



Nishith Desai Associates  
LEGAL AND TAX COUNSELING WORLDWIDE

MUMBAI

SILICON VALLEY

BENGALURU

SINGAPORE

NEW DELHI

NEW YORK

GIFT CITY

Research

# Mediating Commercial Disputes in India

July 2024

In collaboration with



SINGAPORE  
INTERNATIONAL  
MEDIATION CENTRE

MIAMC  
HYDERABAD

Research

# Mediating Commercial Disputes in India

---

July 2024

DMS Code: 30232.2



Ranked as the 'Most Innovative Indian Law Firm' in the prestigious FT Innovative Lawyers Asia Pacific Awards for multiple years. Also ranked amongst the 'Most Innovative Asia Pacific Law Firm' in these elite Financial Times Innovation rankings.



## Disclaimer

This report is a copyright of Nishith Desai Associates. No reader should act on the basis of any statement contained herein without seeking professional advice. The authors and the firm expressly disclaim all and any liability to any person who has read this report, or otherwise, in respect of anything, and of consequences of anything done, or omitted to be done by any such person in reliance upon the contents of this report.

## Contact

For any help or assistance please email us on [conciierge@nishithdesai.com](mailto:conciierge@nishithdesai.com) or visit us at [www.nishithdesai.com](http://www.nishithdesai.com).

## Acknowledgements

### **Soumya Gulati**

[soumya.gulati@nishithdesai.com](mailto:soumya.gulati@nishithdesai.com)

### **Shweta Sahu**

[shweta.sahu@nishithdesai.com](mailto:shweta.sahu@nishithdesai.com)

### **Sahil Kanuga**

[sahil.kanuga@nishithdesai.com](mailto:sahil.kanuga@nishithdesai.com)



## SIMC Singapore

The Singapore International Mediation Centre (SIMC) is an independent, not-for-profit organisation dedicated to meeting the evolving business needs of Asia. SIMC was established on 5 November 2014 following the recommendations of a Working Group convened by Chief Justice Sundaresh Menon and the Ministry of Law, on developing Singapore into a hub for international commercial mediation.

For more information, please visit [www.simc.com.sg](http://www.simc.com.sg).

### SIMC Model Clauses:

#### 1. Mediation Clause

All disputes, controversies or differences arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall before or after the commencement of any other proceedings, be first referred to mediation in Singapore at the Singapore International Mediation Centre in accordance with its Mediation Rules for the time being in force, without prejudice to any recourse to apply to any tribunal or court of law of competent jurisdiction for any form of interim relief.

#### 2. Tiered Mediation Clause

The parties agree that any dispute, controversy or claim arising out of or in connection with the present contract (including any question regarding its existence, validity or termination) (the “Dispute”) shall first be referred to the Singapore International Mediation Centre for mediation in accordance with the Singapore International Mediation Centre Mediation Rules for the time being in force, without prejudice to any recourse to apply to any tribunal or court of law of competent jurisdiction for any form of interim relief.

If the dispute cannot be resolved through mediation within [8 weeks or state such other preferred time period] after commencement of mediation at the Singapore International Mediation Centre, or within such extended period as may be agreed by the parties, the parties shall submit the Dispute to ... [provide other means of dispute resolution e.g. arbitration, litigation etc.]

#### 3. SIAC – SIMC Arb-Med-Arb Clause

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre (“SIAC”) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC Rules”) for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be [Singapore].

The Tribunal shall consist of \_\_\_\_\_ arbitrator(s).

The language of the arbitration shall be \_\_\_\_\_.

The parties further agree that following the commencement of arbitration, they will attempt in good faith to resolve the Dispute through mediation at the Singapore International Mediation Centre (“SIMC”), in accordance with the SIAC-SIMC Arb-Med-Arb Protocol for the time being in force. Any settlement reached in the course of the mediation shall be referred to the arbitral tribunal appointed by SIAC and may be made a consent award on agreed terms.



## IAMC Hyderabad, India

The International Arbitration and Mediation Centre, a first-of-its-kind, is located in Hyderabad—the capital city of Telangana, India. The Centre provides both Arbitration and Mediation services, by combining world-class infrastructure, cutting-edge technology, hearing rooms, a reputed Governing Council, a team adept at handling a wide variety of cases and highly experienced arbitrators and mediators to provide tailored, in-person, virtual and hybrid conflict resolution services.

For more information, please visit [www.iamch.org.in](http://www.iamch.org.in).

## IAMC Model Clauses:

### 1. Mediation/ Conciliation Clause

In the event of any dispute arising out of or in connection with the present agreement, the parties shall, in the first instance, refer the dispute to conciliation (also referred to as Mediation) under the IAMC Mediation Rules. Such reference shall be by way of a notice in writing, and will be a notice for the purpose of commencement of conciliation.

The commencement or pendency of conciliation under the IAMC Mediation Rules will not prevent any party from seeking interim relief or reliefs for the purpose of preserving their rights.

If the dispute has not been settled through conciliation under the IAMC Mediation Rules within \_\_\_\_\_ days following the commencement of conciliation or within such other period as the parties may agree in writing, such dispute shall thereafter be finally resolved through \_\_\_\_\_.

### 2. Med-Arb Clause

In the event of any dispute arising out of or in connection with the present contract, the parties shall first refer the dispute to conciliation (also referred to as Mediation) under the IAMC Mediation Rules. Such reference shall be by way of a notice in writing, which shall also be deemed to be a notice for the purpose of commencement of arbitration.

If the dispute is not settled pursuant to the said Rules within 45 days following the filing of a Request for Mediation or within such further period as the parties may agree in writing, such dispute shall thereafter be referred to arbitration and finally resolved under the IAMC Arbitration Rules.

For the avoidance of doubt, it is clarified that:

- a) all disputes that fall within the scope of arbitration agreement may be resolved in such arbitration; and
- b) even during the pendency of conciliation, parties may seek interim relief or Emergency Measures under the Emergency Arbitrator Provisions in the IAMC Arbitration Rules.

### 3. Arb-Med-Arb Clause

In the event of any dispute arising out of or in connection with the present contract, including any question regarding its existence, validity or termination, the parties shall first refer the same for arbitration to be finally resolved under the administration of International Arbitration and Mediation Centre (“IAMC”) in accordance with the Arbitration Rules of International Arbitration and Mediation Centre (“IAMC Rules”) for the time being in force. The seat of Arbitration shall be \_\_\_\_\_.

The Tribunal shall consist of one or more arbitrators appointed in accordance with the said Rules. The language of the arbitration proceedings shall be English. The law governing the arbitration agreement shall be \_\_\_\_\_. The law governing the contract shall be \_\_\_\_\_.

The parties further agree that following the commencement of arbitration, they will attempt in good faith to resolve the Dispute through mediation at International Arbitration and Mediation Centre (“IAMC”), in accordance with the IAMC Arb-Med-Arb Protocol for the time being in force. Any settlement arrived in respect of some or all their disputes in the course of mediation shall be referred to the arbitral tribunal appointed by IAMC and may be recorded as an arbitration award (interim or final, as the case may be) on agreed terms.

# Contents

<b>Introduction</b>	<b>1</b>
<b>The Indian Perspective: Pre-Mediation Act</b>	<b>2</b>
History of the Legal Framework	2
<b>Codification of Mediation in India: The Mediation Act</b>	<b>4</b>
A. 'Mediation' as Defined under the Mediation Act	5
B. Applicability of the Mediation Act	5
C. Matters not Fit to be Resolved by Mediation	6
D. Mediation Agreement	6
E. Pre-Litigation Mediation and the Power of Courts to Refer the Parties to Mediation	6
F. Interim Orders for Protection	7
G. Appointment of Mediators	7
H. Mediation Proceedings: An Overview	9
I. Mediated Settlement Agreements: Form, Registration, Enforcement and Challenge	11
J. Institutional Mediation under the Mediation Act	12
<b>Enforcing Mediated Settlement Agreements:</b>	<b>13</b>
<b>United Nations Convention on International Settlement Agreements Resulting from Mediation</b>	
A. Introduction and Scope	13
B. Genesis of the Singapore Convention	13
C. Some Key Provisions	14
D. Global Status of the Singapore Convention	14
<b>Looking Forward</b>	<b>19</b>



# Introduction

Mediation has emerged as one of the most preferred mode of alternative dispute resolution and potentially even more so with the enactment of the Mediation Act, 2023 (“**Mediation Act**”). It allows parties to relook at mutual interests and come up with innovative solutions through an interactive and facilitative process. Mediation is voluntary and non-binding upon the parties and issues are resolved through discussions using proper communication techniques. The mediator suggests options but does not compel the parties to attend the mediation or consider the options if they are not interested.

A mediator’s job remains restricted to facilitating the parties to arrive at their self-designed solution (facilitative model) or evaluating the claims of the parties using his legal and commercial expertise (evaluative model), without giving a binding decision.<sup>1</sup> While the parties oscillate between the Best Available Alternative to Negotiation Agreement (BATNA) and Worst Available Alternative to Negotiation Agreement (WATNA), the mediator tries to steer the parties to arrive at a Most Likely Alternative to Negotiated Agreement (MLATNA).<sup>2</sup>

Parties are actively considering mediation, for a bunch of reasons, primarily due to costs and preserving business relationships. There is an understanding that the global economy has been tough on a number of businesses. If one’s traditional business counterpart is facing genuine difficulties in performing certain contractual obligations, the idea is to work out amicable solutions without tarnishing the working relationship. The goal is to ensure that the bridge between the parties does not get burnt and that is a big plus to a business.

---

1 Mediation Training Manual of India, Mediation and Conciliation Project Committee, Supreme Court of India, Chapter VII, Page 36-37, available at: <https://main.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf>.

2 Ibid, Chapter VI, Stage 3, Page 31.

# The Indian Perspective: Pre-Mediation Act

Mediation has been prevalent for centuries as a dispute resolution mechanism. Historical use of mediation through Panchayats for community conflict resolution is well-known and still preferred. The practice of mediation lost ground during British rule, leading to increased disputes and delays in the adversarial legal system.<sup>1</sup> Mediation has also been traditionally used and continues to be used popularly in family disputes.

## History of the Legal Framework

In 1987, the Legal Services Authorities Act 1987 introduced the concept of Lok Adalats which provides a platform to resolve disputes in the pre-litigation stage by way of amicable settlement. The concept of mediation as provided under the Code of Civil Procedure, 1908 [**“Code”**] was amended by the introduction of Section 89(2)(d), empowering courts to direct settlement of disputes by mediation amongst other means. Section 89(2)(d) of the Code contemplated scenarios where the court could refer matters to mediation. If parties agreed to the terms of settlement, the mediator would report to the court and the court, after giving notice and hearing the parties, would give ‘effect’ to the compromise and pass a decree in accordance with the terms of settlement accepted by the parties, thereby rendering finality to the situation. This was specifically in the context of court annexed mediation. Parties could litigate in case of failure to settle disputes by way of mediation. This led to the framing of the draft Civil Procedure — Alternative Dispute Resolution and Mediation Rules 2003 (**“ADR Rules”**).

This was followed by the Supreme Court establishing Mediation and Conciliation Project Committee (**“MCPC”**) in April 2005 to oversee the effective implementation of mediation. The objective was to encourage pre-litigation mediation and develop mediation as ‘another effective mode of dispute resolution’. Several high courts across the country, taking cue from the ADR Rules, framed a comprehensive set of principles for undertaking mediation. For instance, the Tamil Nadu Mediation and Conciliation Centre of Madras High Court was inaugurated on 9th April 2005 to deal with family matters, contracts and civil disputes, property and partitions suits, company petitions and arbitration cases.<sup>2</sup>

---

1 Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, “One Hundred Seventeenth Report on The Mediation Bill, 2021”.: [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2021/SC%20Report\\_Mediation%20bill.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/SC%20Report_Mediation%20bill.pdf), (13th July, 2022). (“117th Report”).

2 <http://www.tnmcc.tn.gov.in/about-tnmcc/about-us/>.

Similarly, the Delhi High Court Mediation and Conciliation Centre, known as Samadhan, was established in May 2006. Samadhan handles cases referred to it by the Delhi High Court, its subordinate courts, and the Supreme Court of India, covering matters relating to business contracts/transactions, real estate and construction, consumer issues, employment and service issues, industrial disputes, banking and insurance cases, trademark and copyright disputes, accident-related claims, landlord-tenant disputes, partnership disputes, family and matrimonial disputes, child custody and visitation rights, verification in habeas corpus matters etc.<sup>3</sup>

The Supreme Court of India, in *Afcons Infrastructure Ltd v. Cherian Varkey Construction Co. (P) Ltd.*,<sup>4</sup> held that all cases relating to trade, commerce, contracts, consumer disputes and even tortious liability could be mediated. In the same year, the Supreme Court, in *Moti Ram (D) Tr. LRs and Anr. Vs. Ashok Kumar and Anr.*,<sup>5</sup> held that mediation proceedings are confidential taking a step forward in relation to court-directed mediation.

Separately, there have been a few specific sectors and laws including the Industrial Disputes Act, 1947, newly amended Consumer Protection Act, 2019 as well as the Companies Mediation Rules, 2016 which have incorporated provisions on mediation within the statute providing it is as one of the modes of amicable resolution of disputes; however, their applicability is restricted to cases of industrial disputes, disputes pending before the company law tribunals and consumer disputes, respectively. Lastly, there was also private mediation offered by mediators or institutional mediation centers, beyond the reference of the court.

The efforts of the judiciary finally saw light at the end of the tunnel in form of amendments to the Commercial Courts Act, 2015, which made mediation mandatory before the institution of a suit which does not contemplate any urgent interim relief. The Ministry of Law and Justice gave mediation the necessary boost when Section 12A was introduced in the Commercial Courts Act, 2015. Section 12A made pre-institution mediation mandatory.

In addition to this, there have been suggestions by the High-Level Committee, chaired by Justice B.N. Srikrishna (“**Srikrishna Committee**”), to review the institutionalization of arbitration mechanisms so as to incorporate ‘Med-Arb’ or ‘Arb-Med’ clauses in the procedure of arbitral institutions in India. The Srikrishna Committee has also recommended that each arbitral institution must mandatorily maintain a mediation cell, with a panel of mediators, where parties must be prompted to resort to mediation within a limited time frame. As to the stage at which parties should resort to mediation—the Srikrishna Committee has recommended that “the possibility of parties seeking mediation, before or during the course of the arbitral proceedings, may be through a limited stay of arbitral proceedings (barring hearings on interim measures) for a specified time, when the parties should make intensive efforts to arrive at a mutually acceptable settlement.”<sup>6</sup>

However, the absence of unified and consolidated legislation in place led to a lack of seriousness being accorded to this mechanism. One question that often confused and haunted the litigants was the effectiveness and enforceability of a decision mutually reached by parties with the assistance of the mediator. Private mediation lacked structure and legal recognition, discouraging participation. To address this, the Mediation Bill 2021 was proposed to enhance the effectiveness of mediation and provide a comprehensive legal framework for it.<sup>7</sup>

3 <https://dhcmediation.nic.in/about-us>.

4 M/s. Afcons Infra. Ltd. & Anr vs M/S Cherian Varkey Constructions (P) Limited & Ors. (2010) 8 SCC 24.

5 Moti Ram (D) Tr. LRs and Anr. Vs. Ashok Kumar and Anr., 2010 SCC OnLine SC 1398.

6 Ministry of Law and Justice, Government of India, Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India (30 July 2017): <http://legalliaffairs.gov.in/sites/default/files/Report-HLC.pdf>, accessed May 22, 2024.

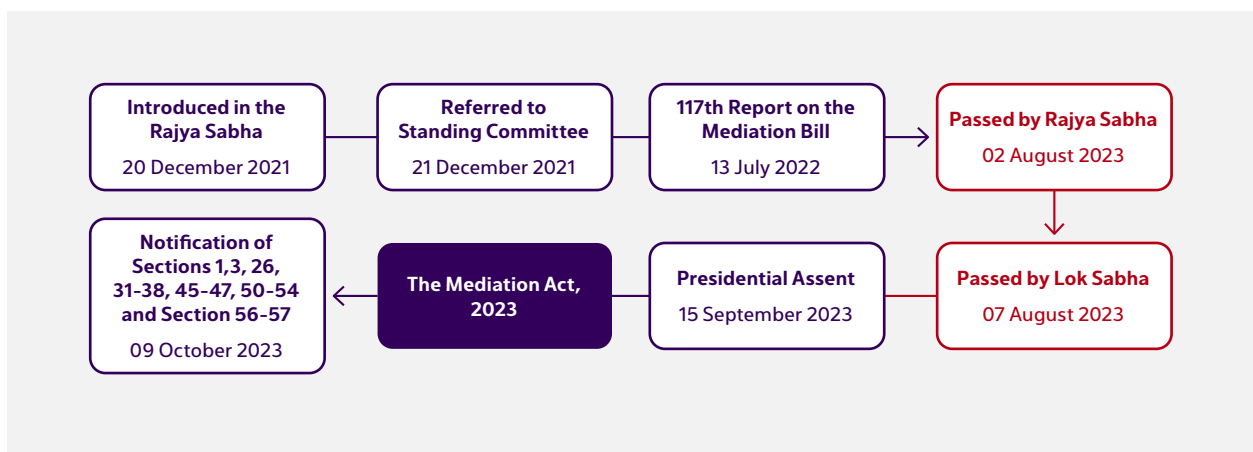
7 117th Report, Para 1.7, Page 4, Volume I.

# Codification of Mediation in India: The Mediation Act

In January 2020, the Supreme Court set up a panel headed by a renowned mediator Shri Niranjana Bhat to firm up a draft legislation to give legal sanctity to disputes settled through mediation. Subsequently, it was sent to the Union Government as a suggestion from the apex court. Thereafter, the Government uploaded the draft bill on mediation on its website for public consultation on 5 November 2021.<sup>1</sup>

The Mediation Bill 2021 was tabled in the Rajya Sabha on 20 December 2021 and was referred to the Standing Committee on Personnel, Public Grievances, Law & Justice for review on 21 December 2021 (“**Standing Committee**”). The Standing Committee issued its 117th Report on the Mediation Bill (“**117th Report**”) making certain recommendations to the provisions on 13 July 2022. The Union Cabinet approved some of these recommendations and the Mediation Bill 2023 (“**Mediation Bill**”) was passed by the Rajya Sabha on 02 August 2023 and by the Lok Sabha on 07 August 2023. The Mediation Bill received presidential assent on 15 September 2023, to be known as the Mediation Act.

On 09 October 2023, certain provisions of the Mediation Act were brought into force by notification, which *inter alia*, include provisions relating to: (i) non-applicability of the Mediation Act to the proceedings conducted by Lok Adalat and Permanent Lok Adalat;<sup>2</sup> (ii) Mediation Council of India;<sup>3</sup> (iii) Mediation Fund;<sup>4</sup> and (iv) Short Title, extent and commencement of the Mediation Act;<sup>5</sup> (v) Definitions;<sup>6</sup> (vi) Provisions pertaining to power to make rules and regulations, power to remove difficulties and the Mediation Act not applicable to pending proceedings.<sup>7</sup>



In essence, the Mediation Act aims “*to promote and facilitate mediation*” with a special focus on institutional mediation, online mediation, and community mediation, in order to facilitate resolution of disputes in a time bound manner.

1 Report, Para 1.1, Page 1, Volume I.

2 The Mediation Act, 2023, Section 26.

3 The Mediation Act, 2023, Section 31 to 38.

4 The Mediation Act, 2023, Section 45 to 47.

5 The Mediation Act, 2023, Section 1.

6 The Mediation Act, 2023, Section 3.

7 The Mediation Act, 2023, Section 50-54 and Section 56-57.

The Mediation Act also provides for enforcement of mediated settlement agreements and establishment of a regulatory body for registration of mediators and institutions.

An analysis of the key provisions of the Mediation Act is as under:

## A. 'Mediation' as Defined under the Mediation Act

The definition of “mediation” clarifies that mediation is a process whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator who does not have the authority to impose a settlement upon the parties to the dispute. Further, the Mediation Act aims to expand the scope and statutorily recognize pre-litigation mediation, online mediation, community mediation, conciliation under the definition of ‘mediation’.<sup>8</sup> This would have the effect of dispensing with the concept of conciliation, in line with the international practice of using the terms ‘mediation’ and ‘conciliation’ interchangeably as done previously by the Supreme Court of India and as documented in the Singapore Convention.<sup>9</sup> Part III of the Arbitration and Conciliation Act 1996 (“A&C Act”) which deals with conciliation is thus rendered otiose and consequently, the Mediation Act seeks to remove the provisions on conciliation from the A&C Act.<sup>10</sup>

## B. Applicability of the Mediation Act

On being notified, the Mediation Act shall apply to mediations conducted in India. It would *inter alia* apply to mediations where:

- 1) all parties habitually reside or incorporated in or have their place of business in India, or
- 2) the mediation agreement imports the applicability of the Mediation Act, or
- 3) there is an international mediation in relation to a commercial dispute provided one of the parties is an individual who is a national or habitually resides in a country other than India,<sup>11</sup> or a body corporate/ association/body of individuals having place of business outside India,<sup>12</sup> or
- 4) Further, where one of the parties is the Central/State Government or any entity/body controlled or owned by such Government, the Mediation Act will be applicable only in case of a) commercial disputes, or b) any other disputes as notified.<sup>13</sup>

Thus, the Mediation Act applies only to international mediations where the mediation is conducted in India but not applicable to mediations conducted outside India. More specifically, the Mediation Act does not contemplate enforcement of mediated settlement agreements resulting from mediation conducted outside India.<sup>14</sup> This would exclude enforcement of such mediated settlement agreements in India under the Mediation Act.

8 The Mediation Act, 2023, Section 3 (h).

9 Report, Para 1.14, Page 6, Volume I.

10 The Mediation Act, 2023, Section 61, The Sixth Schedule.

11 The Commercial Courts Act 2015, s 2(1)(c).

12 The Mediation Act, 2023, Section 2, (i) – (iii).

13 The Mediation Act, 2023, Section 2, (iv) and (v).

14 Report, Para 3.29, Page 18, Volume I.

## C. Matters not Fit to be Resolved by Mediation

The Mediation Act provides an illustrative list of disputes or matters not fit for mediation which *inter alia* include, a) disputes against minors or persons with intellectual disability, b) prosecution of criminal offences, c) any dispute relating to levy, collection, penalties, direct/indirect tax refunds, d) any investigation, inquiry or proceeding before the Telecom Regulatory Authority of India, Telecom Disputes Settlement and Appellate Tribunal and under the Competition Act, 2002, etc.<sup>15</sup> The Mediation Act is also intended to apply beyond civil and commercial disputes, i.e., disputes relating to compoundable offences including the matrimonial offences which are compoundable and pending between the parties may also be referred to mediation.<sup>16</sup>

This may prove to be an effective guidance in case of any ambiguity in the nature of disputes which can be settled through mediation. The Mediation Act thus goes a step ahead of the A&C Act, which has left issues related to non-arbitrability of disputes to judicial precedents.

## D. Mediation Agreement

A mediation agreement may be in the form of a clause in an agreement or separate agreement as long as it is in writing.<sup>17</sup> The Mediation Act explains 'in writing' to mean either (a) any document signed by the parties, or (b) an exchange of communications or letters including through electronic form as provided under the Information Technology Act, 2000, or 3) any pleadings or any other proceedings in which existence of mediation agreement is alleged by one party and not denied by the other.<sup>18</sup> Further, parties can submit a dispute to mediation even subsequent to the dispute arising between them.<sup>19</sup> A mediation agreement in case of international mediation shall refer to an agreement for resolution in matters of commercial disputes only.<sup>20</sup>

## E. Pre-Litigation Mediation and the Power of Courts to Refer the Parties to Mediation

The 2021 version of the Mediation Bill mandated pre-litigation mediation, irrespective of the existence of a mediation agreement before filing any suit or proceeding of civil or commercial nature in any court. The 117th Report recommended that this be amended to voluntary mediation before commencing litigation, on the premise that compulsory or mandatory mediation amounts to denial to justice where the parties are unwilling to mediate.<sup>21</sup> Further, that the object of mediation is voluntary resolution and therefore parties cannot be compelled for mediation involuntarily.

<sup>15</sup> The Mediation Act, 2023, Section 6 read with the First Schedule.

<sup>16</sup> The Mediation Act, 2023, Proviso to Section 6(1).

<sup>17</sup> The Mediation Act, 2023, Section 4(1).

<sup>18</sup> The Mediation Act, 2023, Section 4(3).

<sup>19</sup> The Mediation Act, Section 4(5).

<sup>20</sup> The Commercial Courts Act 2015, s 2(1)(c).

<sup>21</sup> Report, Page 83, Volume I.

Section 5(1) of the Mediation Act provides that irrespective of any mediation agreement, the parties may voluntarily, and with mutual consent, refer the dispute for settlement by mediation before filing any case of civil or commercial nature in any court.<sup>22</sup> This excludes commercial disputes of specified value,<sup>23</sup> that are subject to compulsory pre-litigation mediation under the Commercial Courts Act, 2015.<sup>24</sup> Further, any court/tribunal may at any stage of a proceeding, refer the parties to undertake mediation, irrespective of whether there is a mediation agreement or not.<sup>25</sup> Additionally, when an application for compensation arising out of an accident is made before the Claims Tribunal, if the settlement as provided for in Section 149 of the Motor Vehicles Act, 1988, is not arrived at between the parties, the Claims Tribunal shall refer the parties for mediation in accordance with the provisions of the Mediation Act.<sup>26</sup>

## F. Interim Orders for Protection

The court or tribunal may pass suitable interim order(s) in such court referred mediations to protect the interest of any party if it deems appropriate.<sup>27</sup> However, the Mediation Act does not specify the nature and extent of such interim orders (unlike Section 9 of the A&C Act).

However, it is important to note that, while the A&C Act offers some guidance on the types of interim orders that can be issued, the Mediation Act lacks this level of specificity, leaving room for interpretation and potential variance in practice. The Mediation Act also lacks analogous guiding principles and does not furnish equivalent clarity for appointment of a mediator as provided by the Fifth Schedule of the A&C Act for the appointment of an arbitrator. It is hoped that the rules to be framed under Section 52 of the Mediation Act will bridge this gap.

## G. Appointment of Mediators

A person of any nationality may be appointed as a mediator according to a process agreeable by the parties.<sup>28</sup> However, the party autonomy is curtailed by the proviso to Section 8(1) which provides that in case of a foreign mediator, he/she shall possess such qualification, experience and accreditation “as may be prescribed”. Failing agreement, the parties may make an application to the Mediation Service Provider (see below) for appointment of a mediator from the panel of mediators maintained by it, which must take into consideration the preference of the parties and suitability of the mediator in resolving the dispute.<sup>29</sup>

---

<sup>22</sup> The Mediation Act, 2023, Section 5(1).

<sup>23</sup> Commercial Courts Act, 2015, s 2(1)(i).

<sup>24</sup> Commercial Courts Act, 2015, s 12A; The Mediation Act, 2023, the Ninth Schedule.

<sup>25</sup> The Mediation Act, 2023, Section 7(1).

<sup>26</sup> The Mediation Act, 2023, Section 5(6).

<sup>27</sup> The Mediation Act, 2023, Section 7(2).

<sup>28</sup> The Mediation Act, 2023, Section 8(1) and 8(2).

<sup>29</sup> The Mediation Act, 2023, Section 9.

---

**Codification of Mediation in India: The Mediation Act**

The mediator proposed to be appointed is required to disclose, in writing, any circumstances (personal, professional, financial or otherwise) that may give rise to any conflict of interest or give rise to justifiable doubts as to his independence or impartiality,<sup>30</sup> in line with the standard of disclosure adopted under UNCITRAL Model Laws,<sup>31</sup> and the International Bar Association (IBA) Guidelines on Conflict of Interest in International Arbitration.<sup>32</sup> This is a continuing obligation, and the mediator is required to intimate if any such circumstances arise during the course of the proceedings,<sup>33</sup> which conflict may be waived by the parties expressly in writing.<sup>34</sup> Further, a mediator so appointed cannot act as an arbitrator or a counsel/representative of a party in any arbitral or judicial proceeding which is subject matter of the mediation proceedings or be presented as witness in any proceeding.<sup>35</sup>

While for the appointment of an arbitrator, the grounds are elaborately set out in the Fifth Schedule of the A&C Act which “shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator”<sup>36</sup> based on the IBA Guidelines on Conflicts of Interest in International Arbitration, the Mediation Act provides no such guiding principles.

We can expect similar guiding factors to be set out in the rules to be framed by the Mediation Council of India (*defined herein below —next page*).<sup>37</sup>

---

30 The Mediation Act, 2023, Section 10(1).

31 UNCITRAL, Model Law on International Commercial Arbitration (1985), Article 12(1).

32 International Bar Association, IBA Guidelines on Conflict of Interest in International Arbitration. (2014), Part I (2) Conflict of Interest.

33 The Mediation Act, 2023, Section 10(2).

34 The Mediation Act, 2023, Section 10(3).

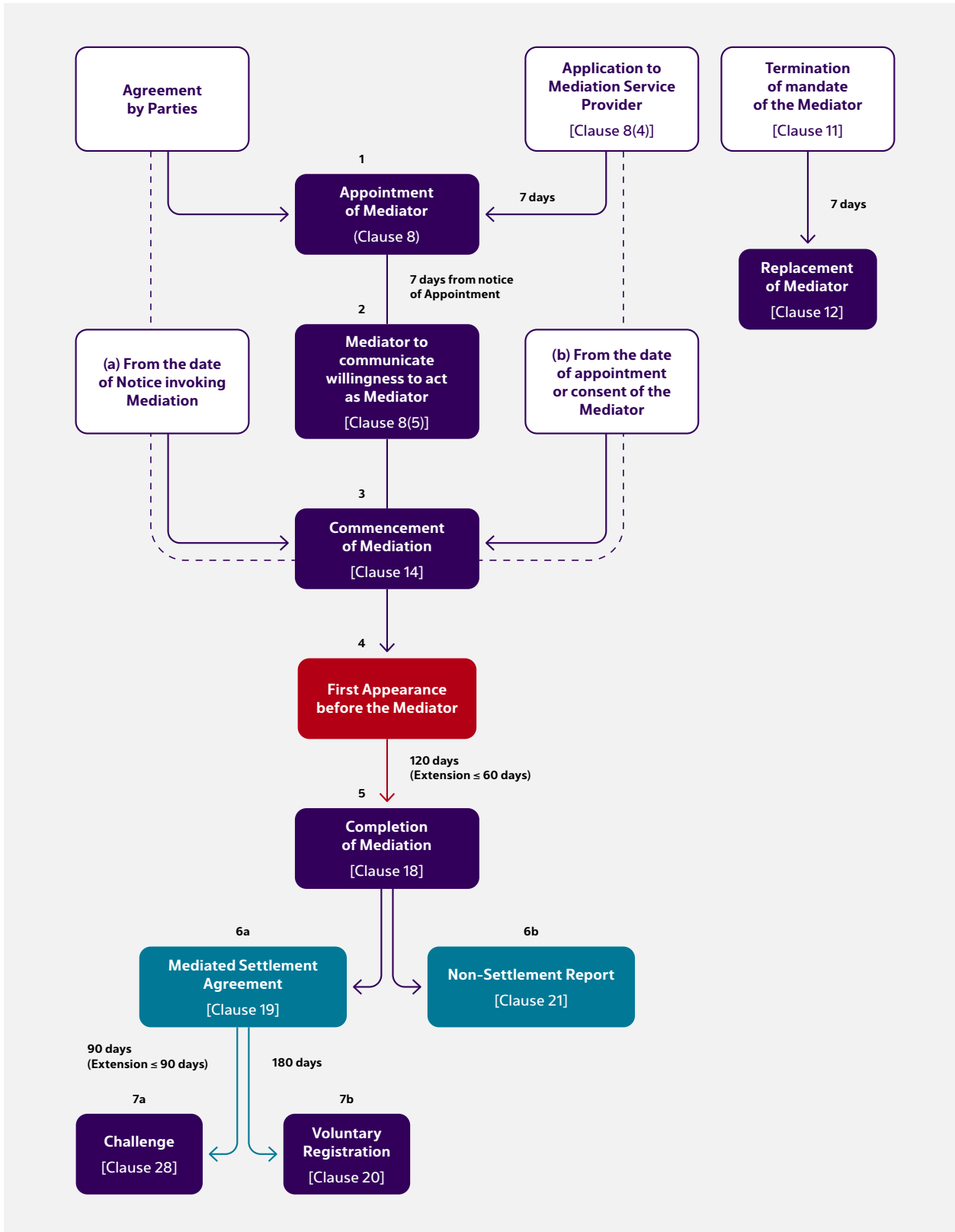
35 The Mediation Act, 2023, Section 17.

36 The Arbitration and Conciliation Act, Explanation 1 to s.12 read with Fifth Schedule.

37 The Mediation Act, Section 38(f) and 52(2)(c).



## H. Mediation Proceedings: An Overview



- a. **Place of mediation:** The mediation shall take place within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of the dispute, or at any other place by mutual consent of the parties.<sup>38</sup> Parties may also conduct the mediation proceedings (including pre-litigation mediation) online, provided the parties agree to do so by written consent.<sup>39</sup>
- b. **Process:** Mediation is deemed to have commenced from the date a party receives notice invoking mediation under a mediation agreement. In case there is no such agreement, from the date of appointment or consent of the mediator to be appointed, whichever the case may be. The mediator is required to assist the parties in an independent, neutral and impartial manner guided by principles of objectivity and fairness. The mediator may meet the parties separately or jointly, as frequently as required. The mediator shall not be bound by the principles of Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.<sup>40</sup> This would ensure more flexibility from procedural requirements and party autonomy in arriving at an amicable settlement.
- c. **Role of the mediator:** The mediator's role is limited to facilitating voluntary resolution of the dispute by assisting the parties in identifying the issue, advance better understanding, clarify priorities, explore areas of settlement, generate options and lay emphasis on the ultimate responsibility of the parties to take a decision regarding their claims — whilst ensuring that the mediator does not impose a settlement on the parties or give an assurance that the mediation may result in a settlement.<sup>41</sup>
- d. **Time-limit:** The mediation proceeding is required to be completed within a period of 120 days from the date fixed for the first appearance of the mediator. This may be extended by a further period mutually agreed upon by the parties, not exceeding 60 days.<sup>42</sup> A corresponding amendment has also been proposed to the Commercial Courts Act 2015 in case of pre-institution mediation which currently requires the process of mediation to be completed within a period of three months from the date of application made by the plaintiff extendable for a further period of two months with the consent of the parties.<sup>43</sup> Mediation, as a voluntary process, cannot be coercively imposed on disputing parties. This is reflected in the Mediation Act. While honoring party autonomy, the Mediation Act seeks to adopt a balanced approach by introducing well-defined timelines to prevent the process from devolving into an indefinite and unproductive endeavor. It acknowledges the voluntary nature of mediation while also recognizing the need for structure to safeguard against unnecessary delays.
- e. **Confidentiality:** Parties and participants involved in mediation are obligated to keep confidential several aspects, including statements, proposals, documents, and any other communication exchanged during the mediation.<sup>44</sup> Moreover, recording mediation proceedings through audio or video is prohibited to ensure confidentiality. Importantly, the information discussed during mediation cannot be used as evidence in court, arbitration, or any legal proceedings.<sup>45</sup> This extends the protection under “without prejudice privilege” to parties to encourage them to engage in candid discussions towards an amicable settlement.<sup>46</sup>

---

38 The Mediation Act, 2023, Section 13.

39 The Mediation Act, 2023, Section 30.

40 The Mediation Act, 2023, Section 15.

41 The Mediation Act, 2023, Section 16.

42 The Mediation Act, 2023, Section 18.

43 The Commercial Courts Act 2015, s 12A.

44 The Mediation Act, 2023, Section 22.

45 The Mediation Act, 2023, Sections 22(3), 23.

46 Privilege and Waiver: Without Prejudice Privilege, January 2021:

[https://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research\\_Papers/Privilege-and-Waiver-Part-II.PDF](https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Privilege-and-Waiver-Part-II.PDF).

This section clarifies that confidentiality does not apply to mediated settlement agreements (*defined below*) needed for registration, enforcement, or challenge.<sup>47</sup> Additionally, mediators, participants, experts, and administrators involved in the mediation process are prohibited from disclosing mediation communications or contents in court or adjudicatory proceedings. However, this privilege does not shield information related to threats of criminal activity, domestic violence, child abuse, or statements posing significant threats to public health or safety and claims of professional misconduct or malpractice during mediation.<sup>48</sup>

## I. Mediated Settlement Agreements: Form, Registration, Enforcement and Challenge

- a. **Form:** The agreement is required to be (a) in writing, (b) may be between some or all parties in the mediation, (c) settling some or all disputes between such parties, (d) authenticated by the mediator and signed by all the parties voluntarily, failing which it would be void.<sup>49</sup> Further, the terms of the mediated settlement agreement may extend beyond the scope of matters that have been referred to mediation, unlike under Section 16 of the A&C Act where the scope of the award is required to be restricted to the scope of disputes referred to arbitration under the arbitration agreement. Therefore, unlike the A&C Act, where the award is confined strictly to the issues directly referred to arbitration, this approach acknowledges that disputes can be multi-faceted and interconnected. It may facilitate a more holistic and comprehensive resolution, as parties can negotiate on various aspects of their relationship or dispute, leading to a more comprehensive and lasting solution.
- b. **Registration:** Parties have the option to register a mediated settlement agreement other than those arrived in a court or tribunal referred mediation or under the Legal Services Authorities Act, 1987, with the authority under the said act or as may be specified, within 180 days (subject to extension) of receiving the authenticated copy of the Agreement. Registration is not, however, compulsory.<sup>50</sup> The Mediation Act does not specify the implications of non-registration of the same.<sup>51</sup>
- c. **Non-settlement Report:** Where no agreement is arrived at between the parties within the time prescribed, or where the mediator is of the opinion that no settlement is possible, a signed non-settlement report is required to be submitted by the mediator to the parties in case of an ad hoc mediation and to the Mediation Service Provider (*defined below*) in case of an institutional mediation.<sup>52</sup> In furtherance of the interests of the parties, the non-settlement report would also be subject to confidentiality and the mediator shall not disclose reasons for non-settlement or any information related to the conduct of the parties during the mediation.<sup>53</sup>
- d. **Finality and Enforcement:** A mediated settlement agreement is final and binding on the parties.<sup>54</sup> Further, it shall be enforceable as a decree or judgement of a court.<sup>55</sup>

<sup>47</sup> The Mediation Act, Explanation to Section 22.

<sup>48</sup> The Mediation Act, Section 23.

<sup>49</sup> The Mediation Act, 2023, Section 19.

<sup>50</sup> The Mediation Act, 2023, Section 20.

<sup>51</sup> Report, Para 3.149, Page 46, Volume I.

<sup>52</sup> The Mediation Act, 2023, Section 21.

<sup>53</sup> The Mediation Act, 2023, Proviso to Section 21.

<sup>54</sup> The Mediation Act, 2023, Section 27(1).

<sup>55</sup> The Mediation Act 2023, Section 27(2).

- e. **Challenge:** The grounds for challenging a mediated settlement agreement are four-fold, i.e., existence of fraud, corruption, impersonation and where the subject matter of dispute was not subject to mediation under Section 6 of the Mediation Act.<sup>56</sup> An application for challenging the settlement agreement may be filed within 90 days from receipt of the copy of mediated settlement agreement, subject to an extension of time as per the court's discretion in case of sufficient cause. While the Mediation Act is well-intended by restricting the grounds of challenge, they may be subjected to abuse by recalcitrant parties, defeating the purpose of the Mediation Act. Therefore, the interpretation by way of judicial precedents may provide some guidance in this respect.

## J. Institutional Mediation under the Mediation Act

### I. Mediation Service Providers

Section 40 provides that mediation proceedings may be conducted by a Mediation Service Provider which includes a body or an organization, or b) an authority constituted under the Legal Services Act, 1987, c) a court annexed mediation center, or d) any other body as notified, provided any of these are recognized by the MCI (*defined below*) for conduct of mediation proceedings under the Mediation Act.<sup>57</sup> The Mediation Service Providers are tasked with the duty to *inter alia* accredit mediators and maintain a panel of mediators, provide all facilities such as secretarial assistance and infrastructure for the conduct of mediation proceedings, facilitate registration of mediated settlement agreements.

### II. Mediation Council of India

The Mediation Act refers to establishment of a Mediation Council of India (“MCI”),<sup>58</sup> in the form of a corporate body, tasked with duties to inter alia develop India to be a robust center for domestic and international mediation. The MCI is also expected to provide for the manner to conduct mediation proceedings, recognize, renew, cancel or suspend Mediation Service Providers, maintain an electronic depository of mediated settlement agreements, submit annual report on implementation of the provisions of the Mediation Act to the Central Government.<sup>59</sup> The MCI would also have the power to frame rules and regulations consistent with the provisions of the Mediation Act.<sup>60</sup> The provisions pertaining to the establishment of MCI have recently been notified.<sup>61</sup>

<sup>56</sup> The Mediation Act, 2023, Section 28.

<sup>57</sup> The Mediation Act, 2023, Section 40.

<sup>58</sup> The Mediation Act, 2023, Section 31.

<sup>59</sup> The Mediation Act, 2023, Section 38.

<sup>60</sup> The Mediation Act, 2023, Section 52.

<sup>61</sup> Notification S.O 4384 (E) [F.No. A-60011/45/2023-ADR] dated 09 October 2023].

# Enforcing Mediated Settlement Agreements:

## United Nations Convention on International Settlement Agreements Resulting from Mediation

### A. Introduction and Scope

The Singapore Convention on Mediation (**“Singapore Convention”**) provides a framework for cross-border enforcement of settlement agreements resulting from international mediation. The Singapore Convention is a landmark multilateral treaty aimed at providing a cohesive and efficient mechanism for enforcing international settlement agreements arising from mediation. The Singapore Convention only covers mediated settlement agreements that are commercial in nature and specifically excludes disputes arising from transactions by consumers for personal, family, or household purposes, or relating to family, inheritance, or employment law.<sup>1</sup>

### B. Genesis of the Singapore Convention

The genesis of the Singapore Convention can be traced back to the deliberations of the UNCITRAL Working Group II (Dispute Settlement) (WGII), which began in 2014. The WGII was tasked with exploring the feasibility of enforcing international settlement agreements resulting from conciliation proceedings and proposing potential solutions. Through extensive consultations involving 85 member states and 35 non-governmental organizations across six sessions, the WGII developed a consensus on various issues. Ultimately, the WGII produced a draft convention on international settlement agreements resulting from mediation, along with an amendment to the UNCITRAL Model Law on International Commercial Conciliation (2002). These drafts were finalized and adopted at the fifty-first UNCITRAL Commission session in July 2018.<sup>2</sup> Following the UNCITRAL Commission’s endorsement, the United Nations General Assembly unanimously passed a resolution in December 2018 to adopt the Convention.<sup>3</sup> Singapore and Fiji became the first two countries to deposit their instruments of ratification in February 2020. Qatar followed suit in March 2020, leading to the Convention’s entry into force on September 12, 2020.

---

1 Article 1(2), Singapore Convention.

2 A/73/17, Report of the United Nations Commission on International Trade Law, General Assembly, Official Records, Seventy-third session, Supplement No. 17, available at: <https://undocs.org/A/73/17>.

3 A/RES/73/198, Resolution adopted by the General Assembly, dated 20 December 2018: <https://undocs.org/A/RES/73/198>.

## C. Some Key Provisions

Settlement agreements can be directly enforced in the competent authority of a party state, in accordance with its rules of procedure and under the conditions laid down in the Singapore Convention.<sup>4</sup> Further, where a dispute arises relating to a matter which has already been resolved by the settlement agreement, the agreement can be invoked to prove that the matter has been resolved.<sup>5</sup> The competent authority of a party to the Singapore Convention may refuse to grant relief on the grounds laid down in the Singapore Convention, inclusive of a) if a party to the settlement agreement was under incapacity;<sup>6</sup> (b) If the settlement agreement is not binding, null and void, inoperative or incapable of being performed under the law to which it is subjected or has been subsequently modified;<sup>7</sup> (c) If there was a serious breach by the mediator in terms of applicable mediator standards;<sup>8</sup> (d) failure to disclose circumstances that raise doubts as to mediator impartiality or independence without which the party would not have entered into the agreement;<sup>9</sup> (e) if granting relief would be contrary to the public policy of the party state.<sup>10</sup>

Article 14(1) provides that the Singapore Convention shall come into force six months from deposit of the instrument of ratification, acceptance, approval or accession by at least three-member states.

## D. Global Status of the Singapore Convention<sup>11</sup>

The Singapore Convention has seen steady growth in signatories, with 57 countries having signed it as of June 27, 2024. Of these signatories, fourteen countries have ratified the Convention, solidifying its status as a vital instrument for facilitating international dispute resolution and promoting trade and investment on a global scale. Despite the growing intent of such developing countries towards ratifying Singapore Convention, yet many developed jurisdictions such as the UK, USA, China and India have not yet ratified the Singapore Convention.

---

4 Art 3(1), Singapore Convention.

5 Article 3(2), Singapore Convention.

6 Article 5(1)(a), Singapore Convention.

7 Art 5(1)(b), Singapore Convention.

8 Art 5(1)(e), Singapore Convention.

9 Art 5(1)(f), Singapore Convention.

10 Art 5(2)(a), Singapore Convention.

11 Singapore Convention on Mediation, <https://www.singaporeconvention.org>.

## Enforcing Mediated Settlement Agreements

Jurisdictions<sup>12</sup>

Name of Country	Date of Signing	Date of Ratification	Date of Entry into Force
Belarus	7-Aug-19	15-Jul-20	15-Jan-21
Ecuador	25-Sep-19	9-Sep-20	9-Mar-21
Fiji	7-Aug-19	25-Feb-20	12-Sep-20
Georgia	7-Aug-19	29-Dec-21	29-Jun-22
Honduras	7-Aug-19	2-Sep-21	2-Mar-22
Japan	—	1-Oct-23	1-Apr-24
Kazakhstan	7-Aug-19	23-May-22	23-Nov-22
Nigeria	7-Aug-19	27-Nov-23	27-May-24
Qatar	7-Aug-19	12-Mar-20	12-Sep-20
Saudi Arabia	7-Aug-19	5-May-20	5-Nov-20
Singapore	7-Aug-19	25-Feb-20	12-Sep-20
Sri Lanka	7-Aug-19	28-Feb-24	28-Aug-24
Turkey	7-Aug-19	11-Oct-21	11-Apr-22
Uruguay	7-Aug-19	28-Mar-23	28-Sep-23

<sup>12</sup> <https://www.singaporeconvention.org/jurisdictions>.

Details pertaining to the status of the mediation legislation in the following jurisdictions are highlighted herein below:

## Japan

Japan has ratified the Singapore Convention on Mediation on 1 October 2023.<sup>13</sup> Japan approved the Act for Implementation of the United Nations Convention on International Settlement Agreements Resulting from Mediation (Act No. 16 of 202) (“**Japanese Mediation Act**”) on 21 April 2023, with the Japanese Mediation Act coming into force on 1 April 2024.<sup>14</sup>

However, Japan has made a reservation with respect to the convention wherein, the Government of Japan declares that the Singapore Convention shall apply only to the extent that the parties to the settlement agreement have agreed to the application of the Singapore Convention.<sup>15</sup>

## Saudi Arabia

Saudi Arabia ratified the Singapore Convention with a reservation excluding governmental agencies from its application.<sup>16</sup> The Singapore Convention was implemented vide Royal Decree No. 96 dated April 9, 2020,<sup>17</sup> making international mediated settlement agreements enforceable in the Courts of the Kingdom of Saudi Arabia with effect from November 5, 2020. International mediated settlement agreements are likely to be enforced similarly to arbitral awards, using the Kingdom’s Execution Law.<sup>18</sup> This law covers various documents, including contracts, commercial papers, and judgments, and requires adherence to Sharia principles unless stated otherwise. During execution, the judge can take precautionary measures and may order assistance from authorities.<sup>19</sup> Parties have five days to meet obligations after notification of the execution order, with potential measures like travel bans or asset freezing if not complied with.<sup>20</sup> Additionally, Saudi Arabia has implemented various initiatives to promote alternative dispute resolution (ADR), including mandatory mediation for certain commercial disputes and the launch of the Taradhi platform for remote mediation services. The Ministry of Justice has established conciliation centers and empowered notaries to notarize mediated settlement agreements, aiming to increase the success rate of mediations and reduce litigation.<sup>21</sup>

13 “Entry into Force of the ‘Singapore Convention on Mediation’ for Japan.” Ministry of Foreign Affairs of Japan: [https://www.mofa.go.jp/press/release/pressite\\_000001\\_00258.html](https://www.mofa.go.jp/press/release/pressite_000001_00258.html).

14 “Conclusion of the ‘Singapore Convention on Mediation’ by Japan.” Ministry of Foreign Affairs of Japan: [https://www.mofa.go.jp/press/release/press6e\\_000501.html](https://www.mofa.go.jp/press/release/press6e_000501.html).

15 Art 8(1)(b), Singapore Convention.

16 “Saudi Arabia Ratifies the United Nations Convention on International Settlement Agreements Resulting from Mediation.” United Nations: Information Service Vienna.: <https://unis.unvienna.org/unis/en/pressrels/2020/unisl296.html>.

17 <https://www.moj.gov.sa/Documents/Regulations/pdf/96.pdf>.

18 Royal Decree No. M/53 dated 3 July 2012, available at: [https://sadr.org/assets/uploads/Enforcement\\_Law.pdf](https://sadr.org/assets/uploads/Enforcement_Law.pdf).

19 Execution Law, Article 7.

20 Execution Law, Article 46.

21 <https://www.singaporeconvention.org/jurisdictions/saudi-arabia>.



## Singapore

The Singapore Convention on Mediation Act 2020 (“SCMA”),<sup>22</sup> and the Supreme Court of Judicature (Singapore Convention on Mediation) Rules 2020,<sup>23</sup> provide the legal framework for implementing Singapore’s obligations under the Singapore Convention on Mediation. The SCMA enables international mediated settlement agreements to be recorded by the High Court for enforcement or invocation. Such agreements can also be invoked directly as a defense in existing court proceedings.<sup>24</sup> The application process follows requirements similar to those of the Singapore Convention, supplemented by additional requirements outlined in the said Rules.<sup>25</sup>

Key documents required for applications include the signed settlement agreement, evidence of mediation, any other documents requested by the court for verification, and a certified translation if the agreement is not in English. An affidavit stating the purpose of the application and compliance with SCMA requirements is also necessary.<sup>26</sup>

The Mediation Act 2017 (“MA”)<sup>27</sup> applicable to mediation proceedings with ties to Singapore, was amended alongside the SCMA. It clarifies that international mediated settlement agreements covered by both acts can be recorded as a court order under either, providing flexibility for parties. While the SCMA focuses on enforcement and invocation of settlement agreements, the MA encompasses agreements to mediate and includes provisions on the mediation process.

Key features of the MA include provisions for staying court proceedings, restrictions on disclosure and admissibility of mediation communication, and recording settlement agreements as court orders for enforcement. However, the MA imposes additional requirements for recording agreements compared to the SCMA, such as the consent of all parties, an 8-week timeframe from agreement to recording, and mediation administered by designated providers or certified mediators.

Legislation amendments accompanying the MA promote mediation in Singapore. Amendments to the Civil Law Act,<sup>28</sup> permit third-party funding in mediation related to arbitration and certain court proceedings, while amendments to the Legal Profession Act<sup>29</sup> exempt mediators and foreign lawyers representing parties in mediation from legal profession regulations. These legal frameworks aim to bolster mediation as a preferred method for dispute resolution in Singapore.

---

22 Singapore Convention on Mediation Act, 2020, available at: <https://sso.agc.gov.sg/Act/SCMA2020>.

23 Supreme Court of Judicature (Singapore Convention on Mediation) Rules 2020, available at: <https://sso.agc.gov.sg/SL/SCJA1969-S761-2020?DocDate=20200911>.

24 SCMA, Section 4.

25 SCMA, Section 6 read with Supreme Court of Judicature (Singapore Convention on Mediation) Rules 2020, Rule 6 and Singapore Convention, Article 4.

26 SCMA, Section 6.

27 Mediation Act, 2017; <https://sso.agc.gov.sg/Act/MA2017>.

28 Civil Law Act, 1909, available at: <https://sso.agc.gov.sg/Act/CLA1909>.

29 Legal Profession Act, 1996, available at: <https://sso.agc.gov.sg/Act/LPA1966>.

## India

Although India became a signatory to the Singapore Convention on 7 August 2019, it is yet to be ratified.<sup>30</sup> Therefore, the Mediation Act does not adopt the Singapore Convention on Mediation, akin to the adoption of the ‘United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards’ (“**New York Convention**”), under the A&C Act.

The progress towards ratifying the convention will be accompanied by challenges in enforcing international settlements, given the provisions of the Mediation Act, 2023. This act deems international mediation conducted within India as domestic, with settlements recognized as court judgments or decrees. However, the Singapore Convention does not extend to settlements already considered judgments or decrees. Consequently, conducting cross-border mediation in India may result in forfeiting the significant advantages of global enforceability.

Recently, the Ministry of Finance, vide its office memorandum No. F.1/2/2024-PPD, dated June 03, 2024, released new guidelines, called ‘Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement – reg.’<sup>31</sup>. These guidelines are aimed at addressing the adoption of dispute resolution mechanisms in contracts of domestic public procurement entered into by the Government and by its entities and agencies (including Central Public Sector Enterprises, Public Sector Banks etc. and Government companies). It further provides that the introduction of the Mediation Act, 2023 has prompted a re-evaluation of dispute resolution strategies, advocating for mediation alongside arbitration and litigation. Successful models in sectors like oil and gas demonstrate mediation’s potential, leading to specific guidelines for government contracts. These guidelines encourage adoption of mediation, suggest inclusion in contracts, and promote amicable settlements. Further, it is also clarified that the non-inclusion of mediation in procurement tenders/ contracts does not preclude the possibility of pre-litigation mediation. The guidelines also propose a High-Level Committee for complex disputes, comprising retired judges and technical experts, to oversee fair resolutions. Ultimately, mediation underpins the Indian Government’s evolving approach to achieve timely and equitable outcomes in contractual disputes, complementing existing arbitration frameworks.

---

<sup>30</sup> Report, Para 1.13, Page 6, Volume I.

<sup>31</sup> Office Memorandum No. F.1/2/2024-PPD, dated June 03, 2024, Dept. of Expenditure Procurement Policy Division, Ministry of Finance, available at: <https://doe.gov.in/circulars/guidelines-arbitration-and-mediation-contracts-domestic-publicprocurement-reg.>

## Looking Forward

The Mediation Act is a welcome step towards transforming the landscape of dispute resolution by offering parties an effective and efficient avenue to resolve conflicts voluntarily and without any form of adjudication. The Mediation Act provides for corresponding amendments to be brought about in existing statutes, including the Indian Contract Act, 1872,<sup>1</sup> the Code of Civil Procedure, 1908,<sup>2</sup> the Legal Services Authorities Act, 1987,<sup>3</sup> the Arbitration and Conciliation Act, 1996,<sup>4</sup> the Micro, Small and Medium Enterprises Development Act, 2006,<sup>5</sup> the Companies Act, 2015,<sup>6</sup> the Commercial Courts Act 2015,<sup>7</sup> and the Consumer Protection Act, 2019.<sup>8</sup>

While the concept of mediation remains completely voluntary and optional, the recognition and formalization of the process and method into a statute demonstrates its growth as an effective form of alternative dispute resolution.

The Mediation Act represents a significant step towards fostering a culture of amicable alternative dispute resolution in India. Introduced with the primary objective of promoting and facilitating mediation, the Mediation Act emphasizes institutional, online, and community mediation as an effective means of resolving disputes in a timely manner. Its applicability spans a broad spectrum of cases, encompassing parties residing or doing business in India, as well as international commercial disputes involving foreign entities.

The journey of the Mediation Act through the legislative process, including the recommendations from the Standing Committee, demonstrates a conscientious effort to strike a balance between voluntary participation and judicial intervention — while protecting confidentiality and privileged communications of parties intending to settle disputes amicably. The establishment of MCI, the provisions for mediated settlement agreements, and the role of mediation service providers collectively lay the groundwork for a comprehensive mediation framework.

Having said that, there are a few misses like absence of statutory enforcement of mediated settlement agreements passed in mediations conducted outside India — in sync with the Singapore Convention. In a world where mediation is fast becoming an effective and preferred dispute resolution mechanism, the Mediation Act has, perhaps, lost an opportunity to provide for an all-encompassing law where mediated settlements entered into by parties anywhere in the world can be enforced in India. This is expected to be remedied by the ratification and adoption of the Singapore Convention by India. This is likely to affect uptake of mediation in resolution of cross border commercial disputes significantly.

---

1 The Mediation Act, 2023, Section 58 read with the Third Schedule.

2 The Mediation Act, 2023, Section 59 read with the Fourth Schedule.

3 The Mediation Act, 2023, Section 60 read with the Fifth Schedule.

4 The Mediation Act, 2023, Section 61 read with the Sixth Schedule.

5 The Mediation Act, 2023, Section 62 read with the Seventh Schedule.

6 The Mediation Act, 2023, Section 63 read with the Eighth Schedule.

7 The Mediation Act, 2023, Section 64 read with the Ninth Schedule.

8 The Mediation Act, 2023, Section 65 read with the Tenth Schedule.



## About NDA

At Nishith Desai Associates, we have earned the reputation of being Asia's most Innovative Law Firm — and the go-to specialists for companies around the world, looking to conduct businesses in India and for Indian companies considering business expansion abroad. In fact, we have conceptualized and created a state-of-the-art Blue Sky Thinking and Research Campus, Imaginarium Aligunjan, an international institution dedicated to designing a premeditated future with an embedded strategic foresight capability.

We are a research and strategy driven international firm with offices in Mumbai, Palo Alto (Silicon Valley), Bengaluru, Singapore, New Delhi, Munich, and New York. Our team comprises of specialists who provide strategic advice on legal, regulatory, and tax related matters in an integrated manner basis key insights carefully culled from the allied industries.

As an active participant in shaping India's regulatory environment, we at NDA, have the expertise and more importantly — the VISION — to navigate its complexities. Our ongoing endeavors in conducting and facilitating original research in emerging areas of law has helped us develop unparalleled proficiency to anticipate legal obstacles, mitigate potential risks and identify new opportunities for our clients on a global scale. Simply put, for conglomerates looking to conduct business in the subcontinent, NDA takes the uncertainty out of new frontiers.

As a firm of doyens, we pride ourselves in working with select clients within select verticals on complex matters. Our forte lies in providing innovative and strategic advice in futuristic areas of law such as those relating to Blockchain and virtual currencies, Internet of Things (IOT), Aviation, Artificial Intelligence, Privatization of Outer Space, Drones, Robotics, Virtual Reality, Ed-Tech, Med-Tech and Medical Devices and Nanotechnology with our key clientele comprising of marquee Fortune 500 corporations.

The firm has been consistently ranked as one of the Most Innovative Law Firms, across the globe. In fact, NDA has been the proud recipient of the Financial Times–RSG award 4 times in a row, (2014-2017) as the Most Innovative Indian Law Firm.

We are a trust based, non-hierarchical, democratic organization that leverages research and knowledge to deliver extraordinary value to our clients. Datum, our unique employer proposition has been developed into a global case study, aptly titled 'Management by Trust in a Democratic Enterprise,' published by John Wiley & Sons, USA.

## Research@NDA

Research is the DNA of NDA. In early 1980s, our firm emerged from an extensive, and then pioneering, research by Nishith M. Desai on the taxation of cross-border transactions. The research book written by him provided the foundation for our international tax practice. Since then, we have relied upon research to be the cornerstone of our practice development. Today, research is fully ingrained in the firm's culture.

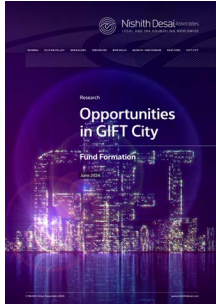
Over the years, we have produced some outstanding research papers, reports and articles. Almost on a daily basis, we analyze and offer our perspective on latest legal developments through our "Hotlines". These Hotlines provide immediate awareness and quick reference, and have been eagerly received. We also provide expanded commentary on issues through detailed articles for publication in newspapers and periodicals for dissemination to wider audience. Our NDA Labs dissect and analyze a published, distinctive legal transaction using multiple lenses and offer various perspectives, including some even overlooked by the executors of the transaction. We regularly write extensive research papers and disseminate them through our website. Our ThinkTank discourses on Taxation of eCommerce, Arbitration, and Direct Tax Code have been widely acknowledged.

As we continue to grow through our research-based approach, we now have established an exclusive four-acre, state-of-the-art research center, just a 45-minute ferry ride from Mumbai but in the middle of verdant hills of reclusive Alibaug-Raigadh district. Imaginarium AliGunjan is a platform for creative thinking; an apolitical ecosystem that connects multi-disciplinary threads of ideas, innovation and imagination. Designed to inspire 'blue sky' thinking, research, exploration and synthesis, reflections and communication, it aims to bring in wholeness — that leads to answers to the biggest challenges of our time and beyond. It seeks to be a bridge that connects the futuristic advancements of diverse disciplines. It offers a space, both virtually and literally, for integration and synthesis of knowhow and innovation from various streams and serves as a dais to internationally renowned professionals to share their expertise and experience with our associates and select clients.

We would love to hear from you about any suggestions you may have on our research publications. Please feel free to contact us at [research@nishithdesai.com](mailto:research@nishithdesai.com).

## Recent Research Papers

Extensive knowledge gained through our original research is a source of our expertise.



June 2024  
**Opportunities in GIFT City**  
Fund Formation



June 2024  
**From Capital to Impact: Role of Blended Finance**  
Legal and Regulatory Framework



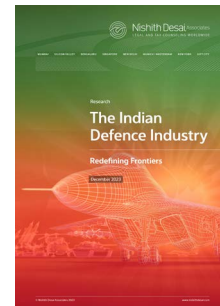
April 2024  
**Third-Party Funding for Dispute Resolution in India**  
Exploring Recent Developments and the Legal Landscape



February 2024  
**Tracking NFTs from Code to Court**  
Legal Considerations and Disputes



December 2023  
**Prevention of Sexual Harassment at the Workplace (POSH)**  
India Legal & HR Considerations



December 2023  
**The Indian Defence Industry**  
Redefining Frontiers

For more research papers [click here](#).



**Nishith Desai** Associates  
LEGAL AND TAX COUNSELING WORLDWIDE

**MUMBAI**

93 B, Mittal Court, Nariman Point  
Mumbai 400 021, India

Tel +91 22 6669 5000

**SILICON VALLEY**

220 S California Ave., Suite 201  
Palo Alto, California 94306, USA

Tel +1 650 325 7100

**BENGALURU**

Prestige Loka, G01, 7/1 Brunton Rd  
Bengaluru 560 025, India

Tel +91 80 6693 5000

**SINGAPORE**

Level 24, CapitaGreen  
138 Market St  
Singapore 048 946

Tel +65 6550 9855

**MUMBAI BKC**

3, North Avenue, Maker Maxity  
Bandra-Kurla Complex  
Mumbai 400 051, India

Tel +91 22 6159 5000

**NEW DELHI**

13-H, Hansalaya Building, 15  
Barakhamba Road, Connaught Place  
New Delhi 110 001, India

Tel +91 11 4906 5000

**NEW YORK**

1185 6th Avenue, Suite 326  
New York, NY 10036, USA

Tel +1 212 464 7050

**GIFT CITY**

408, 4th Floor, Pragya Towers  
GIFT City, Gandhinagar  
Gujarat 382 355, India

**Mediating Commercial Disputes in India**