the Code of Civil Procedure 1908 (CPC), the examination in chief by a party may be on an affidavit, but his attendance is necessary for the purposes of cross examination. In case the party is unable to appear before the Court, the Court may, in compliance with the provisions of the CPC, issue commissions or interrogatories to address this. The Supreme Court has even permitted cross-examination to be conducted through video conferencing in cases where witnesses, for reasons beyond their control, are unable to appear before the Court. For example, an infirm person staying outside India.

4.5 Are there any restrictions on calling expert witnesses? Is it common to have a court-appointed expert in addition or in place of party-appointed experts?

The Evidence Act allows the court to hear expert evidence on matters of foreign law, science or art. Appointment of an expert is usually on an application filed by a party asking the Court to permit that party to call an expert to give evidence, or the Court may also decide to appoint its own expert. The report/statement filed by the expert will not automatically become evidence and an expert must be examined as a witness. The contesting party will then have the opportunity to controvert his findings during cross-examination.

4.6 What sort of interim remedies are available from the courts?

The CPC provides for a wide variety of discretionary interim remedies which may be substantive or procedural. In terms of substantive remedies, temporary injunctions and interlocutory orders allow the Court to stop the commission of an act. Secondly, mandatory injunctions, available under the Specific Relief Act 1963, allow the court to ask a party to carry out a positive and overt act. In other words, a Court may use an injunction to direct a party to act, or restrain from acting or omitting to act, to the detriment of the contesting party.

In addition, the Court may also pass directions for a party to direct a deposit of an amount of money or provide surety in Court in order to secure the interests of the contesting party, especially where that defaulting party is attempting to defeat a possible award or decree against it.

These remedies are obviously discretionary and a grant of such a remedy is based on various factors which need to be satisfied and proved before Court.

4.7 Is there any right of appeal from the decisions of the courts of first instance? If so, on what general grounds? How many stages of appeal are there?

Appeal to Decisions of the Court of First Instance

Unless expressly provided by specific law, an appeal can be made from every decision of a Court of First Instance to the court authorised to hear appeals from the decisions of that Court. This right will not be available when the decision of the Court is with the consent of the parties. The first appeal can be made on any ground of error either legally, factually or procedurally by the Court of First Instance.

Subsequent Stages of Appeal

A subsequent appeal from a first appeal is only available in specific cases where there is a substantial question of law involved. Furthermore, if the monetary value of the decision of the Court is less than *circa* US$384, no subsequent appeal is available. There are some High Courts in the country which are the Courts of First Instance when the subject matter of the proceedings is more than a fixed amount; these are the Delhi High Court, Bombay High Court, Madras High Court, Calcutta High Court and Allahabad High Court. No second appeal is available from a decision of these Courts.

Appeal to the Supreme Court

In civil disputes, the usual sequence is that the decision of a District Court is appealable before a single judge of the High Court. The single judges' decisions can be appealed before a division bench of the High Court. In both these cases, a final stage of appeal is provided under the constitution to the Supreme Court for which prior leave of the Supreme Court is required.

4.8 Is interest generally recoverable in respect of claims? If so, what is the current rate?

A Court has the discretion to award interest from the date when the cause of action arose to the date of actual payment made as a result of a judgment against a party. A rate of 9 per cent to 12 per cent is currently applied by the Courts. However, an arbitration award will carry interest at the rate of 18 per cent unless the tribunal says otherwise.

4.9 What are the standard rules regarding costs? Are there any potential costs advantages in making an offer to settle prior to trial?

The Court may award the successful party its costs of pursuing litigation, but the award is entirely at the Court's discretion. It is common for costs awards to be made in favour of a successful party, but the level of costs awarded is rarely sufficient to cover the actual cost incurred. In a recent decision, while referring to a statutory upper limit of *circa* US $60 for costs awards in cases of vexatious litigation, the Supreme Court suggested that the parliament should consider raising the limit to US $2,000. In view of the low level of costs awarded, there are, as yet, no material advantages in making a pre-trial offer in civil litigation and Calderbank letters are hardly, if ever, used.

4.10 Can the courts compel the parties to mediate disputes? If so, do they exercise such powers?

Section 89 of the CPC embraces the provision for settlement of disputes outside Court. Keeping in mind the delay in legal procedures and the limited number of judges available, it has now become imperative on Courts to insist, though not compel, parties to explore the possibilities of an out-of-court settlement with a view to end litigation between the parties at an early date. Courts usually have an in-house mediation centre where experienced senior lawyers are appointed on a random confidential basis, and contentious complex cases, which have the potential for an extremely delayed decision, are compelled to explore settlement at the mediation centre with neutral, experienced lawyers acting as mediators. All proceedings at the mediation centre and settlement discussions are kept confidential from the Court and do not prejudice either party in case mediation fails and parties are of course free to return to the Court process.

4.11 If a party refuses to a request to mediate, what consequences may follow?

Consent of the parties is a condition precedent to be referred to mediation. There are of course no formal sanctions if proceedings are not followed through to their logical end.

5 Arbitration

5.1 What approach do the courts take in relation to arbitration and how far is the principle of party autonomy adopted by the courts? Are the courts able to intervene in the conduct of an arbitration? If so, on what grounds and does this happen in many cases?

The Indian Arbitration and Conciliation Act 1996 (ACA) is based on the UNCITRAL model law. The ACA preserves party autonomy in relation to most aspects of arbitration, such as the freedom to agree upon the qualification, nationality, number of arbitrators (provided it is not an even number), the place of arbitration and the procedure to be followed by the Tribunal. The principle of party autonomy has been recently confirmed by the Constitutional Bench of the Supreme Court of India in *Bharat Aluminium Co v Kaiser* (2012).

The decision restricts the scope of the Indian Courts to intervene in respect of those arbitrations where the seat is non-Indian. Further, the ACA expressly bars the Courts from intervening in an arbitral proceeding except to the extent this is provided for in the Act itself. For example:

- Where a party files an action before a Court in spite of an arbitration agreement, the other party can apply to that Court to refer the dispute to arbitration instead.
- A party can apply to a Court for interim remedies (please see the response to question 5.4 below for further details).

A party can seek the Court's assistance for the appointment of an arbitrator if the other party refuses to cooperate in the process.

5.2 Is it necessary for a form of words to be put into a contract of (re)insurance to ensure that an arbitration clause will be enforceable? If so, what form of words is required?

An arbitration agreement, as per the ACA, needs to be in writing and should reflect the intention of the parties to submit their dispute(s) to arbitration. There is no prescribed form required for the purpose of an arbitration agreement. In fact, it is not necessary for an arbitration agreement to be incorporated into an insurance/reinsurance contract at all. An arbitration agreement can come into existence if it is contained in a subsequent exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement.

5.3 Notwithstanding the inclusion of an express arbitration clause, is there any possibility that the courts will refuse to enforce such a clause?

In relation to domestic arbitration, the ACA bars the intervention from courts except for some specific instances wherein the courts are allowed to intervene – for example, for interim reliefs, reference to arbitration when an action has been instituted before the Court, and for the appointment of arbitrators, where parties have failed to nominate arbitrators within the stipulated time frame.

In relation to international commercial arbitration, the tendency of the Indian judiciary to intervene is now declining. The decision of India's Supreme Court in *Bharat Aluminium Co. v Kaiser* has reversed earlier authority which endorsed an interventionist approach under certain circumstances.

However, there are exceptions to the non-interventionist approach. For example in *N Radhakrishnan v Maestro Engineering*, the Supreme Court of India has held that cases involving allegations of fraud and misrepresentation, which go to the root of the agreement, involve adjudication upon substantial questions of law and complicated facts, or that require detailed evidence, fall more properly to be decided by the Courts. However, recent judgments of the Indian Supreme Court in *World Sports Group (Mauritius) Ltd v MSM Satellite* and *Swiss Timing Ltd. v Organising Committee*, Commonwealth have diluted the effect of the judgment in *Radhakrishnan* and demonstrate a growing inclination towards a pro-arbitration and non-interventionist approach in the context of Indian, as well as foreign, seated arbitrations.

In addition to the above, Courts have recognised a few additional categories of matters, such as cases involving disputes relating to: criminal offences; matrimonial disputes; guardianship disputes; insolvency and winding up; and testamentary disputes, which ought not to be arbitrated.

5.4 What interim forms of relief can be obtained in support of arbitration from the courts? Please give examples.

A party to an arbitral proceeding may, before the start of the proceeding or during it, or even after the arbitral award has been pronounced (but before it is enforced), apply to a Court for interim relief seeking:

- the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings;
- the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
- to secure the amount in dispute;
- the detention, preservation, or inspection of any property or thing that is the subject of the dispute;
- interim injunction or the appointment of a receiver; and
- such other interim measure of protection as a Court may find just and convenient.

5.5 Is the arbitral tribunal legally bound to give detailed reasons for its award? If not, can the parties agree (in the arbitration clause or subsequently) that a reasoned award is required?

As per the ACA, an arbitral award must state the reasons upon which it is based, unless: (a) the parties have expressly agreed that no reasons are to be given; or (b) the award is made upon terms agreed between the parties.

5.6 Is there any right of appeal to the courts from the decision of an arbitral tribunal? If so, in what circumstances does the right arise?

The ACA lays down the grounds on which an award can be challenged. The grounds on which the award can be challenged before a Court are narrow and limited, and a Court is not allowed to reassess or re-appreciate the quality of evidence produced before the arbitrator. The Court cannot substitute the Tribunal's findings with its own findings or conclusions and will set aside an arbitral award only if:

- A party was under some incapacity.
- The arbitration agreement is not valid under the applicable law.
- A party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present its case.
- The arbitral award deals with a dispute that does not fall within the arbitration agreement, or it contains decisions on matters beyond the scope of the submission to arbitration.
- The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or failing such agreement, was not in accordance with the law.
- The dispute is not capable of settlement by arbitration under Indian law.
- The arbitral award is in conflict with the public policy of India.

Additionally, the ACA allows an arbitral tribunal to decide upon its own jurisdiction. If the tribunal decides that it has jurisdiction, an aggrieved party cannot approach the Courts until after an award has been given. Further, any challenge to the impartiality, independence or qualification of an arbitrator is to be heard by the tribunal and, again, an aggrieved party cannot approach the Courts until after an award has been given.

However, the Indian Government has proposed to reduce the scope of 'against public policy', available as a ground of challenge, only to situations where an award:

1. was induced or affected by fraud or corruption;
2. is in contravention of the fundamental policy of Indian law; or
3. is in conflict with the basic notions of morality or justice.

The proposal is part of an amendment bill which is yet to be passed by the Indian Parliament.

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Tuli & Co
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Tuli & Co was established in 2000 to serve the Indian and international insurance and reinsurance industry. Tuli & Co is an insurance driven commercial litigation and regulatory practice and has working associations with firms in other Indian cities, as well as globally via our association with Kennedys. Tuli & Co's approach is straightforward and informal. We provide our clients with direct, uncomplicated, clear advice and recommendations, delivered in plain English. In short, we believe in finding the best and most cost-effective solution for our clients and provide value by focusing on what is needed and delivering it in a friendly but business-like manner.

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