

Consider enforceability in drafting cross-border arbitration contracts

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While arbitration and choice of law clauses are no longer drafted using boilerplate precedents, they may not take into account practical consequences. Their effects are far-reaching, including whether a claim is arbitrable, the enforceability of interim orders, disclosure obligations, procedural protections and the enforceability of the final award.

The law governing the arbitration agreement determines both the formal and substantive validity of the arbitration agreement, including arbitrability of claims. This is significant in cross-border transactions because jurisdictions differ as to what may be referred to arbitration.

For example, although oppression and mismanagement (O&M) claims are non-arbitrable in India, they are arbitrable in Singapore. This was at the heart of the dispute between Anupam Mittal, the founder of Shaadi.com, incorporated as People Interactive (India) Private Limited, and Westbridge Ventures II Investment Holdings, a Mauritius-based investor in People Interactive.

Mittal began an O&M case before the [National Company Law Tribunal](#) (NCLT) in India. At the same time, Westbridge instituted arbitration proceedings under the shareholders agreement, which provided for arbitration seated in Singapore. The Singapore [courts](#) determined that the law governing the arbitration agreement was Singapore law and directed Mittal to pursue his claims through arbitration.

However, the Bombay High Court [held](#) that the NCLT had exclusive jurisdiction over O&M matters and that any arbitral award rendered on such matters would not be enforceable in India.

The NCLT [followed](#) this decision, holding that arbitration would leave Mittal without a remedy because the NCLT was the exclusive forum empowered to grant relief in O&M matters. Although the matter is now before the National Company Law Appellate Tribunal, the dispute shows how designating the law governing the arbitration agreement can reduce the dispute life cycle.



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The law of the seat governs arbitral procedure, judicial oversight and intervention, as well as the grounds for setting aside awards. The choice of seat in cross-border contracts impacts whether interim relief granted through emergency arbitration is enforceable in India. In *Amazon.com NV Investment Holdings LLC v Future Coupons Private Limited and Ors*, the Supreme Court [held](#) that an emergency arbitrator's decision in an India-seated arbitration under Singapore International Arbitration Centre (SIAC) rules is enforceable under section 17(1) of the Arbitration and Conciliation Act, 1996 (act). However, emergency interim relief in foreign-seated arbitrations is not enforceable under part II of the act, which lacks an equivalent provision. Parties must apply for interim relief under section 9 of the act, the relief granted by the emergency arbitrator being treated merely as a factor in the court's consideration.

In foreign-seated arbitrations, parties may still seek interim relief under section 9, as read with the proviso to section 2(2) of the act. However, they may exclude the applicability of section 9. Courts differ on whether this exclusion has to be done expressly or may be implied. Therefore, parties should make their intentions known explicitly.

Institutional rules govern key aspects such as arbitrator appointment, interim relief, disclosure obligations and timelines. As institutions often update their rules, not specifying the relevant version or overlooking the impact of changes may lead to unexpected procedural consequences.

For example, the SIAC Arbitration Rules, 2025, introduce protective preliminary orders, a powerful form of ex parte emergency relief available before filing the notice of arbitration in order to preserve assets and evidence. No notice is required, and the emergency arbitrator must decide the application within 24 hours. However, enforcement may be difficult in India, where procedural fairness is sacrosanct.

Another example is the mandatory disclosure of third-party funding under the International Chamber of Commerce Arbitration Rules, 2021 and the SIAC rules. These rules require disclosure of the identity of the funder, which can affect decisions concerning conflicts of interest and applications made for security for costs.

Parties should carefully consider such matters when deciding which institutional rules and laws are to apply. Dispute resolution strategies, procedural expectations and jurisdictional realities must be taken into account.

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