ICC RULES AND ARBITRATION IN INDIA

Alexis Mourre & Abhinav Bhushan†*

Abstract

*The Rules of Arbitration of the International Chamber of Commerce, 2012 ["**ICC Rules**"] offer the parties to a dispute, a formal institutional framework to reach a binding decision or settlement, while ensuring that the tenets of transparency, efficiency and fairness are upheld. The ICC Rules envisage a structure in which the parties retain considerable autonomy and control over various aspects of the procedure. As the rules are framed by legal experts and jurists from diverse backgrounds, the ICC Rules present a merger of wide ranging legal traditions, cultures and professions that caters to the needs of today's diverse economy. This particular feature of the rules, among others, makes it best suited to meet the demands of a developing economy like India that is witnessing a wave of change from dispute resolution in courts to dispute resolution based in arbitrations. The first part of this paper shall analyse the status of dispute resolution in India, with special focus on arbitration as a method of dispute settlement. In the second part of this paper, the author wishes to throw light on a pressing issue that has surrounded the courts in India with respect to Indian parties choosing foreign law or foreign seat of arbitration. In the third part, the author elucidates the manner in which the ICC Rules can assist in the evolving status of arbitration in India.*

I. Status of Dispute Resolution in India

The dispute resolution process has a huge impact in the way the Indian economy will be perceived globally by investors when it comes to making choices based on the 'ease of doing business' in India. Unfortunately, Indian courts are known for a mountainous backlog of cases. India has an estimated 31 million cases pending in various courts.[1] As of December 31, 2015 there were 59,272 cases pending in the Supreme Court of India, around 3.8 million cases pending in the High Courts and around 27 million pending before the subordinate judiciary.[2] More than 8.5 million, which comprises about 26% of the total number of cases, are over 5 years old.[3] On an average it takes twenty years for a real estate or land dispute to be resolved. As a result, India ranks 100 out of 190 countries in the World Bank rating on *Ease of Doing Business 2018*.[4] The ease of doing business index measures regulations directly affecting the private sector in a country.

Majority of the companies in India (around 61%) adopt a dispute resolution clause when they enter into a contract, be it in the nature of hire-purchase agreements, construction contracts,

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* Alexis Mourre is the President, ICC International Court of Arbitration.

† Abhinav Bhushan is the Director, South Asia, ICC International Court of Arbitration.

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1 Bibek Debroy & Suparna Jain, *Strengthening Arbitration and its Enforcement in India – Resolve in India*, NITI AAYOG REPORT (2016), *available at* http://niti.gov.in/writereaddata/files/document_publication/Arbitration.pdf .

2 *Id.*

3 *Id.*

4 *Doing Business 2018: Economy Profile Of India*, WORLD BANK GROUP (2018), at 4 *available at* http://www.doingbusiness.org/~/media/WBG/DoingBusiness/Documents/Profiles/Country/IND.pdf.

mortgage agreements, energy etc.[5] It has been revealed that 91% of the companies surveyed in India, who have a dispute resolution policy, include arbitration (not litigation) for resolution of future disputes.[6] This clearly shows a trend towards arbitration being chosen as one of the most favoured forms of dispute resolution as far as companies and corporates are concerned. Realizing that arbitration is the need of the hour as far as Indian litigants are concerned, the International Chamber of Commerce ["**ICC**"] International Court of Arbitration supported a three-day conference entitled "*National Initiative towards Strengthening Arbitration and Enforcement in India*", organized in New Delhi.[7]

In this conference, which was presided over by some of the most renowned legal luminaries of the country, several key observations were made to strengthen the arbitration landscape in the country. It was noted that one of the major shortcomings was the lack of institutional arbitration in India. There is no single arbitral seat or institution in the country, which is a centre of global repute. The need to set up institutional arbitration with international standards is one of the biggest challenges. Moreover, the institutions themselves need to be transparent, credible and independent and should have vibrant leadership, supported by well-trained staff for qualitative arbitration. Additionally, India needs physical and technological infrastructure for e-filing, creating database of cases, big data analytics, video-conferencing for witness examination, etc. It is also equally necessary to develop a quality pool of arbitrators, who take up arbitration as a full-time profession and appreciate its uniqueness and distinctiveness from court litigation. Another central aspect that requires due consideration is the creation of awareness among litigants about the usefulness of adopting arbitration, as there are concerns that users are not yet adequately informed about the advantages of arbitration (both institution and ad-hoc) in India. One of the basic issues that is rampant in dispute resolution is the lack of timely and speedy disposal of cases. Consequently, it becomes necessary to develop procedural safeguards to ensure effective disposal of cases along with stringent timelines that need to be strictly adhered to. The heavy costs associated with arbitration have also acted as a disincentive for parties adopting arbitration.

II. Choice of Foreign Law/Foreign Seat by Indian Parties

Indian parties freely choosing a foreign seat or a foreign law for arbitration has become an Achilles' heel for arbitration in India. The question as to whether Indian parties can choose foreign laws or rules to govern their arbitration has a significant implication in (a) determining whether Indian companies can adopt rules of international arbitral institutes like the ICC, London Court of International Arbitration ["**LCIA**"], Singapore International Arbitration Centre ["**SIAC**"] *et al.* (in an arbitration seated outside India) as well as, (b) on the global perception of the ease of enforcing contracts and doing business in India. While the judiciary seems to have resolved the matter through some of its decisions, confusion continues to exist.

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5 *Corporate Attitudes and Practices towards Arbitration in India*, PRICE WATERHOUSE COOPERS (2013), *available at* https://www.pwc.in/assets/pdfs/publications/2013/corporate-attributes-and-practices-towards-arbitration-in-india.pdf.

6 *Id.*

7 *National initiative towards strengthening arbitration and enforcement in India*, INTERNATIONAL CHAMBER OF COMMERCE (Oct. 21, 2016), *available at* https://iccwbo.org/event/national-initiative-towards-strengthening-arbitration-and-enforcement-in-india/.

The Madhya Pradesh High Court in *Sasan Power* v. *North American Coal Corporation India*[8] ["**Sasan Power**"] held that two Indian parties are free to arbitrate in a place outside India and an award rendered pursuant thereto, would be a foreign award falling under Part-II of the Arbitration and Conciliation Act, 1996 ["**Act**"]. Further, the Court construed that the classification of an arbitration as an 'international commercial arbitration' is dependent on the nationality of parties and is only relevant for the purpose of appointment of arbitrators under Section 11 of the Act. However, in the appeal to the *Sasan Power* case in the Supreme Court, the Hon'ble Supreme Court left the question unanswered and did not conclusively decide the issue of a foreign seated arbitration between two Indian parties. This is because the Supreme Court concluded as a matter of fact, that the dispute also involved a United States company and therefore, the agreement in question was not between two Indian parties only. The Supreme Court in the particular case allowed the parties to choose a foreign governing law and a foreign seat as there was a foreign entity involved in the dispute thereby giving a foreign element to the dispute.[9] The Court also did not either affirm or set aside the findings of the Madhya Pradesh High Court in the *Sasan Power* High Court decision.

The Supreme Court of India in *Yograj Infrastructure Limited* v. *Ssangyong Engineering and Construction Co. Ltd.*,[10] held that when the parties have submitted to the curial law of Singapore and the proceedings are being held in accordance with the SIAC Rules, the law of arbitration (curial law) will be the Singapore International Arbitration Act. The Court further reasoned that once the parties had submitted to the SIAC Rules, the procedure related to setting aside an award must also be derived from and conform to those rules. The judgment re-iterated the lack of jurisdiction of the Indian courts in relation to the setting aside of foreign awards.[11] Also, in *Atlas Exports Industries* v. *Kotak & Co*, [12] ["**Atlas Exports**"] the Supreme Court, under the Arbitration Act, 1940, had held that it was not against the public policy of India when two Indian parties contract to have a foreign-seated arbitration.

However, the Apex Court had taken a different view in *TDM Infrastructure Private Limited* v. *UE Development India Private Limited,*[13] ["**TDM Infrastructure**"], where the Supreme Court held that it appeared to be the legislature's intention that Indian nationals should not be permitted to derogate from (substantive) Indian law, as that was part of the public policy of India.[14] However, by way of an official corrigendum, the Court clarified that the observation made in the judgment was only for the purpose of determining the jurisdiction of the court under Section 11 of the Act and not for any other purpose.[15] A similar view was espoused in cases such as *Seven Islands Shipping Ltd* v. *Sah Petroleums Ltd*[16] and *Addhar Mercantile Private Limited* v. *Shree Jagdamba Agrico Exports Private Ltd.*[17] ["**Addhar Mercantile**"]. In any event, both *TDM Infrastructure* and *Addhar*

8 Sasan Power Ltd. v. North American Coal Corporation India (P) Ltd., 2015 SCC Online MP 7417 (India)
9 Sasan Power Ltd. v. North American Coal Corporation India Pvt. Ltd., AIR 2016 SC 3974 ¶ 26. (India).
10 Yograj Infrastructure Ltd. v. Ssangyong Engineering and Construction Co. Ltd., (2012) 12 SCC 359 (India).
11 *Id.* ¶ 35.
12 Atlas Exports Industries v. Kotak & Co., 1999 (7) SCC 61 (India).
13 TDM Infrastructure Pvt. Ltd. v. UE Development India Pvt. Ltd., (2008) 14 SCC 271(India).
14 *Id.* ¶ 20.
15 *Id.* ¶ 28.
16 Seven Islands Shipping Ltd. v. Sah Petroleums Ltd., 2012 (5) Mah LJ 822 (India).
17 Addhar Mercantile Private Limited v. Shree Jagdamba Agrico Exports Pvt. Ltd., 2015 SCC OnLineBom 7752 (India).

Mercantile being decisions under Section 11 of the Act i.e., decided by a designate of the Chief Justice and not a 'court', have no precedential value.[18]

Fortunately, the Delhi High Court in *GMR Energy Limited* v. *Doosan Power Systems India Private Limited & Ors.*,[19] ["**GMR**"] after evaluating the trajectory of cases and ultimately relying on the decision of the Madhya Pradesh High Court in *Sasan Power* and *Atlas Exports,* has ruled that there is no prohibition on two Indian parties opting for a foreign seat of arbitration, and such an arrangement would attract Part II of the Act. The Court distinguished the judgment of the Apex Court in *TDM Infrastructure* on the ground that such observation was only made for the purpose of Section 11 of the Act and cannot be relied on for any other purposes.[20] The GMR case is currently in appeal before the Division Bench of the Supreme Court of India.

III. Effectiveness of ICC Arbitration Rules in India

Set up in 1929, ICC India is one of the most active national committees of ICC, the world business organization. ICC India's membership includes a large range of companies, chambers of commerce, trade & industry association, consulting organizations, and law firms.

In its endeavour to serve the needs of the global business community and contribute to effective policy making, ICC India regularly engages with governments and businesses alike. ICC India has been at the forefront of spreading awareness on rule based international trade and investment, responsible business conduct, etc. In partnership with leading Indian and foreign banks, it also organizes capacity building programs to facilitate business and to spread best practices.[21]

Indian business experts, nominated by ICC India on various ICC global policy commissions, actively participate in the work of the commissions, thereby providing an Indian business perspective in the global policy matrix.

ICC India also frequently organizes ADR focused conferences and workshops across India to spread awareness about ICC Rules as a preferred choice for commercial dispute resolution.[22] ICC India has recently been ranked among the top ICC national committees globally in the ICC Dispute Resolution Development Programme.

The Rules of Arbitration of the International Chamber of Commerce, 2012 ["**ICC Rules**"] continue to contribute to the steady growth of arbitration in India through its twin objective of promoting diversity while ensuring that international standards of arbitration are brought to fruition. For instance, the World Council, the ICC's supreme governing body, on June 21, 2018, in an unprecedented decision, appointed 176 members from 104 countries to the Court,

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18 State of West Bengal v. Associated Contractors, (2015) 1 SCC 32 (India).

19 GMR Energy Limited v. Doosan Power Systems India Pvt. Ltd. & Ors., 2017 S.C.C. OnLine Del. 11625 (India).

20 *Id.* ¶¶ 11, 22.

21 *See generally,* INTERNATIONAL CHAMBER OF COMMERCE INDIA [ICC INDIA], *available at* http://www.iccindiaonline.org/.

22 Forthcoming Events, ICC INDIA, *available at* http://www.iccindiaonline.org/icc-two/forthcoming-events.html.

representing gender parity of 88 women and 88 men. The Court, including the President and Vice-Presidents, constitute another 18 members, with equal representation of men and women.[23]

ICC Rules are renowned for their flexibility and effectiveness in the manner of conducting arbitration. Parties can adopt the rules by simply consenting to them contractually, either as a part of the same agreement or through a separate agreement. It can be entered into either before a dispute or even after the dispute has arisen. ICC Rules reflect international best practices that have fair, neutral, transparent and efficient procedures. The ICC Secretariats are located in Paris, Hong Kong, New York, Sao Paulo and Singapore, where Requests for Arbitration can be filed that gives the ICC Court unique case management ability to cater to the parties in real-time from five cities, four continents and different time zones across the world.[24]

Under Article 22 of the ICC Rules, the arbitral tribunal and the parties are required to make every effort to conduct the arbitration in an expeditious and cost-effective manner.[25] Recently, to preserve the traditional advantages of arbitration i.e. being cost-efficient and timesaving, the ICC introduced the Expedited Procedure Rules,[26] with effect from March 1, 2017. These are contained in Article 30 and Appendix XI of the Rules and are applicable to cases where the arbitration agreement is concluded after March 1, 2017 and the amount in dispute does not exceed US$2,000,000, unless the parties to the dispute contract out of the expedited procedure under ICC Rules. Alternatively, expedited procedure may also be made applicable in cases where the parties have contractually agreed to be bound by it, regardless of the date on which the arbitration agreement was concluded, or the value involved in the dispute.[27] One of the striking features of the Expedited Procedure Rules is that the ICC Court may appoint a sole arbitrator constituting the arbitral tribunal, as opposed to three arbitrators, notwithstanding any contrary provisions in the arbitration agreement. The appointment may be done based on the nomination made by the parties, or in the absence of such nomination, as expeditiously as possible by the

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23 *ICC renews Alexis Mourre as President and nominates Court with full gender parity and unprecedented diversity*, INTERNATIONAL CHAMBER OF COMMERCE, (Jun. 21, 2018), *available at* https://iccwbo.org/media-wall/news-speeches/icc-renews-alexis-mourre-president-nominates-court-full-gender-parity-unprecedented-diversity/.

24 *Filing a request,* INTERNATIONAL CHAMBER OF COMMERCE, *available at* https://iccwbo.org/dispute-resolution-services/arbitration/filing-a-request/.

25 Rules of Arbitration of the International Chamber of Commerce 2012, art. 22.
"Article 22: Conduct of the Arbitration- 1) The arbitral tribunal and the parties shall make every effort to conduct the arbitration in an expeditious and. cost-effective manner, having regard to the complexity and value of the dispute."

26 *Expedited Procedure Provisions- ICC Arbitration Rules*, INTERNATIONAL CHAMBER OF COMMERCE, *available at* https://iccwbo.org/dispute-resolution-services/arbitration/expedited-procedure-provisions/.

27 Rules of Arbitration of the International Chamber of Commerce 2012, art. 30.
"Art. 30: Expedited Procedure- 1) By agreeing to arbitration under the Rules, the parties agree that this Article 30 and the Expedited Procedure Rules set forth in Appendix VI (collectively the "Expedited Procedure Provisions") shall take precedence over any contrary terms of the arbitration agreement.
2) The Expedited Procedure Rules set forth in Appendix VI shall apply if:
a) the amount in dispute does not exceed the limit set out in Article 1(2) of Appendix VI at the time of the communication referred to in Article 1(3) of that Appendix; or
b) the parties so agree.
3) The Expedited Procedure Provisions shall not apply if:
a) the arbitration agreement under the Rules was concluded before the date on which the Expedited Procedure Provisions came into force;
b) the parties have agreed to opt out of the Expedited Procedure Provisions; or
c) the Court, upon the request of a party before the constitution of the arbitral tribunal or on its own motion, determines that it is inappropriate in the circumstances to apply the Expedited Procedure Provisions.".

Court. The Expedited Procedure Rules have also done away with the prerequisite of the tribunal drawing up the terms of reference.

Document production is one of the most time-consuming and costly part of any arbitration.[28] Under the Expedited Procedure Rules, the tribunal enjoys liberty to adopt appropriate procedural measures in consultation with the parties.[29] This way, the tribunal can decide to disallow document production and save considerable time based on the nature of the dispute. This also helps in cutting down costs, thereby making it cost-effective and less time consuming. Similarly, the tribunal can also limit the number, length, and scope of written submissions, and witness statements, both from fact witnesses and experts. In fact, the tribunal can go to the extent of doing away with oral hearings altogether and decide the case based on written submissions.[30] All of these are flexible methods that are to be adopted on the basis of the nature of the case and in consultation with the parties, in a manner that best serves the ends of justice. Alternatively, the tribunal can use the leverage of advanced technology and decide to conduct oral hearings through videoconferencing, telephone or any other means. This can help the parties save considerable costs as well as hardship, and settle the dispute as expeditiously as possible.

The Expedited Procedure Rules also contain strict timelines and schedules that the tribunal is required to adhere to. The tribunal must render its final award within six months from the date of the case management conference, which may be extended by the ICC Court on its own initiative or at the request of the tribunal.[31] Moreover, the arbitral tribunal will not be required to draw up terms of reference as required under Article 23 and the parties cannot make new claims once the tribunal has been constituted unless authorized by the arbitral tribunal.[32] Most importantly, disputes administered under the Expedited Rules will be subject to significantly reduced administrative cost and expenses, as well as arbitrator's fees.

The litigants end up spending extensive amounts of money, time and effort in getting these disputes settled. Arbitration must be resorted to for such cases, especially under the Expedited Procedural Rules, to ensure that time and costs are saved, to avoid the litigants being caught up in the unwarranted and redundant chain of procedural compliances. The provision to do away with extensive procedural prerequisites can also go a long way in expeditiously settling disputes, which are less complicated and do not require extensive examination. Resorting to arbitration under these Expedited Rules, would also come as a great relief to the courts as well as in arbitrations which are unnecessarily prolonged, even when the amount involved is minimal. The fixed time schedules and the reduced costs also provide great certainty to parties involved in a dispute, and help instil confidence in them.

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28 Richard Davies, *Disclosure of Documents in Construction and Engineering Arbitrations: Theory, Practice and Strategy*, 4.1 BCDR INT'L ARB. REV. 175 (2017).

29 Rules of Arbitration of the International Chamber of Commerce 2012, Appendix VI: Expedited Procedure Rules, art. 3(4).

30 *Id.* art. 3(5).

31 *Id.* art. 4(1).

32 *Id.* arts. 3(1), 3(2).

As far as the cost regime under ICC Rules is concerned, typically there are three types of costs: (a) non-refundable filing fee that is borne by the claimant after filing the request, (b) provisional advance fixed by the Secretary General upon receipt of the request, which is to be borne by the claimant and (c) advance on cost fixed by the ICC Court after counterclaims have been received.[33] The cost regime is predictable, fixed, and reasonable in tune with the nature and scale of the dispute. The ICC also provides for a costs calculator for this purpose, through which parties can get an estimate of the costs that they will incur based on the amount involved in the dispute.[34] Parties hailing from India have suffered for long, due to the significantly high prices associated with international arbitrations, which have acted as a major hindrance. Parties, as they should, prefer arbitration because of its cost-effectiveness. However, the parties during the arbitration proceedings are faced with unexpected costs to such an extent that more often than not, they tend to enter into settlement agreements outside of the arbitration. The predictability and reasonableness offered to parties under the ICC Rules can restore immense faith in the minds of parties in the process of arbitration.

In India, as pointed out in the *Niti Aayog Report*, most arbitrators are retired judges of the Supreme Court or of the various high courts.[35] One of the major issues that creates an obstacle is the mentality of the arbitrators to forget their instincts as a litigator or a judge. This problem can be tackled in two ways. One way is to create awareness among the potential pool of arbitrators, which can be done through conferences, awareness campaigns, tutorials, etc. ICC India has played a very active role in conducting such workshops by adding in stakeholders from different fronts, including judges, lawyers, students, corporates etc. In the years, 2017 and 2018, the organisation spearheaded a series of ICC India Arbitration Conferences in various major cities of India, including Ahmedabad, Chandigarh, Chennai, Delhi, Kolkata, Mumbai, Hyderabad etc.[36] These conferences brought together leading practitioners to discuss key issues in domestic and international arbitrations, with a special focus on the Indian practice and experiences under the ICC Rules. Apart from that, ICC also organised '*Young Arbitrators Forum: Master class on enforcement of foreign arbitral awards*' in New Delhi in May, 2018.[37] The second way in which this problem can be actively tackled is by way of adopting strict norms of impartiality and independence, and by choosing from a world class array of arbitrators who are well-trained and well-versed with the practice. The ICC, while appointing arbitrators, endeavours to maintain the diversity and going forward, would consider appointing younger arbitrators to increase the arbitration talent in the country. The ICC has also appointed partners/practitioners of Indian law firms and has parted with the traditional system of appointing retired judges from India. In the past, ICC has played an instrumental role in promoting the appointment of women as arbitrators, while also keeping in mind that the president should/must come from a jurisdiction different from that of the co-

33 *Costs and Payments*, INTERNATIONAL CHAMBER OF COMMERCE, *available at* https://iccwbo.org/dispute-resolution-services/arbitration/costs-and-payments/.

34 *See Cost Calculator,* INTERNATIONAL CHAMBER OF COMMERCE, *available at* https://iccwbo.org/dispute-resolution-services/arbitration/costs-and-payments/cost-calculator/.

35 Bibek Debroy & Suparna Jain, *Strengthening Arbitration and its Enforcement in India – Resolve in India*, NITI AAYOG REPORT (2016) at 15, *available at* http://niti.gov.in/writereaddata/files/document_publication/Arbitration.pdf.

36 *Forthcoming events*, ICC INDIA, http://www.iccindiaonline.org/icc-two/forthcoming-events.html.

37 *ICC YAF: Master class on enforcement of foreign arbitral awards,* INTERNATIONAL CHAMBER OF COMMERCE, *available at* https://iccwbo.org/event/icc-yaf-master-class-enforcement-foreign-arbitral-awards/.

arbitrators.[38] The appointment of arbitrators is also now publicly available and this is a great step towards ensuring transparency.

Most companies in India are known for using expert evidence in arbitration proceedings, as most issues are technical and cannot be resolved without an expert. More than half of the companies that have entered into contractual arrangements containing an arbitration clause have used expert evidence in arbitration proceedings.[39] Industry experts or experts for valuation and accounting are often appointed to provide assistance during arbitral proceedings. The ICC Arbitration Rules could also provide support when it comes to expert examination, as they contain dedicated rules with respect to proposal of neutral experts, appointment of experts and administration of expert proceedings.[40] The ICC also maintains an internal database of experts and can propose the names of experts on request by the parties or the arbitral tribunal.

IV. Conclusion

The litigants in India have been at the suffering end, due to the backlog of cases and the lack of a system to settle disputes effectively. The time has come that parties should be encouraged to resort to alternate dispute resolution mechanisms, including negotiation, mediation, conciliation and arbitration. There is a need to promote institutional arbitration in India, which is transparent and independent, to foster public confidence in this form of dispute settlement. The amendments made to the Act, coupled with the judicial trend to minimise court intervention, has led to the creation of an arbitration-friendly environment in India. This would aid in attracting foreign investors and contributing to the ease of carrying out business in India.

The efficacy and adequacy of the dispute settlement mechanism has a direct effect on the level of foreign trade. The ICC Rules reflect international best practices in the area of international arbitration. It ensures that flexibility and party autonomy are fulfilled while providing a structural framework for efficient conduct of arbitration. It ensures timely disposal of disputes in a cost-effective manner through its provisions pertaining to Expedited Rules. Other provisions of the ICC Rules, with respect to additional services (as provided for in the Note to the Parties and Arbitral Tribunal on the Conduct of Arbitration[41]) to enhance efficiency and increase transparency and accountability to the parties, appointment of arbitrators, and scrutiny of the awards, make ICC suitable for India, given the stage of its economic development and its requirements. The ICC Rules can act as a catalyst in transforming the arbitration landscape in India by creating a framework of world-class standard and catering to the diverse range of transactions, agreements and people. The adoption of the ICC Rules is hassle-free and it has several mechanisms, such as video conferencing, that make it possible for parties to settle disputes without having to undergo the trouble of travelling to other counties.

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38 Peter Bert, *ICC Arbitrator Appointments: A First Look At The Data*, KLUWER ARB. BLOG (Sept. 13, 2016), *available at* http://arbitrationblog.kluwerarbitration.com/2016/09/13/icc-arbitrator-appointments-a-first-look-at-the-data/.

39 *Corporate Attributes and practices towards arbitration in India*, PRICEWATERHOUSECOOPERS, *available at* https://www.pwc.in/assets/pdfs/publications/2013/corporate-attributes-and-practices-towards-arbitration-in-india.pdf.

40 ICC Expert Rules 2017, INTERNATIONAL CHAMBER OF COMMERCE, *available at* https://iccwbo.org/publication/icc-expert-rules-english-version.

41 *See generally, Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration*, INTERNATIONAL CHAMBER OF COMMERCE, *available at* https://iccwbo.org/publication/note-parties-arbitral-tribunals-conduct-arbitration/.