

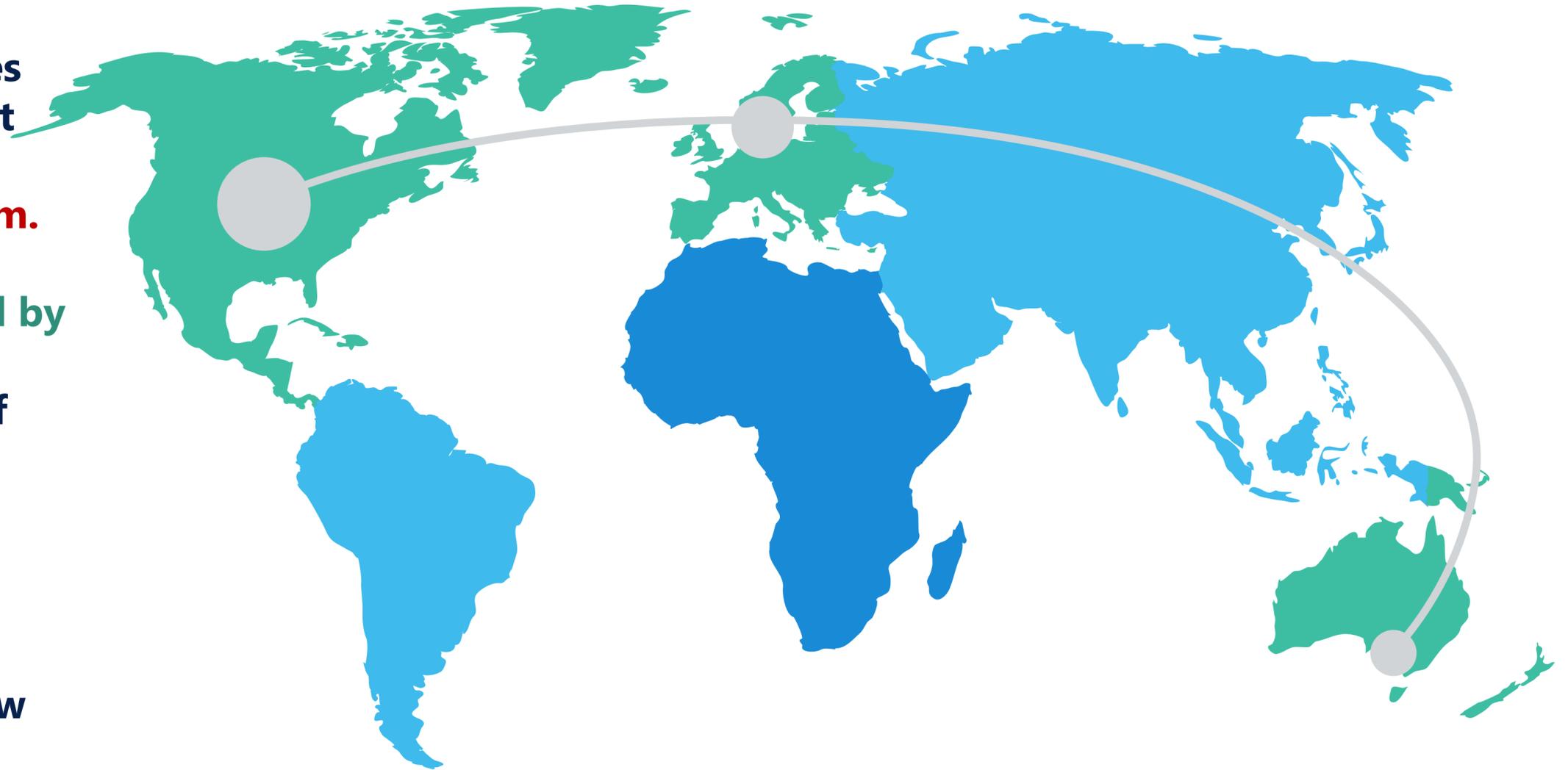
International Arbitration

FRAME WORK

International Arbitration frame Work is created to find a Global **Uniform mechanism** that reduces the complexities of regular court Procedure but culminates more efficient **Enforcement mechanism**.

Global enforceability is achieved by New York Convention on the Recognition and Enforcement of Foreign Awards 1958 (163 Countries)

Uniformity is achieved by UNCITRAL Model Law Model Law On International Commercial Arbitration ,1985



INTERNATIONAL ARBITRATION CLAUSE

Seat of Arbitration 01

The Parties can choose any place as the seat of Arbitration.



Number of Arbitrators 06

Parties may choose one or three arbitrators and incorporate in the contract.



Arbitral Institution 02

It is advisable to specify the Arbitral Institution to administer the arbitration



Language of Arbitration 05

Parties should specify the language of arbitration to avoid the application of default language.



Substantive Laws 03

The Parties can choose any law including a neutral law as the substantive law of the arbitration.



Law governing Arb Agreement 04

Parties may choose the law governing the arbitration agreement.



Seat Selection

Situations



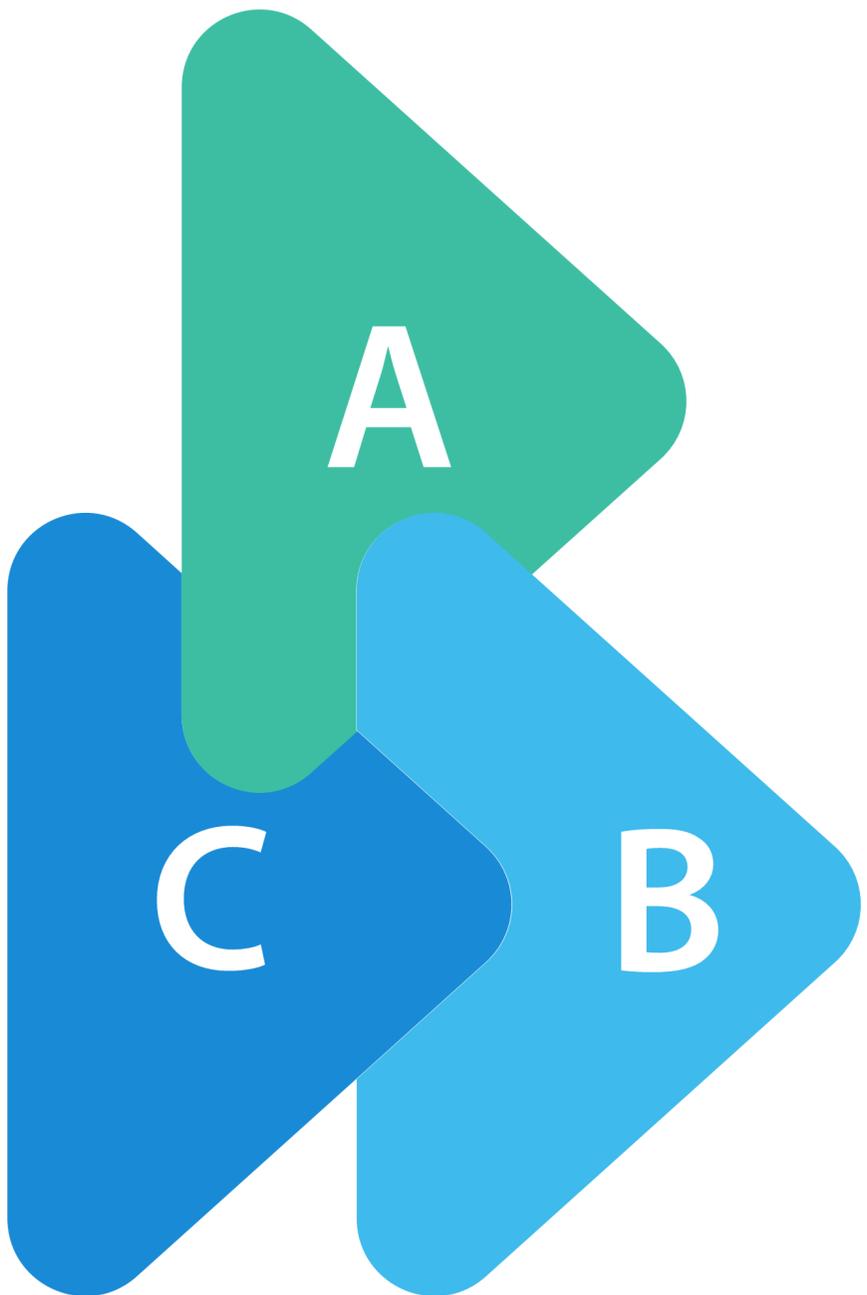
A. Neutral Seat

Parties to the contract
Choose a neutral seat
for Arbitration
Singapore, London,
New York , Paris,
Geneva etc.,



B. Compulsion by one Party

Parties choose a seat
because of the
compulsion of the
stronger Party



C. Statutory requirements

The Statute of
country like China
does not allow
Foreign Arbitral
Institutions to
administer
Arbitrations in
China

Importance of a Seat

in an International Arbitration

Procedural Law

Seat Comes with the Procedural law. Example: If seat is Singapore International Arbitration Act of Singapore is the Procedural Law .

Supervising Courts

Courts having Jurisdiction over the seat are the supervising Courts .



Enforceability

If the seat is a New York Convention signatory then award becomes enforceable under the Convention

India Seated International Arbitrations

Speaker S Ravi Shankar



**Procedural
Law**



**New York
Convention**



**Appointme
nt of
Arbitrators**



**Supervising
Courts**

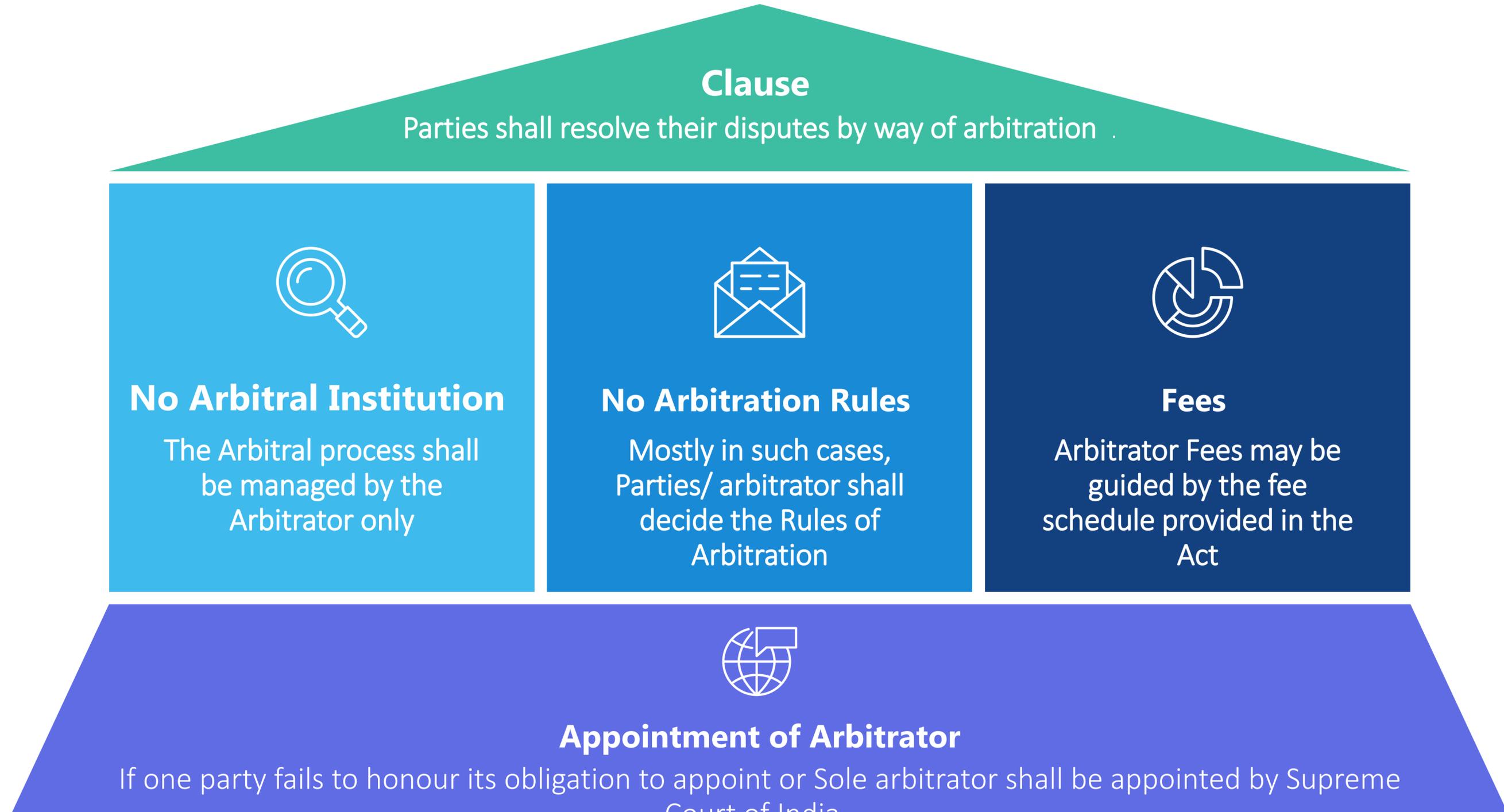


**Finality of
Awards**



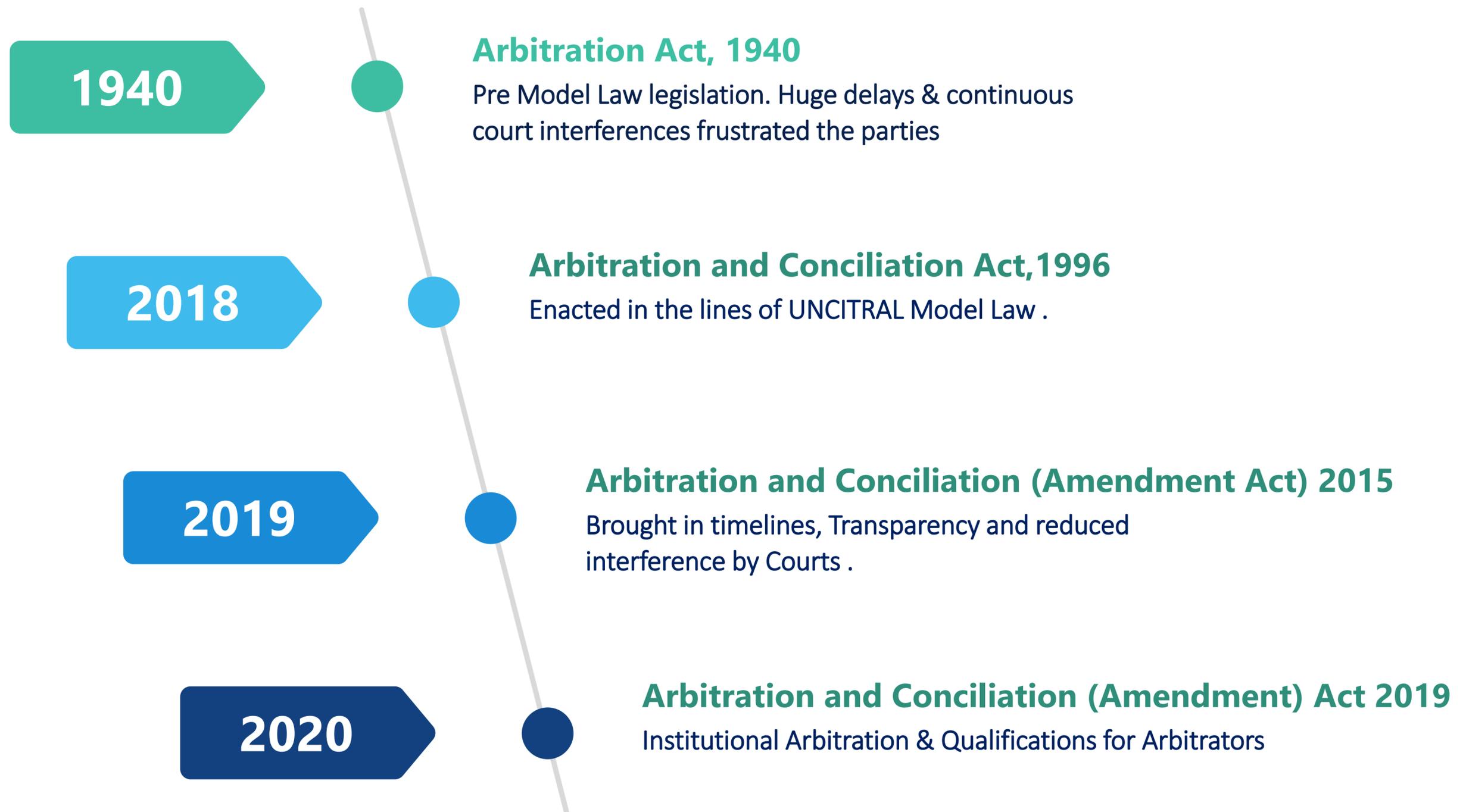
**Enforcemen
t of Awards**

ADHOC / INSTITUTIONAL ARBITRATION



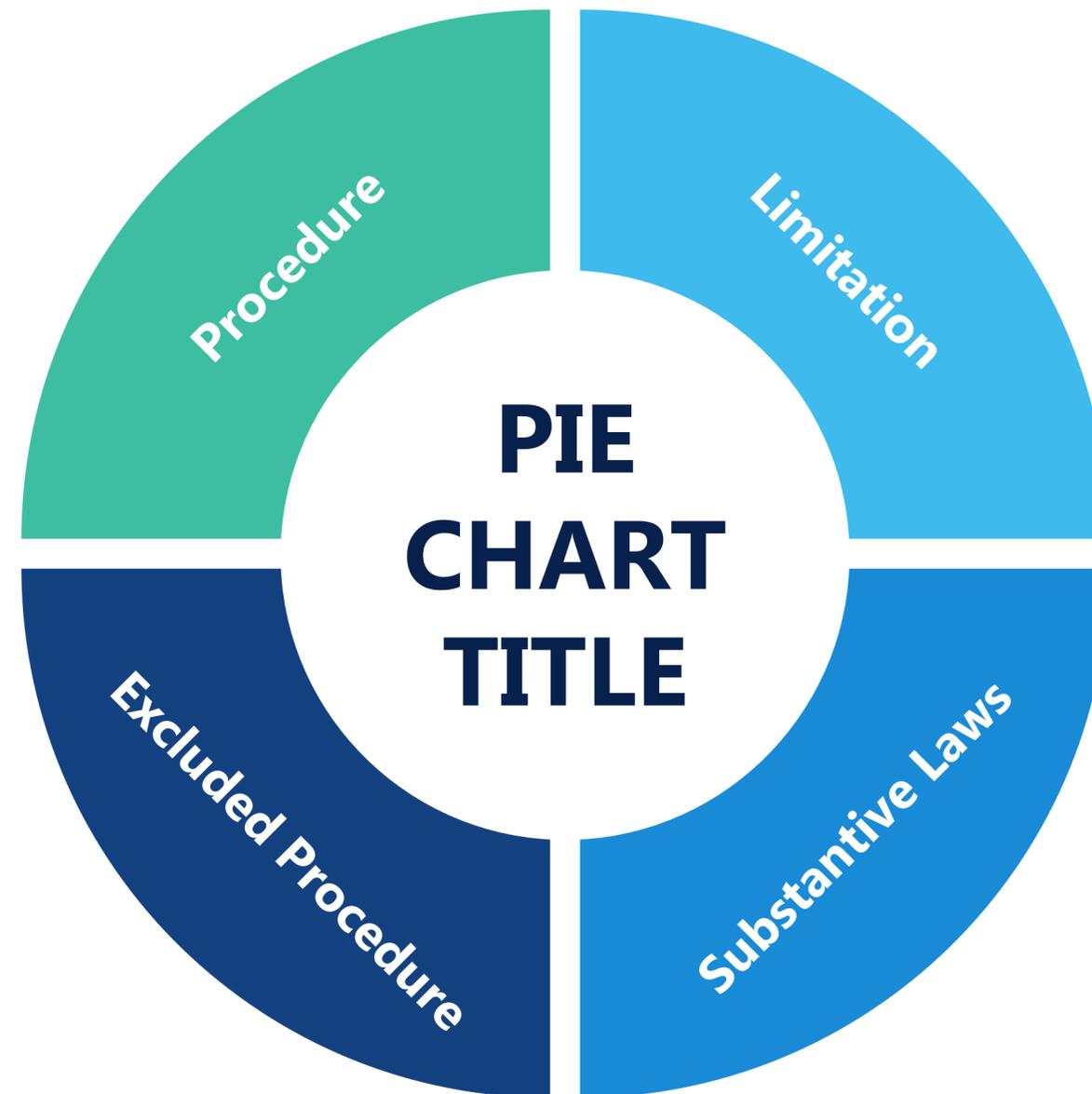
Procedural Law of Indian Seat

Seat determines procedural law



APPLICABLE LAWS & SEAT

Arbitration and Conciliation Act, 1996 .



Limitation Act, 1963 is applicable. Limitation for disputes arising out of contract in India is three years from the date of cause of Action

Applicability of Code of Civil Procedure and Evidence Act are expressly excluded .

Contract Act, Partnership Act, Companies Act, Specific Relief Act etc.,

Special Features of the Procedural Law

As Amended

Independence & Impartiality of Arbitrators

Mandatory declaration by Arbitrators in line with IBA Rules on Conflict of Interest .

Interim orders in support of Foreign seated Arbitrations

Courts can pass interim orders in support of Foreign seated Arbitrations .

Reduced Scope of Public Policy

Public Policy cannot lead to re-appreciation of Merits .



Time lines

Time lines prescribed in all stages of Arbitration Process

Delegation of Court Powers To Arbitral Institutions

High Court can delegate powers to appoint arbitrators to Institutions to appoint Arbitrators

Enforceability of Interim orders Passed by Arbitrators

Interim orders Passed under S.17 are enforceable like Court orders .

ARBITRAL INSTITUTIONS



01

NO BAR

Any Foreign Arbitral Institution can administer Arbitrations seated in India



02

Registration

Arbitral Institutions have to be Registered with High Courts / Supreme Court .



03

Indian Arbitral Institutions Adhoc Arbitrations

There are many efficient Indian Arbitral Institutions in India including DIAC, ICA, MCIA, IDAC India etc.,



04

80% of the Arbitrations in India are Adhoc Arbitrations.



05

Qualifications

Certain Qualifications for Arbitrators are prescribed in the Act.

SUPERVISING COURTS

HIGH COURTS



APPOINTMENT

S.11. Power to appoint Sole Arbitrator is with the Supreme Court of India /Institutions .



Interim orders

S.9. Courts in India are fast and efficient in granting interim orders in pre-arbitration & Post arbitration stages



Removal of Arbitrators

S.14. If Arbitrators are disqualified to be arbitrator under Schedule V.

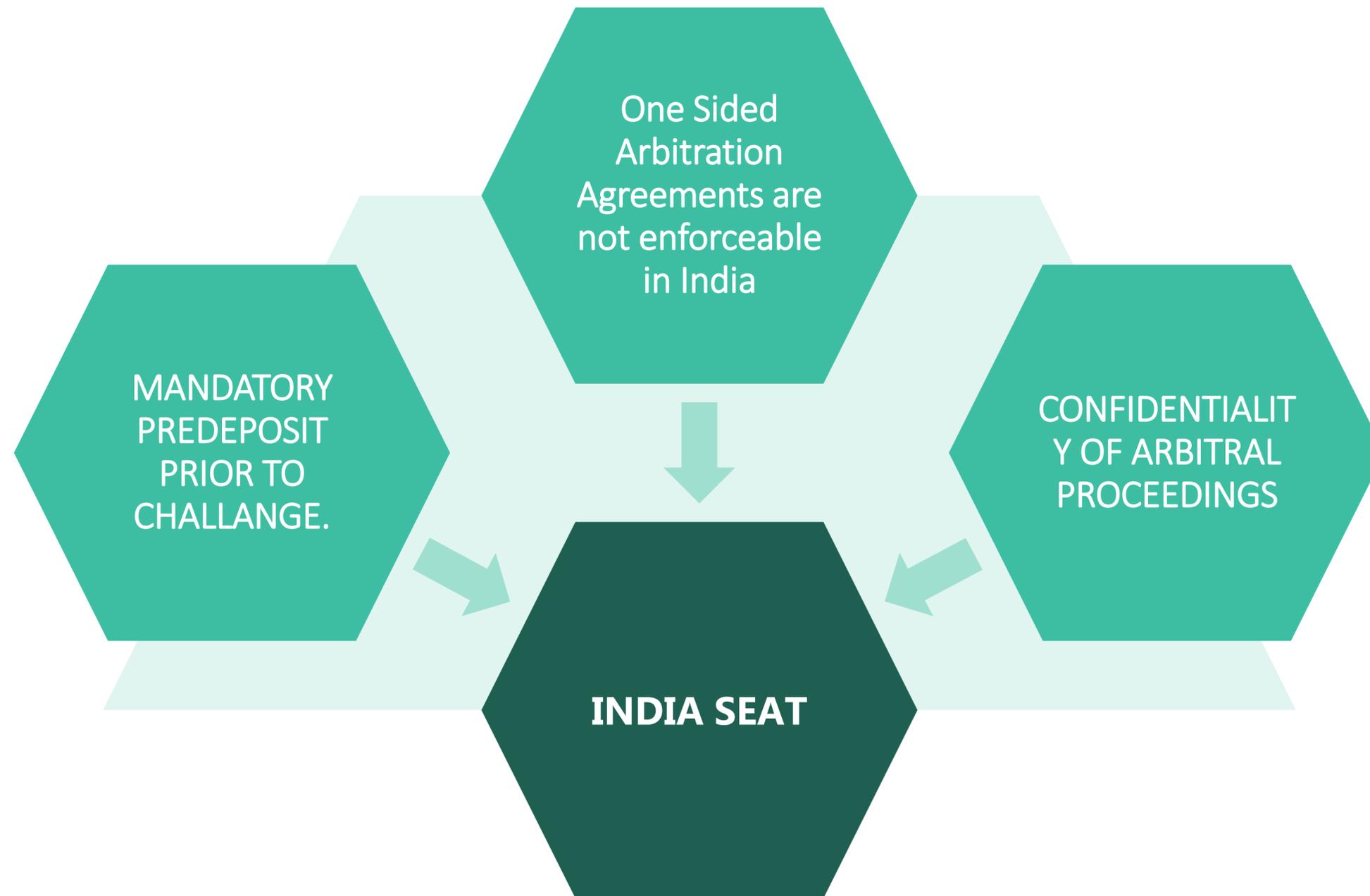


Challenge to an Award

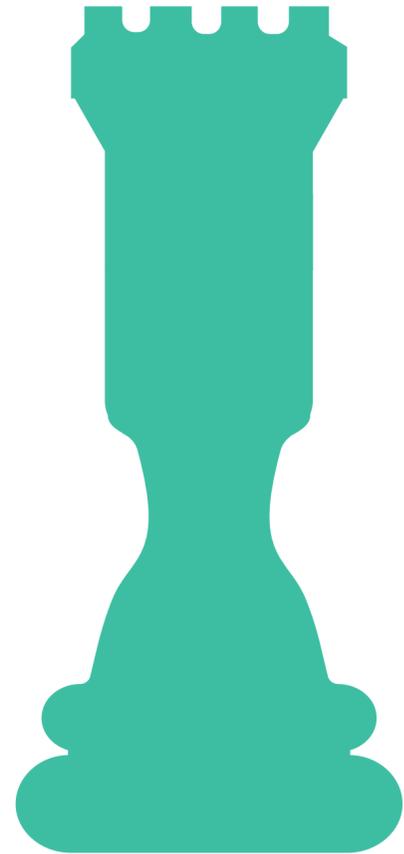
Courts cannot go into the merits or the case, perversity is a main ground on which awards are set aside.

OTHER ADVANTAGES OF INDIA SEAT

WRITE YOUR SUBTITLE HERE

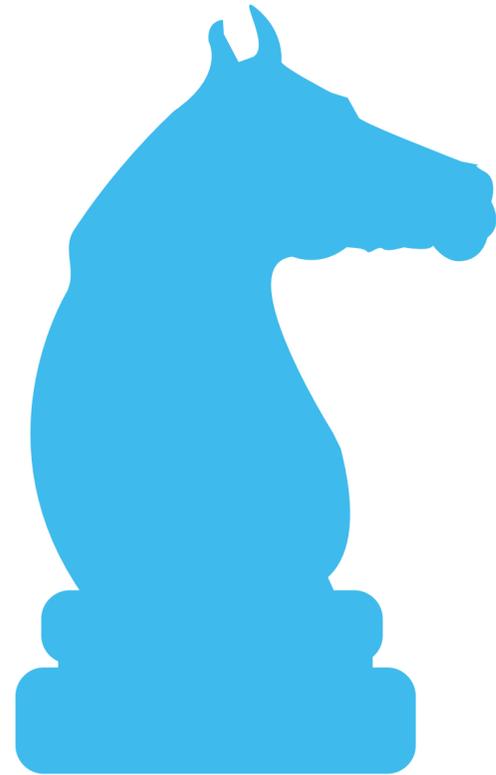


I recommend India seat Because



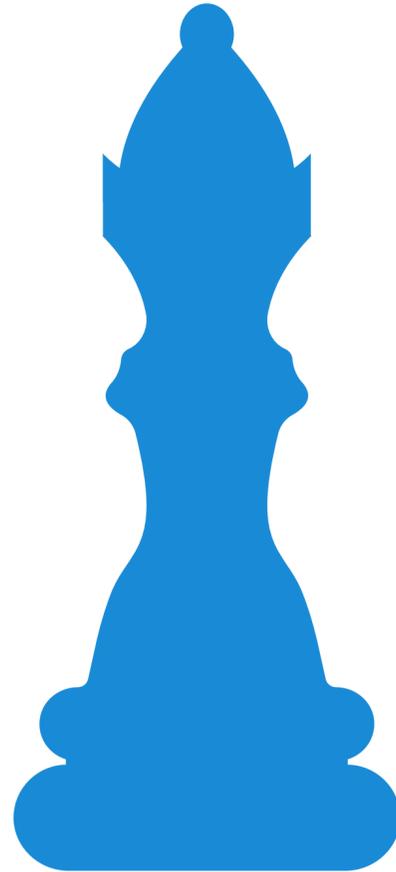
MODEL LAW COUNTRY

Since we follow Model Law, parties from Foreign Countries can understand the process



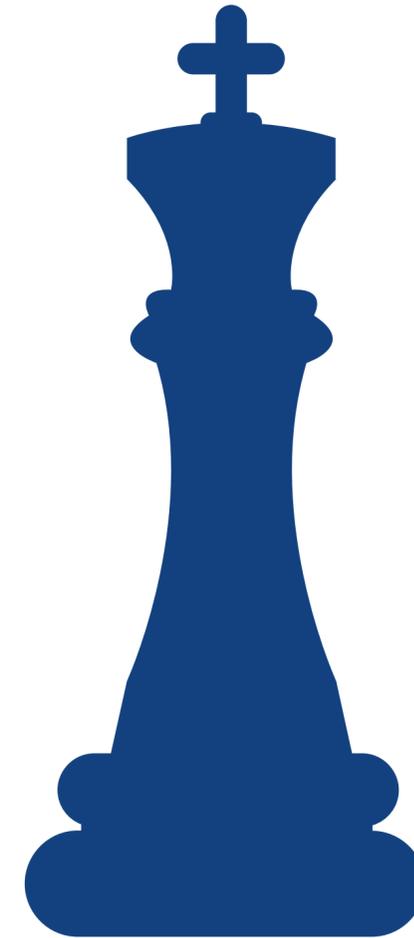
NEW YORK CONVENTION

New York Convention supports Award arising out of India Seat



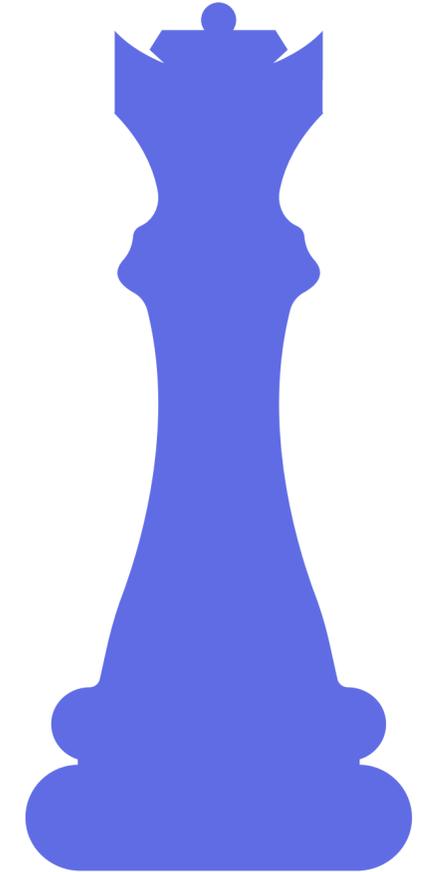
TIME LINES

Speedy Conclusion of Arbitration ensured by law .



FOREIGN INSTITUTIONS

Unlike China, India allows Foreign Arbitral Institutions to Administer



PRE-DEPOSIT

Mandatory Pre-deposit of award amount forces parties to avoid unnecessary challenge.

Thanks

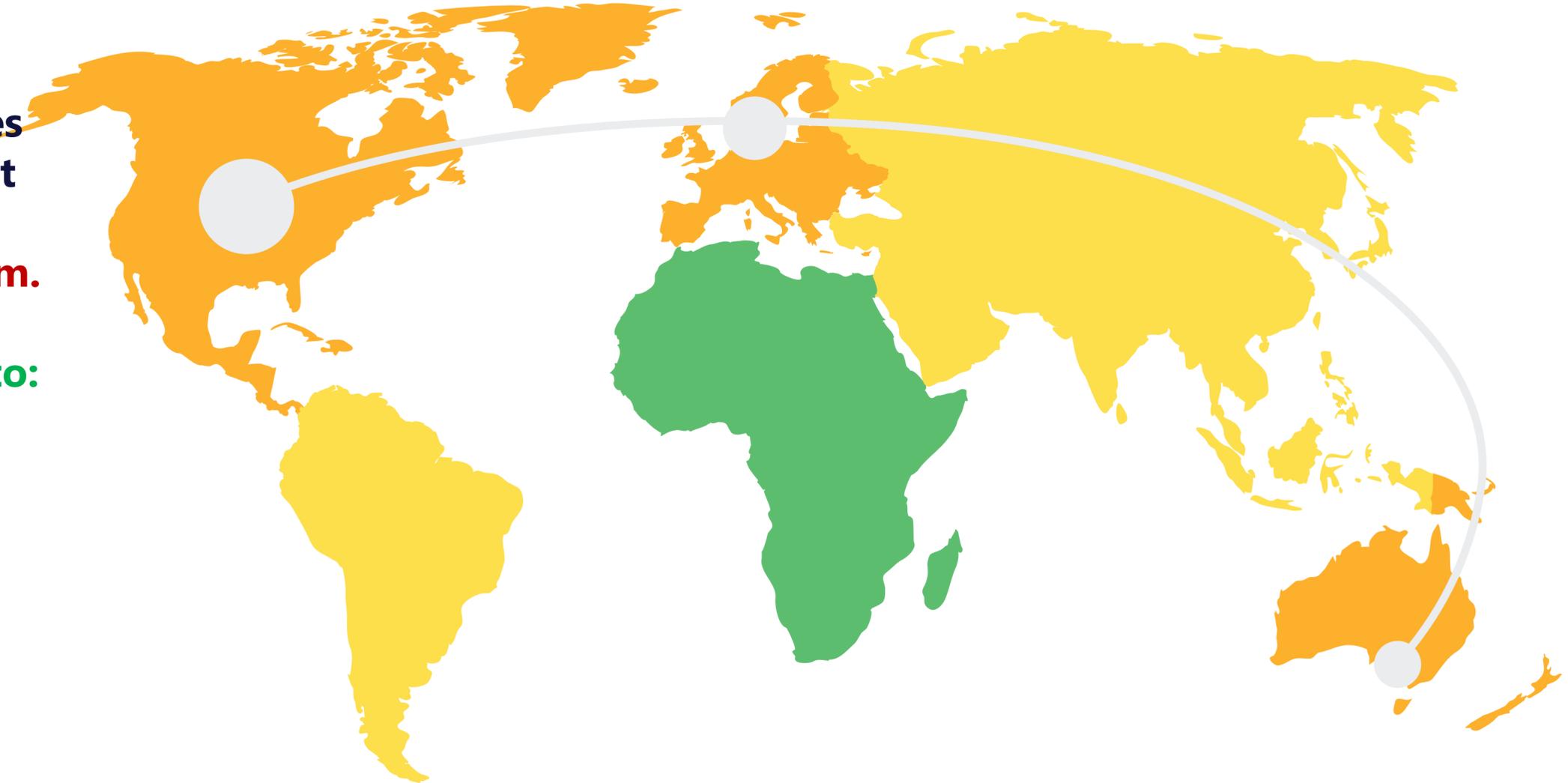
International Arbitration

FRAME WORK

International Arbitration frame Work is created to find a **Global Uniform mechanism** that reduces the complexities of regular court Procedure but culminates more efficient **Enforcement mechanism**.

Interim Protection is necessary to:

- Avoid frustration of awards
- Avoid third Party interests
- To avoid irreparable loss



Interim Protections in International Arbitrations

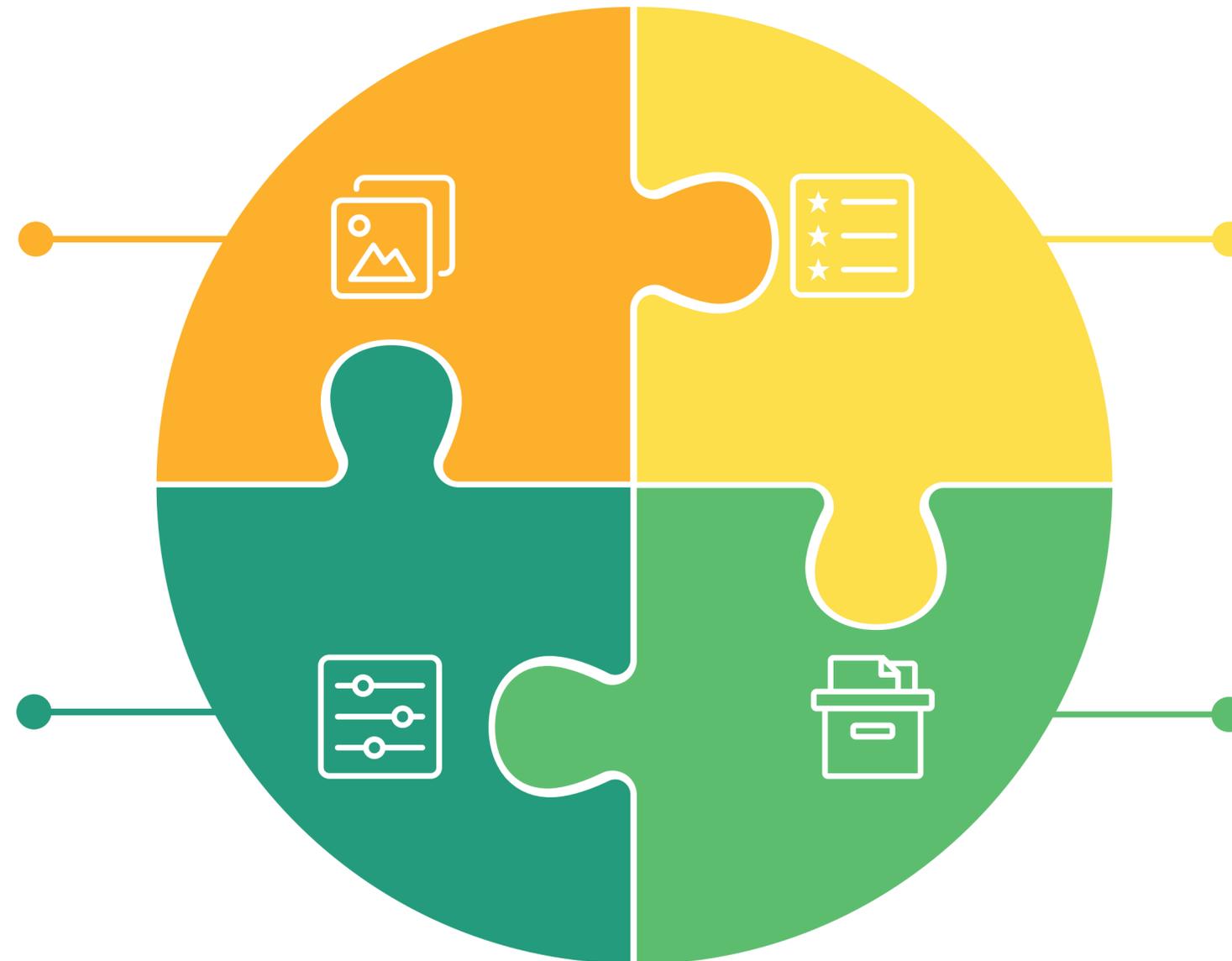
Forums

Prior to Formation of AT

S.9 through the court.
Unlike Court Proceedings, formation of AT takes time hence there is a gap.

After formation of AT

S.17 After formation of AT, AT has the power to grant interim protection.



After award before Enforcement

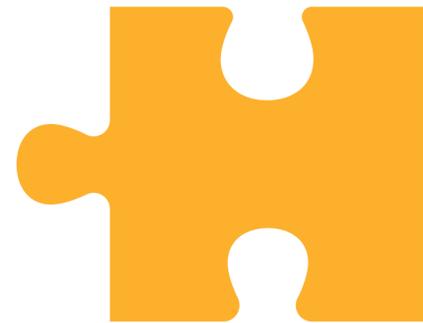
S.9. through the Court.
After award AT becomes functus officio

During Enforcement

S.9 through the Court

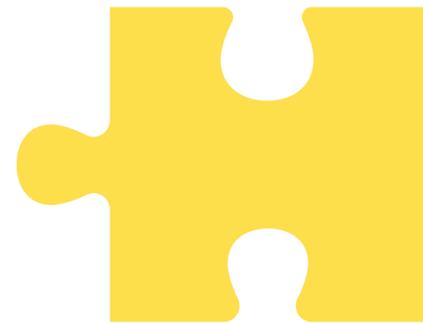
Prior to formation of AT

Against a party located in India though the Courts



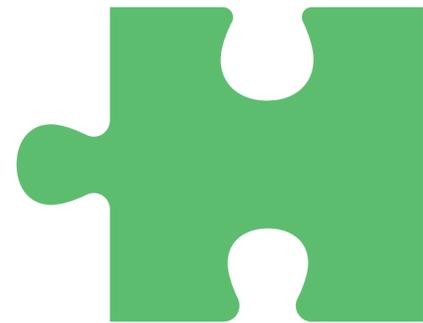
The preservation, interim custody of sale of any goods which are the subject matter of the arbitration agreement .

A



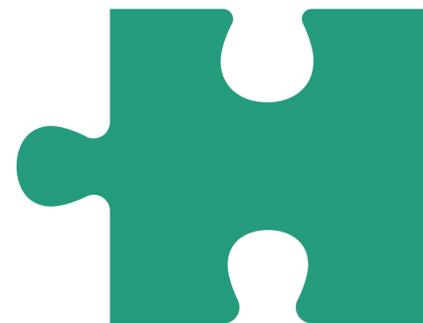
Securing the amount is dispute in the arbitration

B



Preservation of any property or authorizing any person to do certain things for interim protection .

C



Interim injunction or Appointment of Receiver

D

After Formation of AT

Against an Indian Party through AT



Powers of AT

All the interim protections that can be granted by the court under S.9 can be granted by AT.

Enforceability

Under S.17(2) these orders are equal to orders of the court and enforceable



Appeal

Any interim protection order passed under S.9 or S.17 are appealable to the Court.

Bar to Court Jurisdiction

After formation of AT Courts will not entertain interim protection applications under S.9.



After Award and during Enforcement

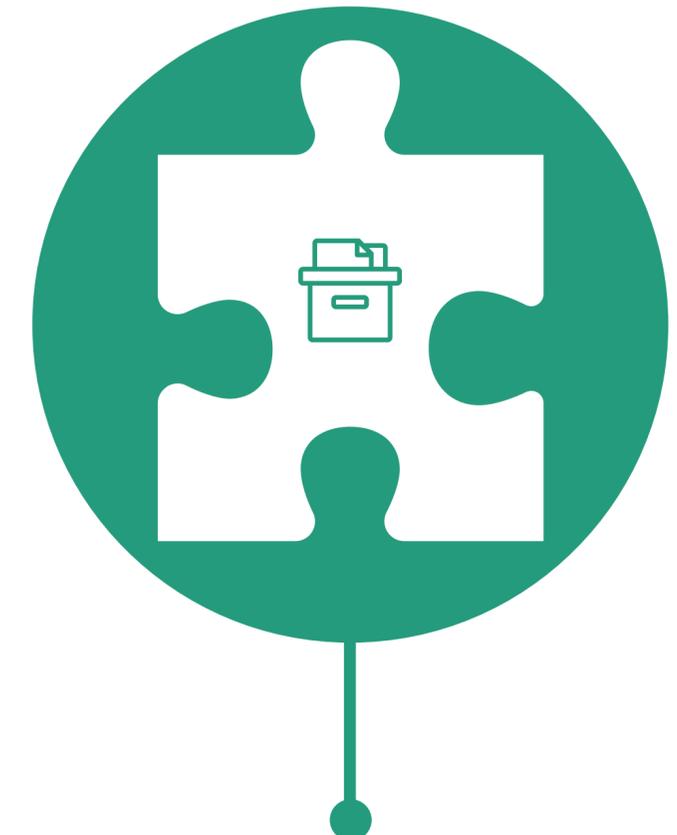
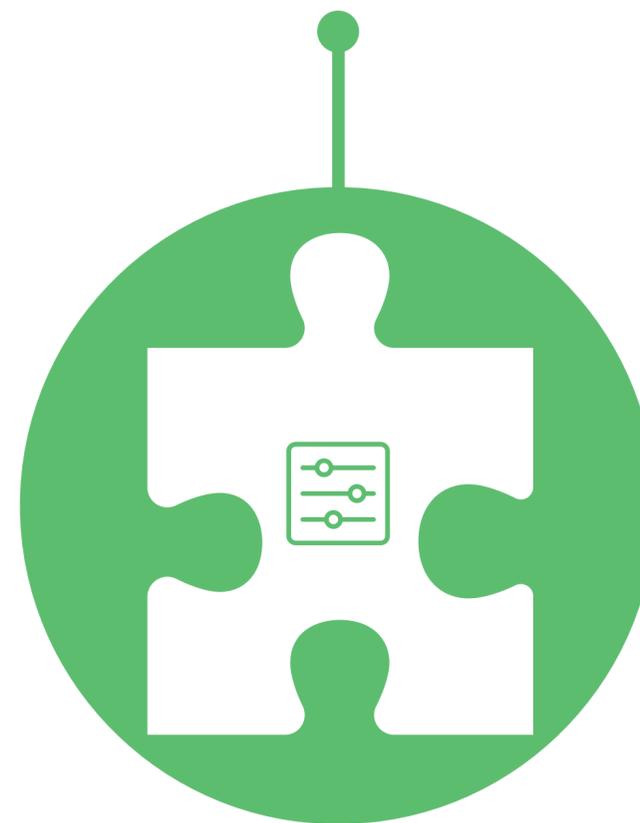
Against an Indian Party

Securing the Subject matter



Injunctions

Securing the award amount



Only through Courts

These orders can be obtained under S.9 through the Courts and not from AT.

Interim orders against a Foreign Party

OPTIONS AVAILABLE

- **Foreign Court orders**

Should approach the Court in the Country of the Foreign Party for interim protection

- **Emergency Arbitrator**

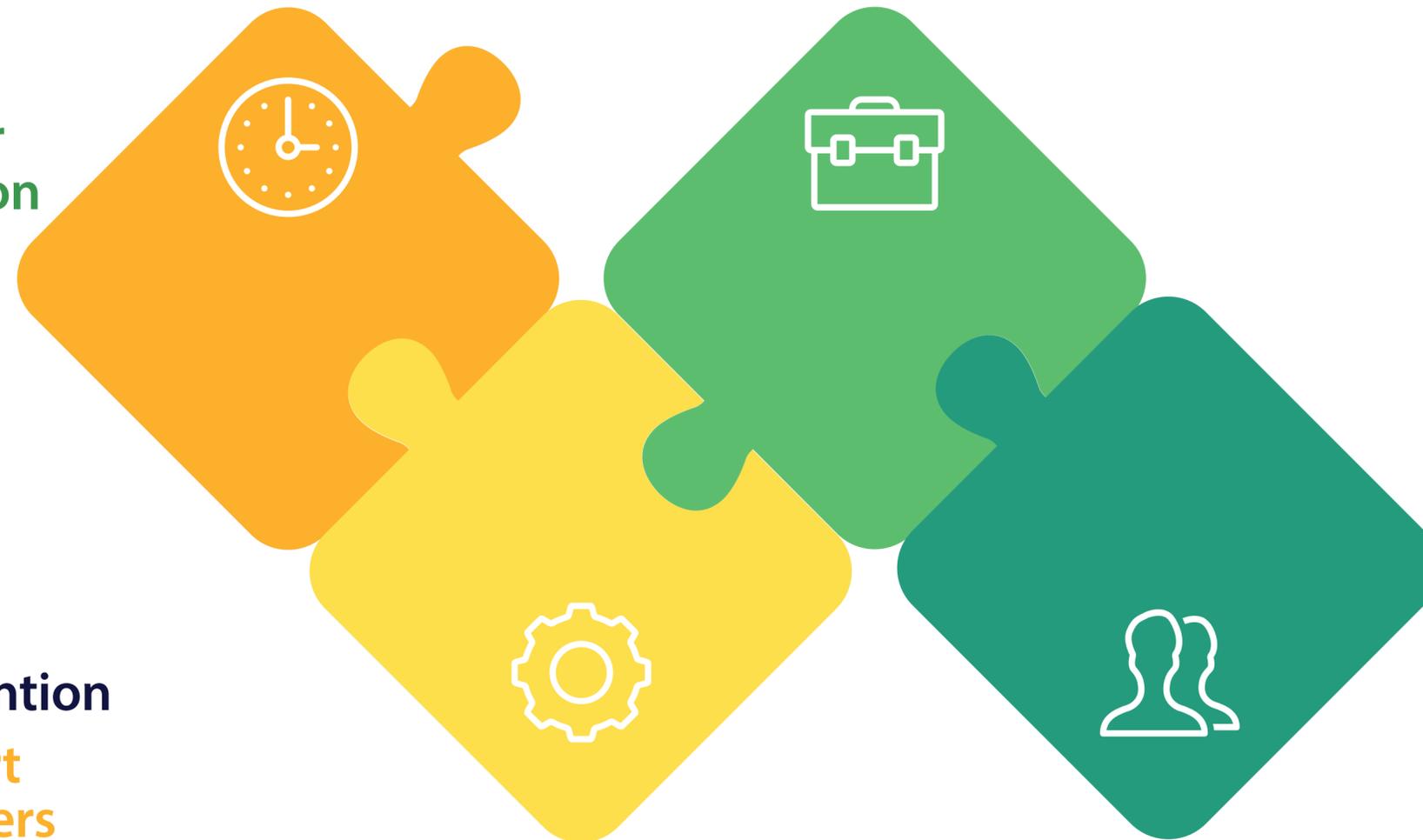
Some Countries recognize this procedure

- **New York Convention**

Does not support either Court orders or interim awards

- **Indian Court order**

Enforceability may be an issue but it works in India seated arbitrations



Emergency Arbitrator

Process

Appointment
On the application of party, Arbitral Institution appoints an emergency Arbitrator.

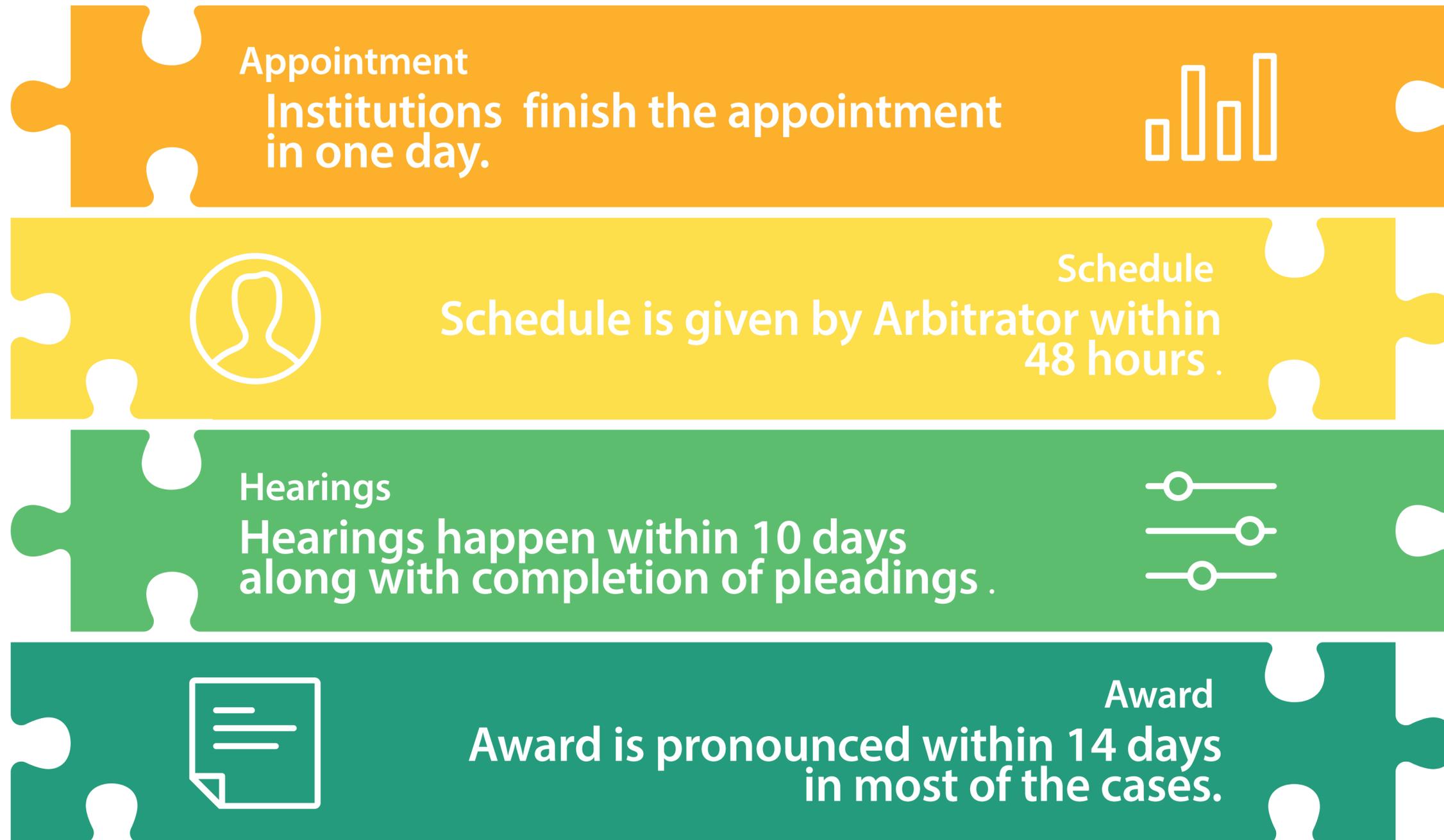


Arbitral Tribunal
He wont be a part of AT and AT can review or alter the order of the emergency Arbitrator

Scope
His authority is restricted only to the interim order.

Enforceability
Singapore and Hong Kong recognize emergency arbitrator by law.

Times Lines



Emergency Arbitrator & India

WRITE YOUR SUBTITLE HERE

1

Not enforceable in India

Even though Law Commission recommended the amendment, Government did not incorporate in 2015

Can be a basis for a Section 9 Application

Relying on Emergency Arbitrator award Section 9 orders are granted by Indian Courts

2

3

Section 9 is advisable

Indian Courts handle Section 9 applications efficiently

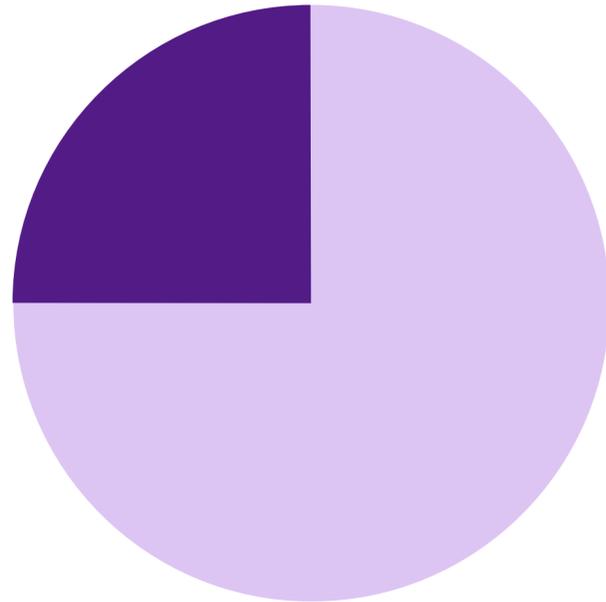
Grounds

Irreparable loss is expected if not protected & Party has reasonable chance of succeeding

4

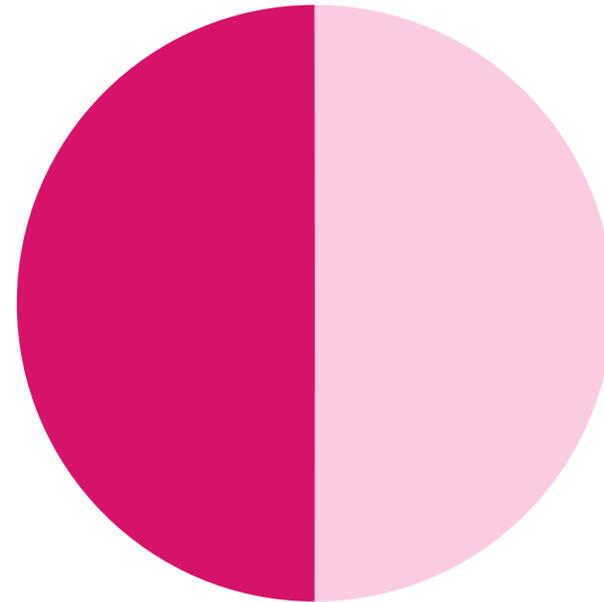
Thanks

Courts & Awards



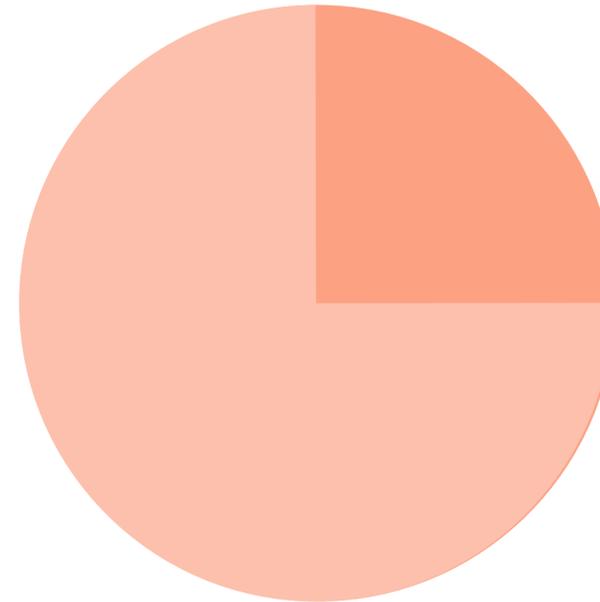
Grounds

S.34 grounds are similar to Article 34 of UNCITRAL Model law



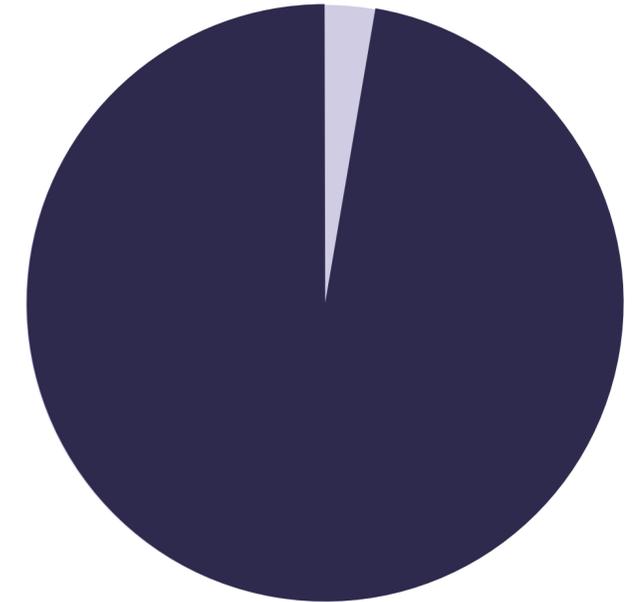
Nature

S.34 Proceedings are not Regular Civil Appeals



Courts Powers

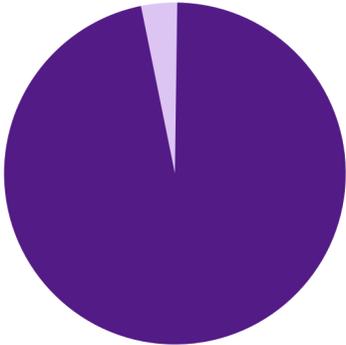
Are restricted to the grounds specified in S.34 of the Act.



Scope of S.34

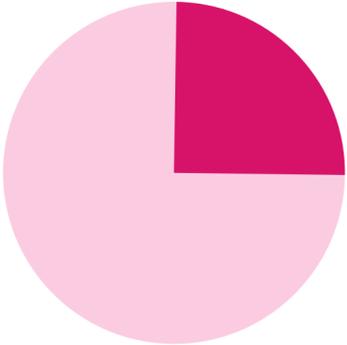
Has different approaches to domestic awards and awards arising out of international Commercial Arbitration

Requirements to Challenge an Award under S.34



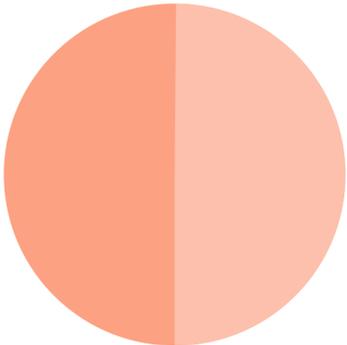
S.34 Application

The only recourse to challenge the award is filing an application under S.34 of the Act .



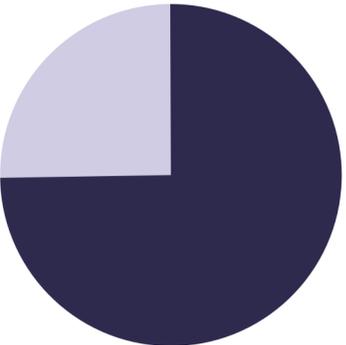
Within 120 days from the Date of Receipt of the Award

The Limitation is three months plus one month for special reasons. Limitation starts from delivery of the award



Establishing on the basis of record of the Arbitral Tribunal

Parties cannot go beyond the Arbitral records to prove their challenge to an Arbitration award.



Time Limit for disposal of S.34 application

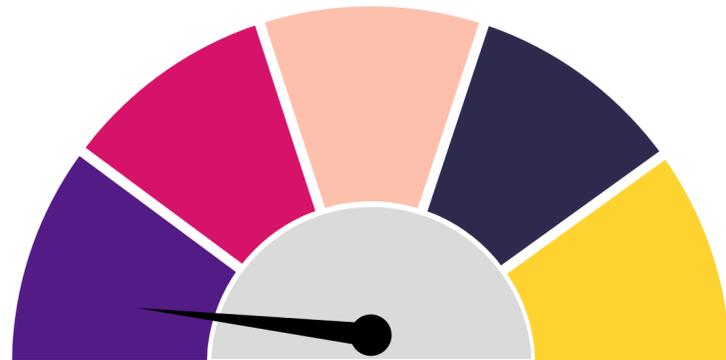
Within one year from the date of receipt of notice by the other party.

Grounds of Challenge

S.34 (2)(a) of Arbitration and Conciliation Act, 1996

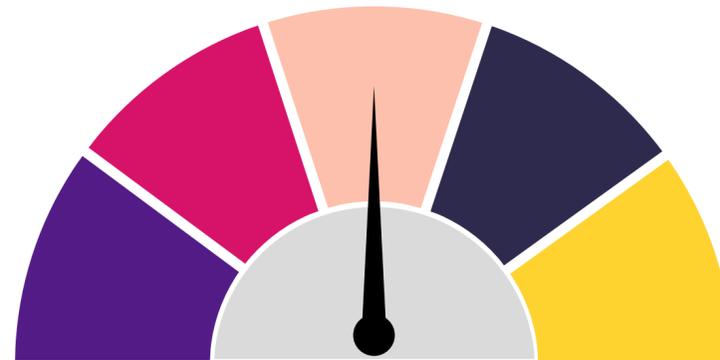
Incapacity

If any of the party was under some incapacity.S.34(2)(a)(i)



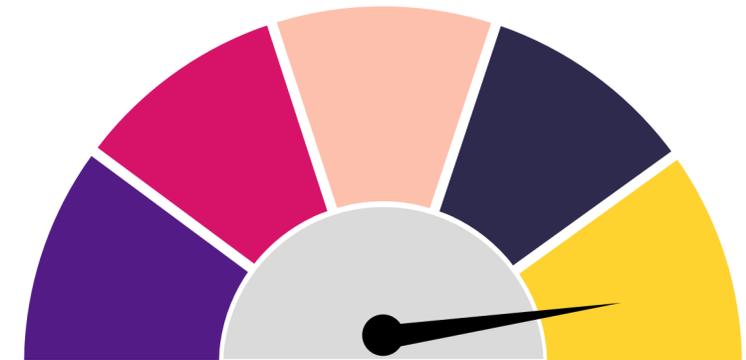
Invalidity

Invalidity of the arbitration agreement under the procedural law. S.34(2)(a)(ii)



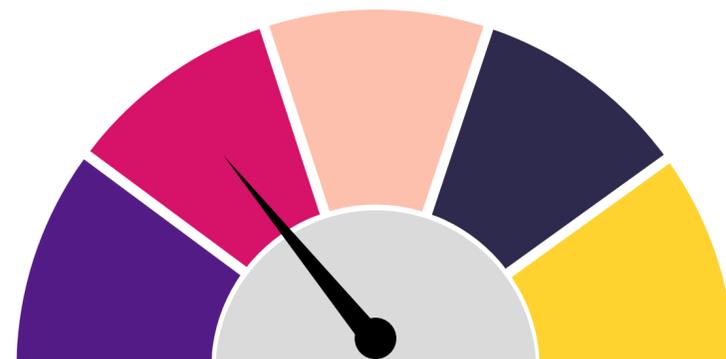
Notice

No proper notice to a party/ unable to present the case S.34(2)(a)(iii)



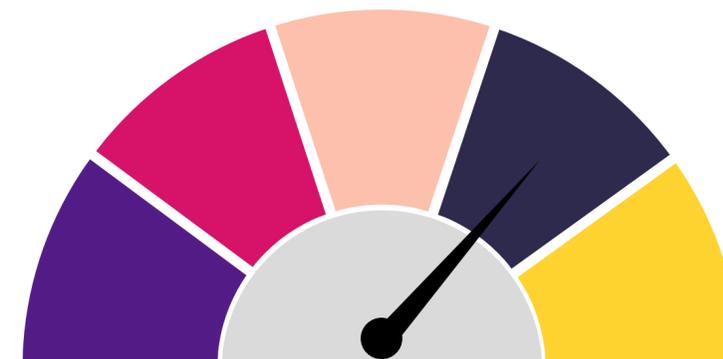
Award beyond submission

Arbitral award is beyond the submission of parties S.34(2)(a)(iv)



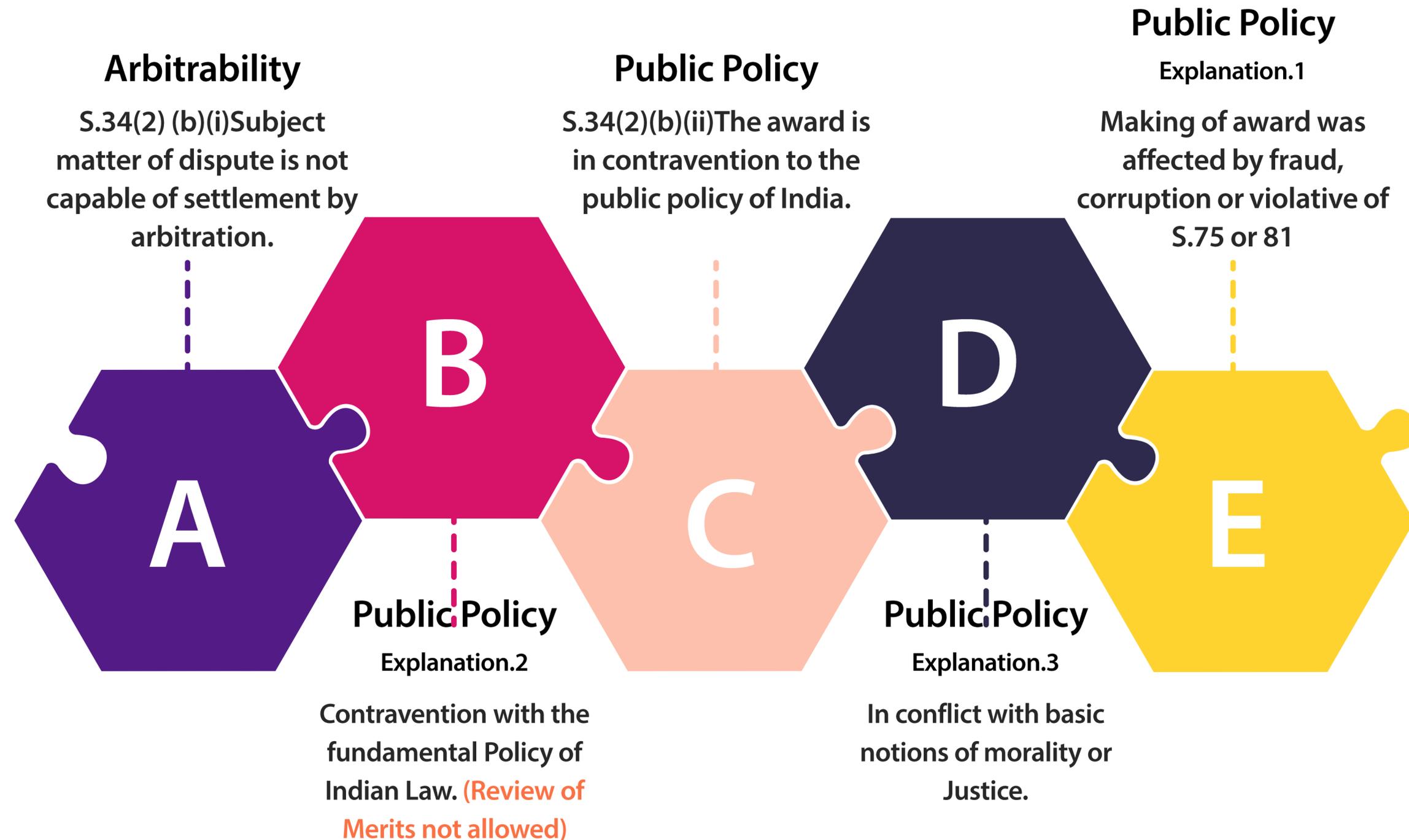
Composition of AT

If composition of the tribunal was not according to the agreement S.34(2)(a)(v)

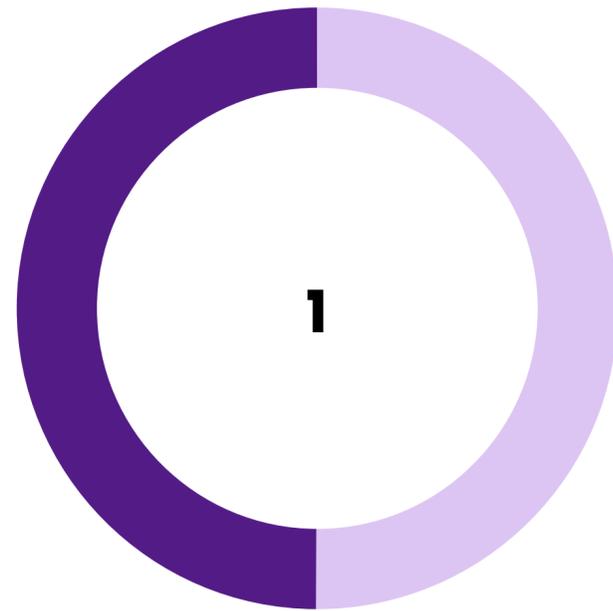


Grounds of Challenge

S.34(2)(b) of the Arbitration and Conciliation Act

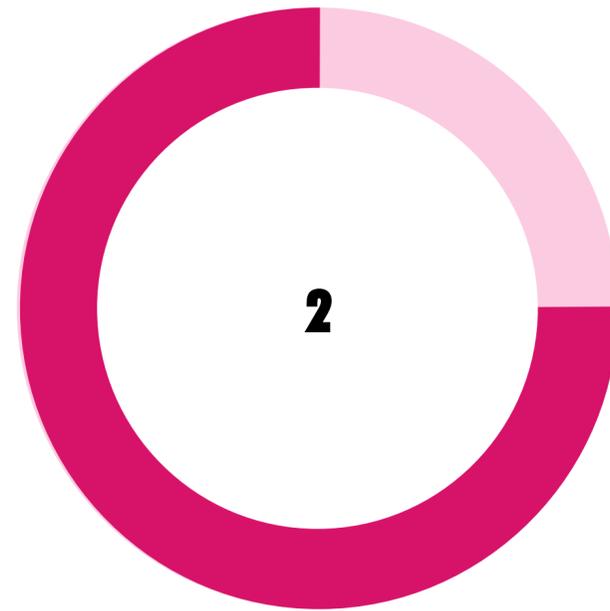


Arbitrator is the final Authority for



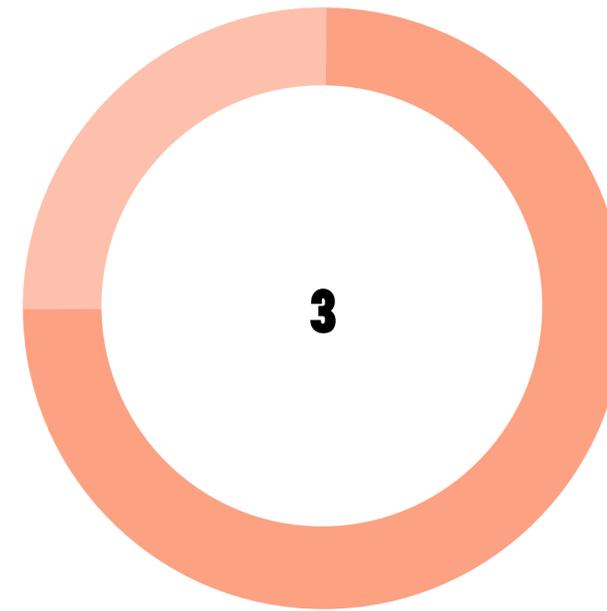
Interpretation of Contract

Arbitrator is the final authority for interpretation of contract



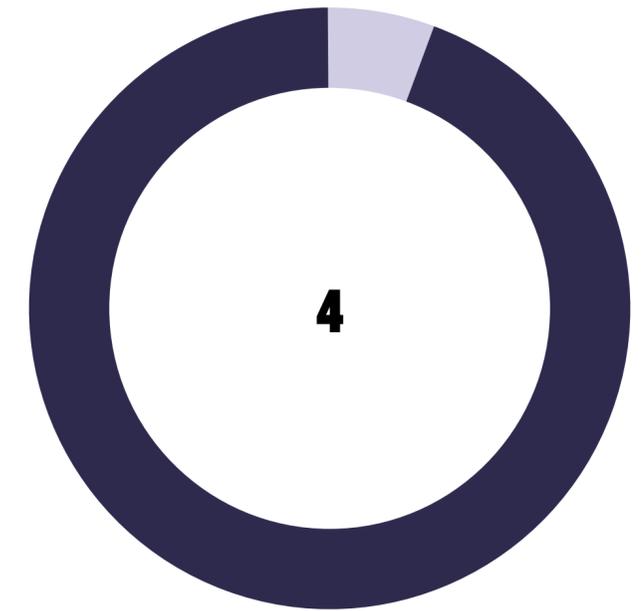
Facts

Arbitrator is the final authority for the facts of the case.



Interpretation of law

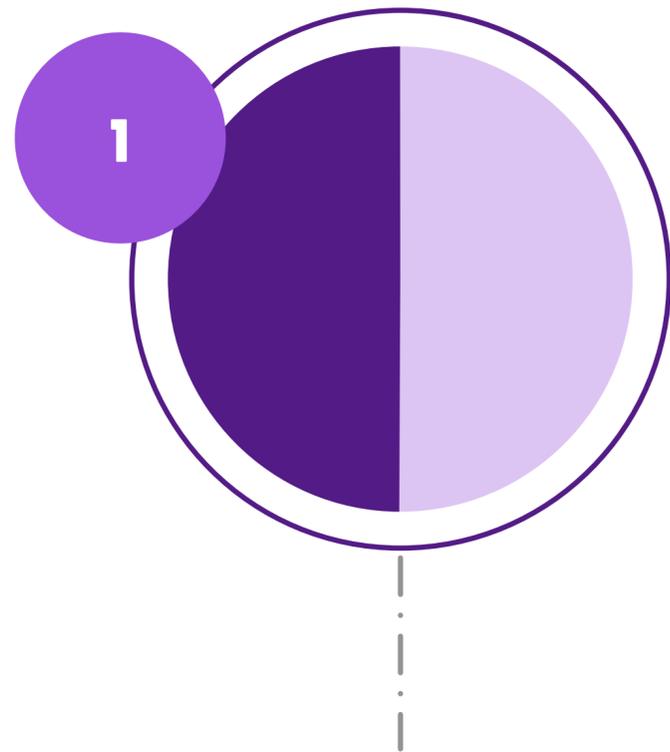
Arbitrator view is final if a legal question was referred to him



Plausible view

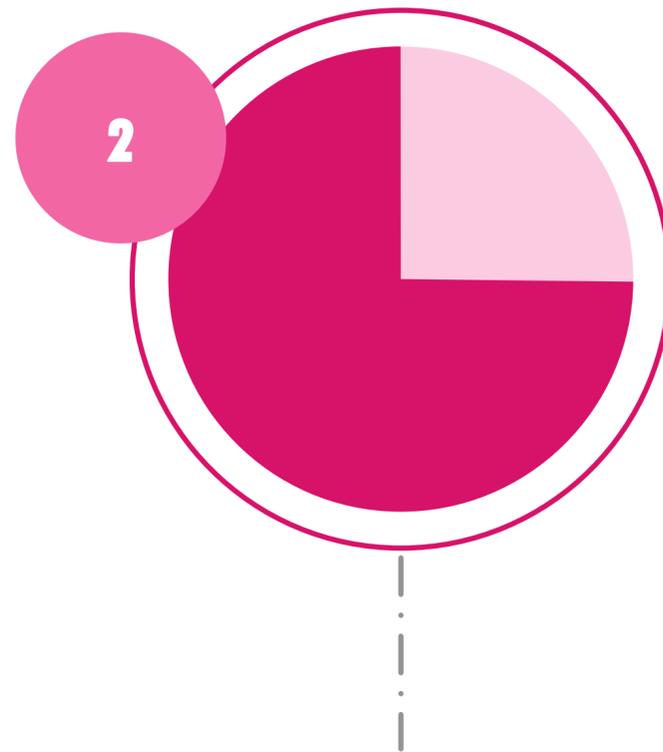
If the view taken by the arbitrator is a plausible view court should not interfere.

When award can be set aside?



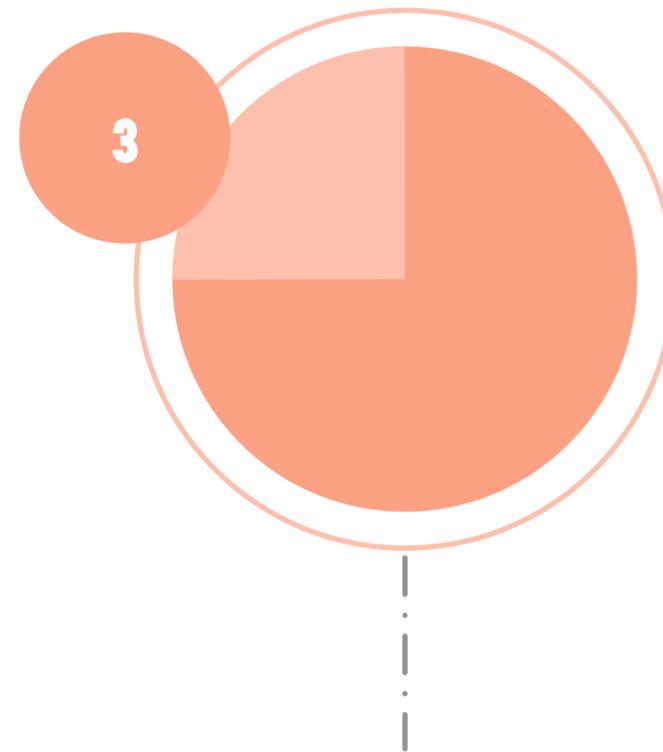
Perversity

If the findings of the arbitrator is perverse.



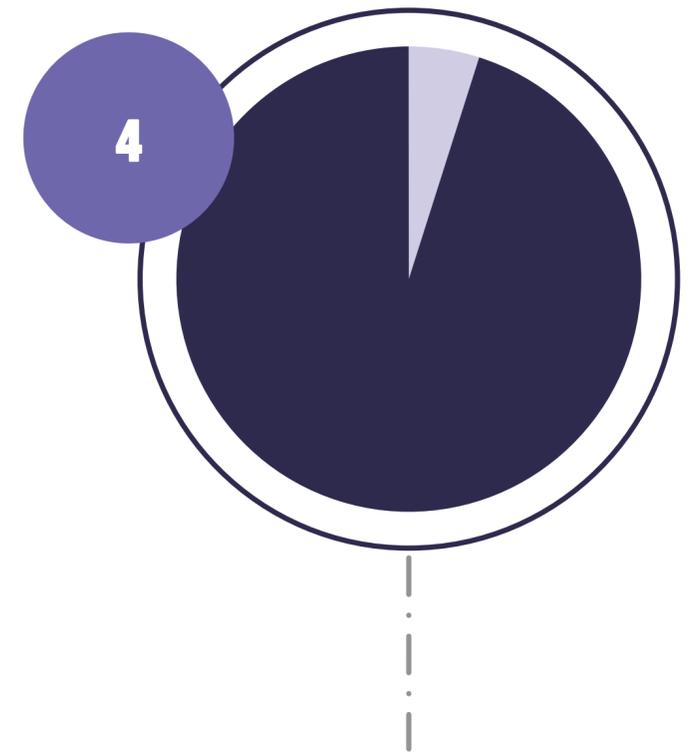
Technical grounds

Incapacity, improper notice, beyond reference, arbitrability, AT formation ignoring contract.



Ignoring the Contract

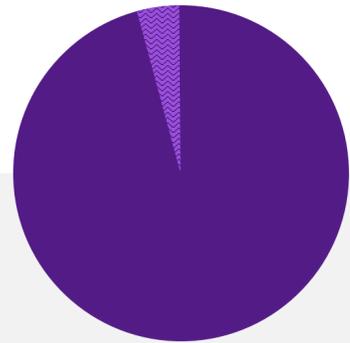
If the Arbitral tribunal ignores the contract provisions of the contract between parties.



Public Policy

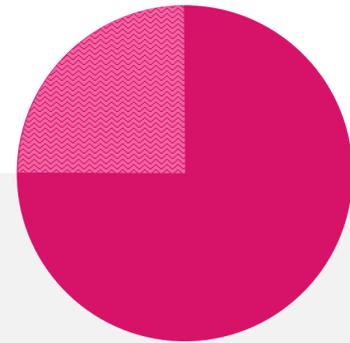
Public Policy as explained by the Courts in India.

Fundamental Policy of Indian Law



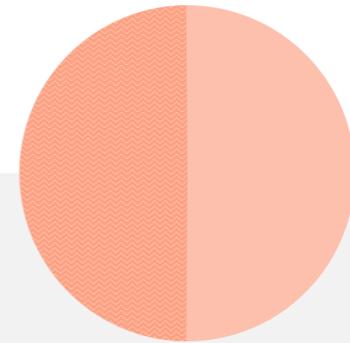
Legal compliance

Award should be compliant with statutes and Judicial precedents.



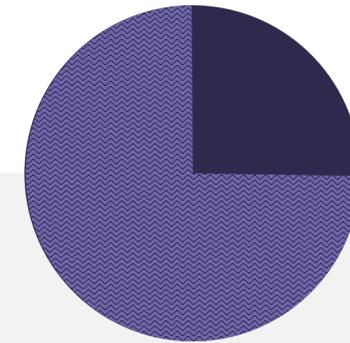
Judicial approach

Award should be fair, reasonable and objective.



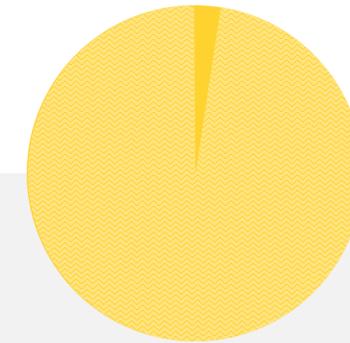
Natural Justice

Following the fundamental rules of natural justice.



Wednesbury reasonableness

Perversity. Finding on no evidence or irrelevant evidence or ignoring evidence



Judicial Morality

Following Judicial Approach to the disputes.

Patent Illegality

Substantive Law

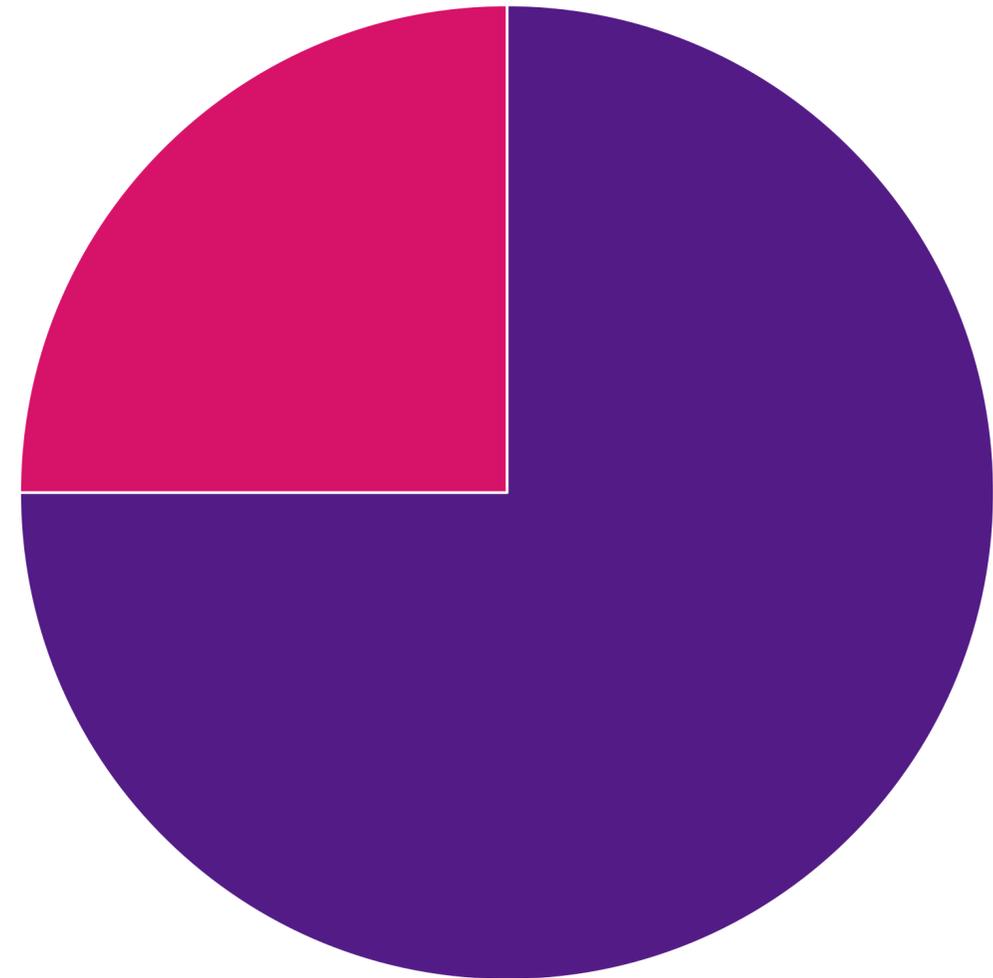
Award should not violate any substantive law of the country.

Procedural Law

Award should not be violative of Arbitration and Conciliation Act,1996.

Contract

Award should not be violative of the contract provisions



Online Arbitration

Under IDAC India Rules



Increasing International Trade

Globalization of business has increased the requirement of less cost dispute resolution to help the small and medium enterprises. One of the emerging dispute resolution method is “Online Arbitration”

Development of Arbitration

1958

1985

1996

2020

New York Convention 01

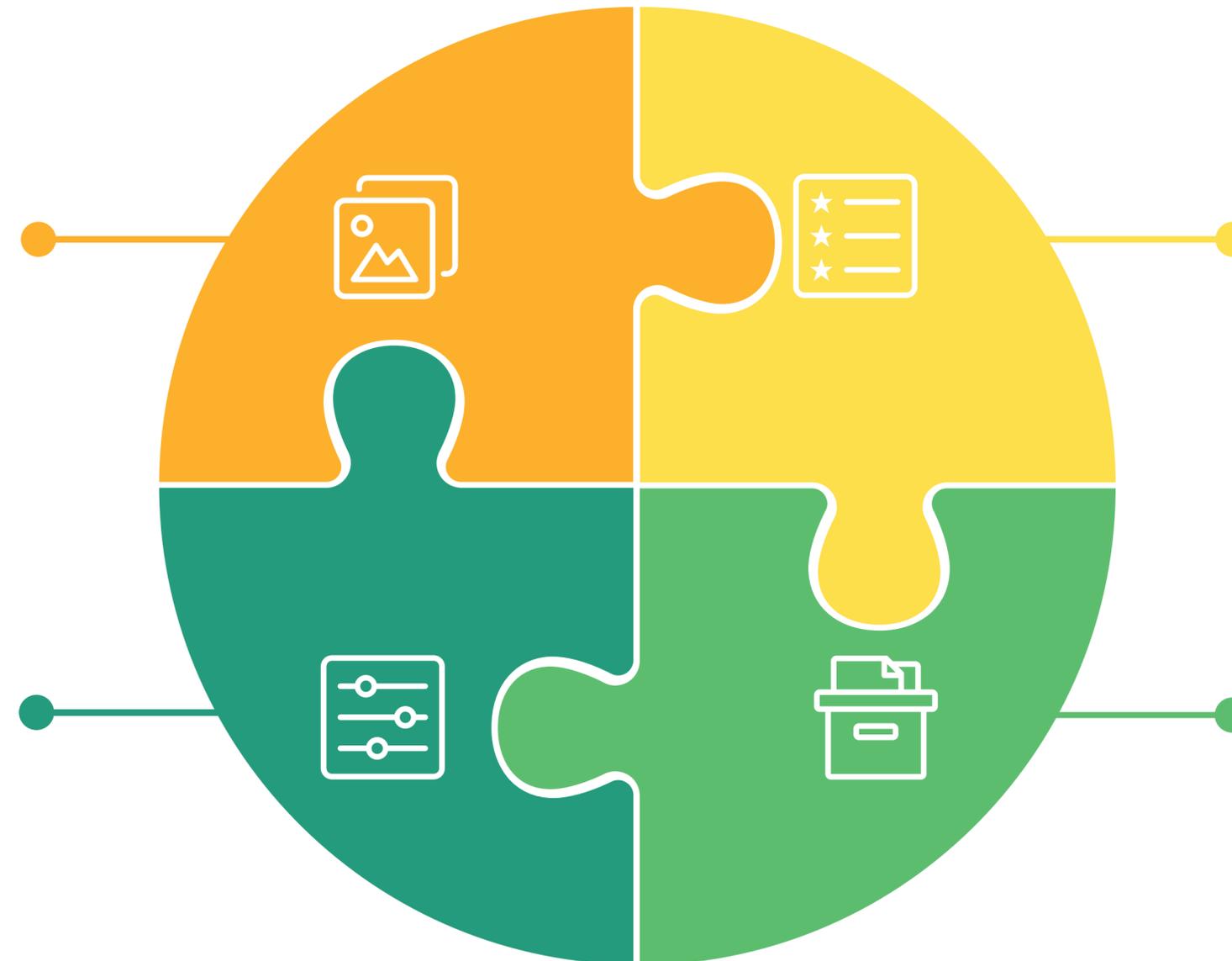
UNCITRAL Model law 02

A & C Act, 1996 03

Online Arbitration 04

Online Arbitration Framework

Global Institutions



WIPO

WIPO online dispute resolution resolves disputes relating to domain name disputes globally.

UNCTD 2003

United Nations Conference on Trade and Development created a base paper on Electronic Arbitration.

China Guangzhou

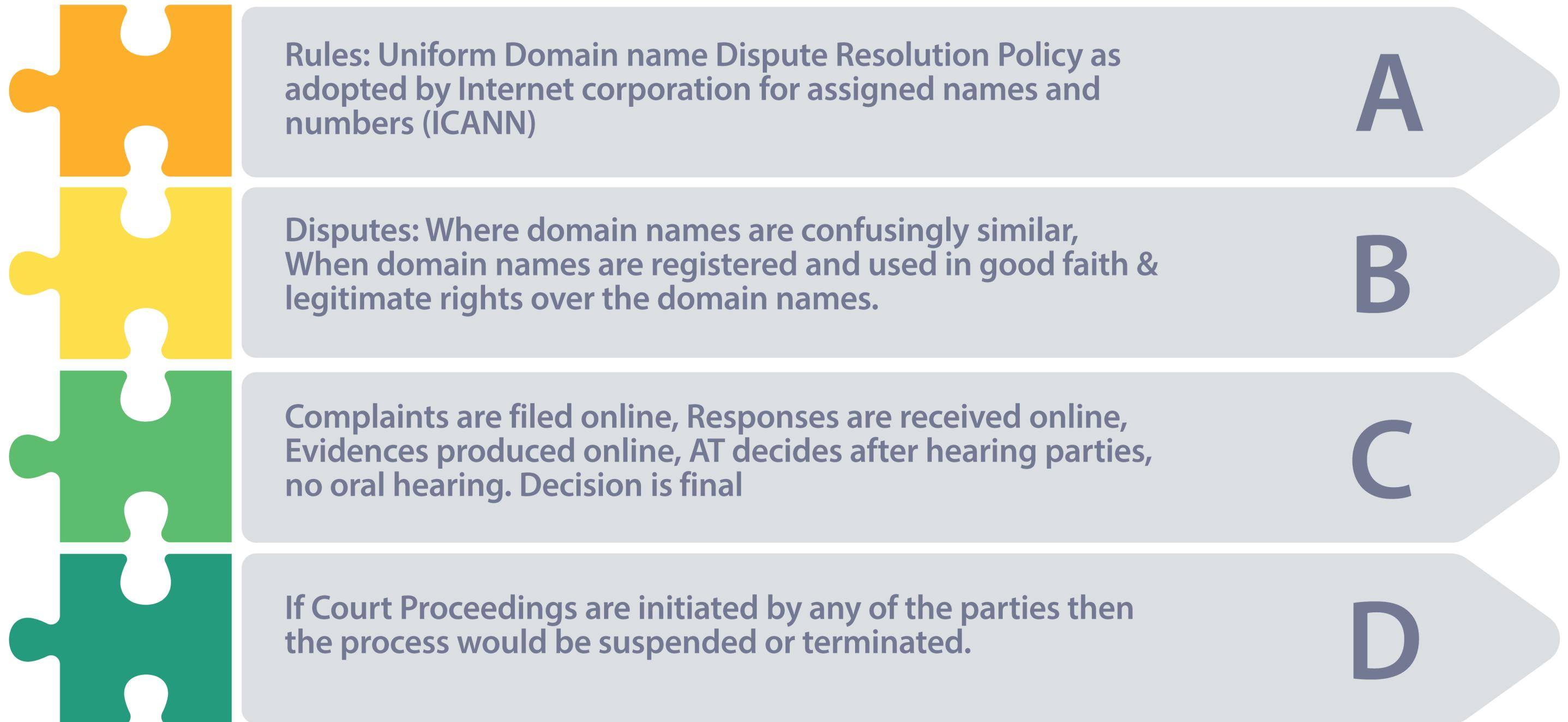
In China CIETAC & China Guangzhou Arbitration Centers have online Arbitration Process.

UK European Consumer Centre

This online arbitration center provides online resolution process for consumer disputes in UK & entire Europe.

WIPO Model

Online Arbitration for domain name disputes



IDAC India Model

Online Arbitration Process



Notice of Arbitration

Notice of Arbitration is to be sent by email or hard copy request to IDAC India



Completion of pleadings & Hearings

Filing of Claim, Statement of defense and all other activities happen online.

Appointment of Arbitrator

Appointment of Arbitrator is done jointly by parties/ IDAC India and provides online Access.



Award

Award is finalized by the arbitrator and IDAC provides copies to the Parties.



Appointment of Arbitrator

Under IDAC India Rules

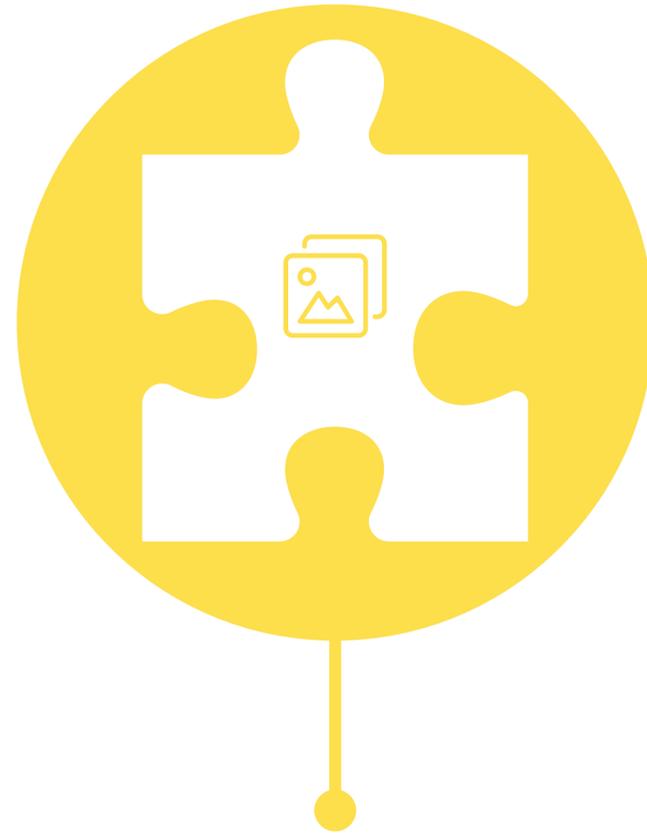
Panel

IDAC India has a panel of trained Arbitrators



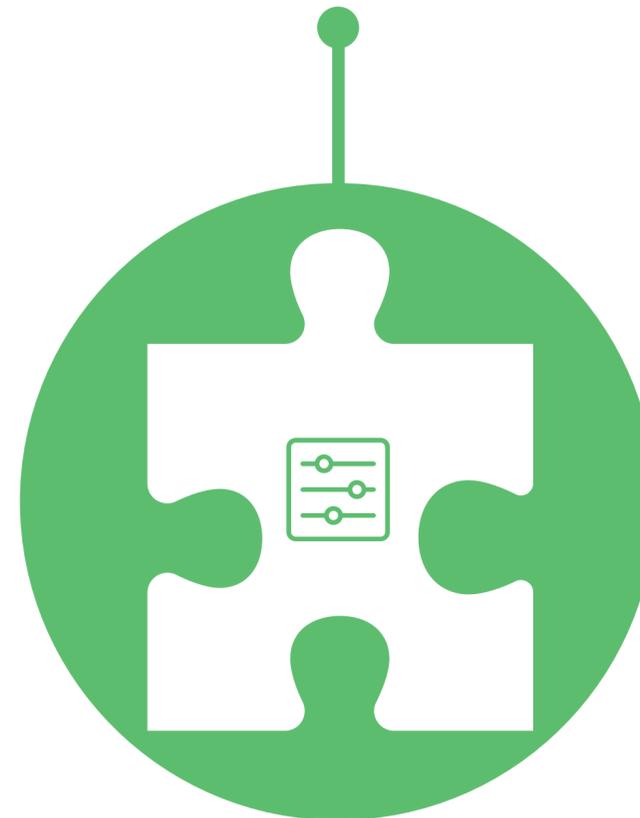
Claimant Proposal

Claimant can select five names from the panel and send it to IDAC and to Respondent.



Declaration

If respondent does not agree to any one of them, then IDAC will select one and seek declaration.



Arbitrator appointment

After circulating the declaration to parties, the appointment shall be confirmed by IDAC India .



Hearing Procedure

Under IDAC India Rules

● Filing of Documents & Pleadings

Using their login details parties should upload the documents in the case window. One hard copy shall be sent to IDAC India office.

● Evidences

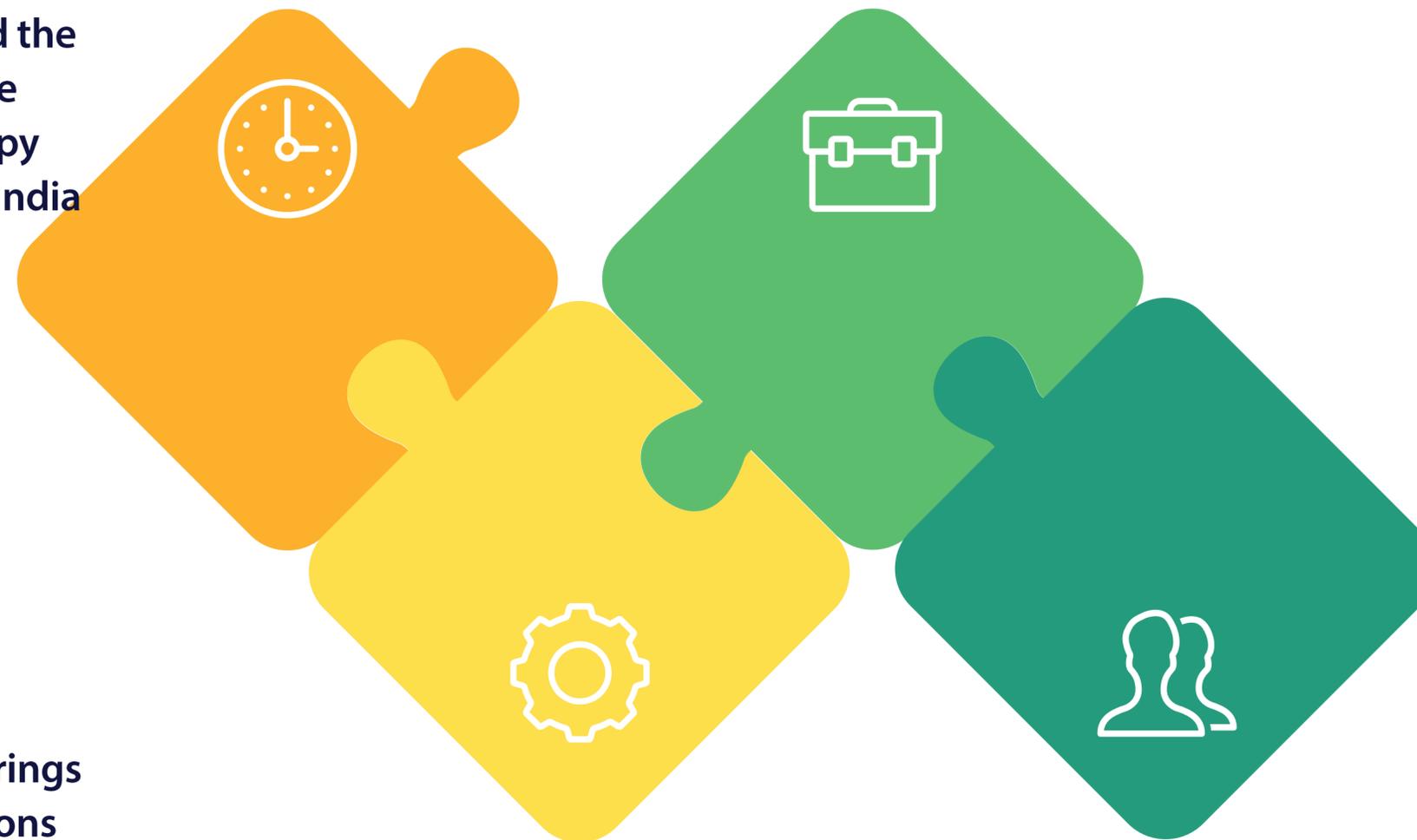
No oral evidence hearings are allowed. Arbitrations will be document only arbitrations

● Oral Hearings

In special cases, arbitrator may allow, online oral hearings by video conferencing

● Written Arguments

Arbitrator shall seek parties to file written arguments on the issues finalise in consultation with Parties



Award & Seat

WRITE YOUR SUBTITLE HERE

Seat

Arbitrator will follow the seat and laws provided by the parties in the agreement. If no seat is selected Delhi will be the default seat

Fee Schedule

Fee Schedule is much cheaper than the Fee schedule Provided in the Act (30% of the Schedule Fee)

Applicable Laws

Applicable laws are selected by parties, if not Indian laws are applicable laws.

Enforceability

The seat chosen by the party if it is a New York Convention seat, it is enforceable all over the World.



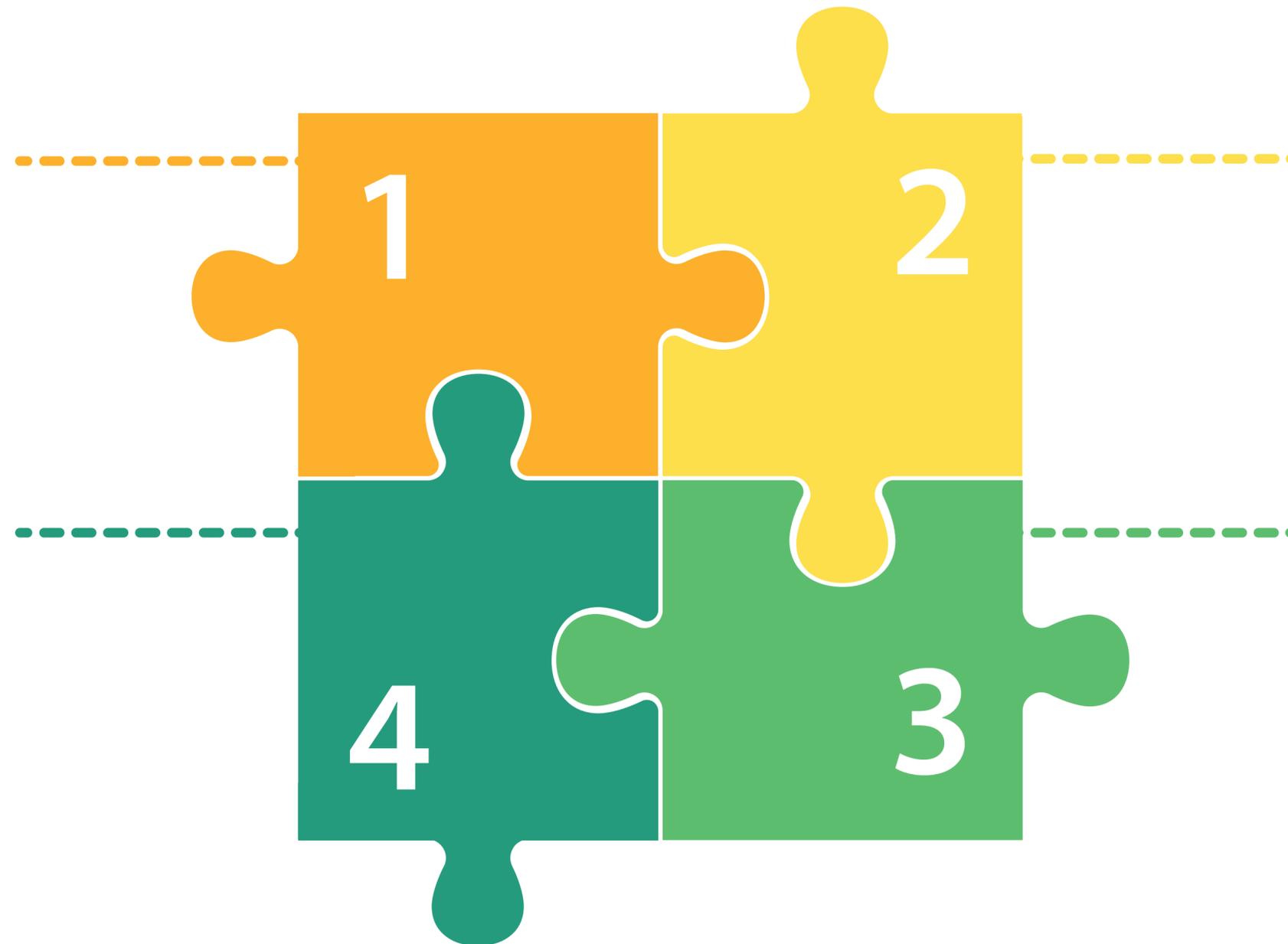
Advantages of online Arbitration

Convenience

Parties can conduct the case sitting their own places and under the pre-determined Procedure.

Less Cost

The travel costs, legal costs & arbitration costs are much lower.



Enforceable Award

Since there is no bar for online arbitration, New York Convention can be applied.

Faster resolution

Most of the cases will see the final award within 6 months from the date of formation of the Arbitral tribunal.

Thanks