



AD IDEM

**The Dispute Resolution Center
of the Indo-Italian Chamber**

Bi-lateral Mediation & Arbitration Chamber

in partnership with





Why an International Arbitration?

- The globalization of international cross-border investment and trade has led to increased and ever more complex relationships between businesses, investors and States
- The risk of complaints, litigation and dispute is increasing
- The current default system of international commercial litigation does not meet the needs of contemporary cross-border trade and investment.
- Parties need to consider (preferably at the outset of the relationship) faster means of resolving any disputes (this is particularly important for SMEs).
- Bilateral Arbitration Chambers are a solution that would enable more efficient, more expert, more neutral, more objective, and fairer dispute resolution.
- BACs would enhance international trade and investment, access to justice and the rule of law in international commercial settings





Dispute resolution options for foreign companies in India

- The Indian judiciary is vast at some 17,000 judges, and while it boasts many professional and diligent judges, the system is under strain.
- Almost 24 million cases currently pending in the system
- The Courts are understaffed, meaning bottlenecks and delays are endemic.
- Depending on the court, commercial cases may take in the region of 5, 10 or 15 years to reach judgment.

The arbitration landscape – an emerging independence

- a) International commercial arbitration – Foreign seated
- b) International arbitration- India seated



The needs for International Mediation and Arbitration?

ISSUE	DESCRIPTION
Lack of Neutrality	Many international commercial disputes are, by default, resolved by litigation in national courts. However, commercial parties frequently doubt that national courts, particularly the courts of the jurisdiction of their counterparty, will render an unbiased and competent decision. In many instances, well documented concerns about corruption and the integrity of national courts further erode confidence in cross-border litigation
Lack of Experience and Expertise	International commercial disputes are often complex and many such disputes arise in specialized sectors, with complex business customs and technical issues (e.g., oil and gas disputes; M&A disputes)
Risk of Parallel or Multiple Litigation	Cross-border disputes often lead to litigation in multiple fora – the place of performance, the jurisdiction of the counter-party, the enterprises' own national courts and jurisdictions where the counter-party has assets for enforcement – with each proceeding potentially involving multiple appellate levels.



The needs for International Mediation and Arbitration?

ISSUE	DESCRIPTION
Cost and Time to Resolve Disputes	<p>Multiple parallel proceedings in cross-border disputes also leads to prohibitive costs and delays.</p> <p>Parties often have to “layer” counsel, first engaging local counsel and then appointing foreign counsel in each of the various relevant jurisdictions.</p> <p>Enforcement of judgments often requires multiple sets of lawyers in different jurisdictions. Litigation is often slow, with proceedings taking many years to conclude before being subject to even lengthier delays for appellate review and enforcement</p>
Obstacles to Enforceability of Judgments	<p>Different jurisdictions apply different rules (often uncertain national rules) when enforcing foreign judgments and forum selection clauses. Assuming the parties obtain a judgment from a national court, it is often difficult or impossible for the judgment to be enforced abroad, in particular in jurisdictions where the defendant has assets. Even where enforcement is possible, the process is invariably slow</p>
Uncertainty and Unpredictability	<p>The factors outlined above introduce a significant degree of uncertainty and unpredictability, which in turn has a chilling effect on international business. These risks drive up the costs of international commerce and may prevent many potential participants from expanding internationally</p>



Why the IICCI is the natural institution for AD IDEM?



- The Indo-Italian Chamber of Commerce, established in 1966, is a private no for profit association registered in India under Section 25 and recognized by the Italian Ministry of Economic Development.
- The IICCI is an association of Indian and Italian enterprises, professional and intermediate bodies with the mission of supporting the establishment and development of industrial and commercial collaborations between India and Italy
- The IICCI (more than 1050 members including Italian and Indian companies, associations, individual) is the natural institution to support companies in finding out a solution to their commercial disputes.
- The IICCI is member of Assocamerestero, Italian Association representing 79 Italian Chambers of Commerce abroad in 54 countries.
- A bilateral association is the natural institution to host a bilateral dispute resolution Chamber by providing all interested parties with:
 - Impartiality
 - Integrity
 - Confidentiality
 - Transparency



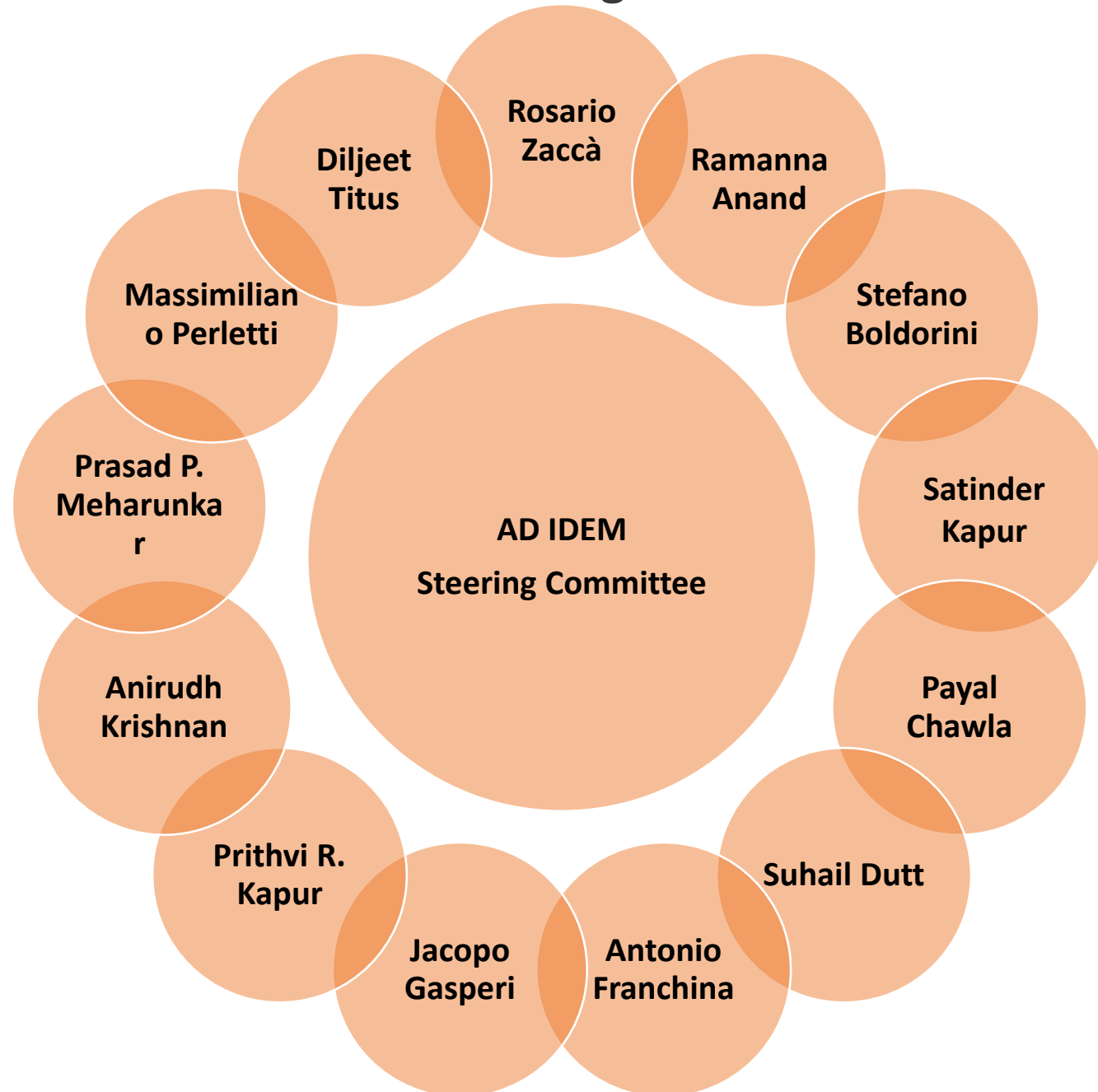
Background of the initiative

- The bi-lateral relationship between Indian and Italian companies have been consistently growing over the last decade
- Several Italian and Indian members highlighted the difficulties in finding out satisfactory solution in their commercial and investment related disputes
- Several members have given important input to work out a solution to solve this problem
- IBF (Indian Business Forum), informal association of lawyers based in Milan, conducted a study to outline the idea of a setting a bilateral arbitration chamber.
- Rosario Zaccà, active IICCI Board member and partner of one of the largest Italian Law firm (Gianni Origoni and Partners) suggested the idea of establishing a bilateral arbitration chamber within the Indo Italian Chamber of Commerce based on the IBF preliminary work.
- The idea has been supported by the IICCI Board and a Steering Committee has been established
- Members of the Steering Committee have been selected according to their education (law), work experience (they are all lawyers) and deep knowledge in the field of International arbitration and balancing Indian and Italian experts
- The Steering Committee has been assigned the task of preparing and developing the regulatory and administrative framework of an innovative bilateral mediation and arbitration chamber taking into consideration both the Italian and the Indian laws regarding arbitration.

ON 26TH SEPTEMBER 2019 THE IICCI BOARD APPROVED THE REGULATION AND ADMINISTRATIVE DOCUMENTS FOR ESTABLISHING AN INDO ITALIAN DISPUTE RESOLUTION CHAMBER.



AD IDEM Steering Committee





AD IDEM Steering Committee

Rosario Zaccà	Specialises in corporate and commercial law, merger & acquisitions and private equity, he has been with the firm since 1994
Ramanna Anand	Entrepreneur - more than 50yr in Industry and trade, intensive practical training with leading European manufacturers of machinery.
Satinder Kapur	Founder of skaa advocates and solicitors, Mr kapur is an accomplished English solicitor and Indian advocate. he has two decades of experience in conducting international commercial arbitration
Stefano Boldorini	Entrepreneur and Business Consultant for market strategies and internationalization of enterprises, working since 1996
Payal Chawla	Handled legal work for 11 Asian jurisdictions, she is among the premier corporate lawyers in the country, specializes in the areas of mergers, acquisitions ,litigation and arbitration
Suhail Dutt	Enrolled as an advocate in 1985, designated as senior advocates by Delhi High Court in Jan 2011, have a varied and vast experience of 33 years in civil, commercial & corporate law and arbitration
Antonio Franchina	Attorney at law, he is founder partner of the law firm Studio Legale Franchina & Associati, specialized in Civil law, commercial law, Employment & Labour law
Jacopo Gasperi	Advocate, working with Titus & Co, having 14 yr. of experience in international contracts & internationalisation of Italian companies



AD IDEM Steering Committee

Prithvi R. Kapur	Counsel SKAA advocates & Solicitors, Specialises in commercial Arbitration ,investment arbitration and commercial dispute resolution
Anirudh Krishnan	Arbitration Specialist at AK law Chambers, Area of Practice: litigation & Dispute Resolution
Prasad P. Meharunkar	Country head of Italy at TCS, has been with TCS since 1993, with over 25 yr. of experience in various part of the world
Massimiliano Perletti	Attorney at law, co founder of Rodl & Partner Milan since 1998,experience in important law firms in France, England and Germany
Diljeet Titus	Admitted to Bar Council in 1989, Founder & Managing Partner Titus & co since 1997, active practice in public international law, litigation, alternative dispute resolution, corporate and commercial advisory.
Gianni Vettorello	Co-Head of the banking & finance department based in DWF's Milan, he is considered as a high rated expert in general Italian legal banking & financial matters.



AD IDEM

**The Dispute Resolution Center
of the Indo-Italian Chamber**

Ad Idem is a latin adverb commonly used in the legal language

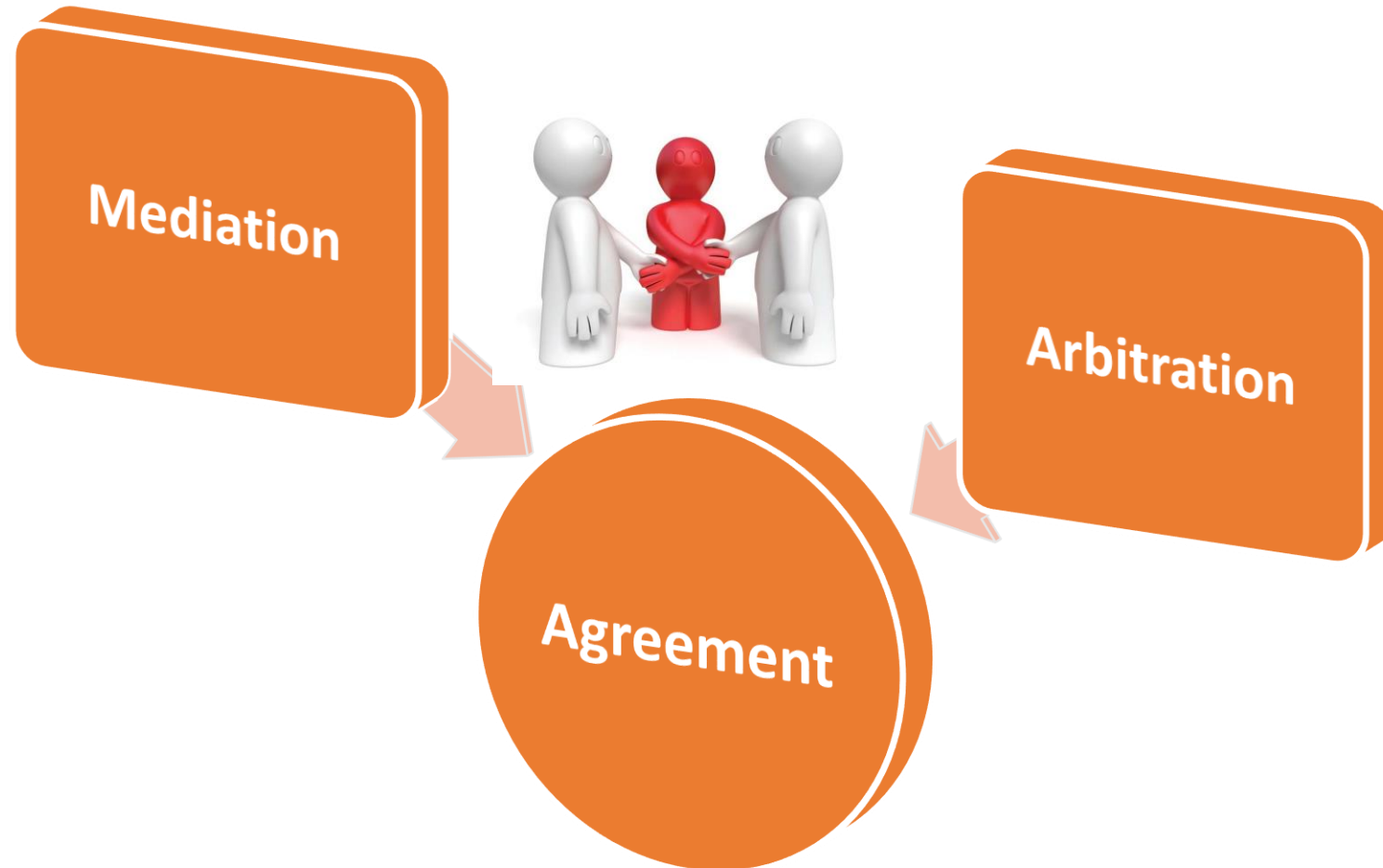
It means: “in agreement”: the parties were at idem

An Italic name to identify a contemporary bilateral mediation and arbitration Chamber



Ad Idem

Two services



One goal: resolving disputes



AD IDEM

Indo Italian Dispute Resolution Chamber

Mediation

The rules of Commercial Mediation of
AD IDEM

(Indo Italian Dispute resolution chamber)
promoted by the Indo-Italian Chamber Of
Commerce And Industry
(October 2019)

Arbitration

Arbitration Rules of
AD IDEM

(Indo Italian Dispute Resolution Chamber)
promoted by the Indo-Italian Chamber Of
Commerce And Industry
(October 2019)

References:

The arbitration rules - UNCITRAL (United Nations Commission on Trade Law)

The arbitration and conciliation act (9 august 2019) – Ministry of law and justice of India

D.LgsI.40/2006 Codice di procedura civile – Modifiche in materia di arbitrato – Ministry of Justice of Italy



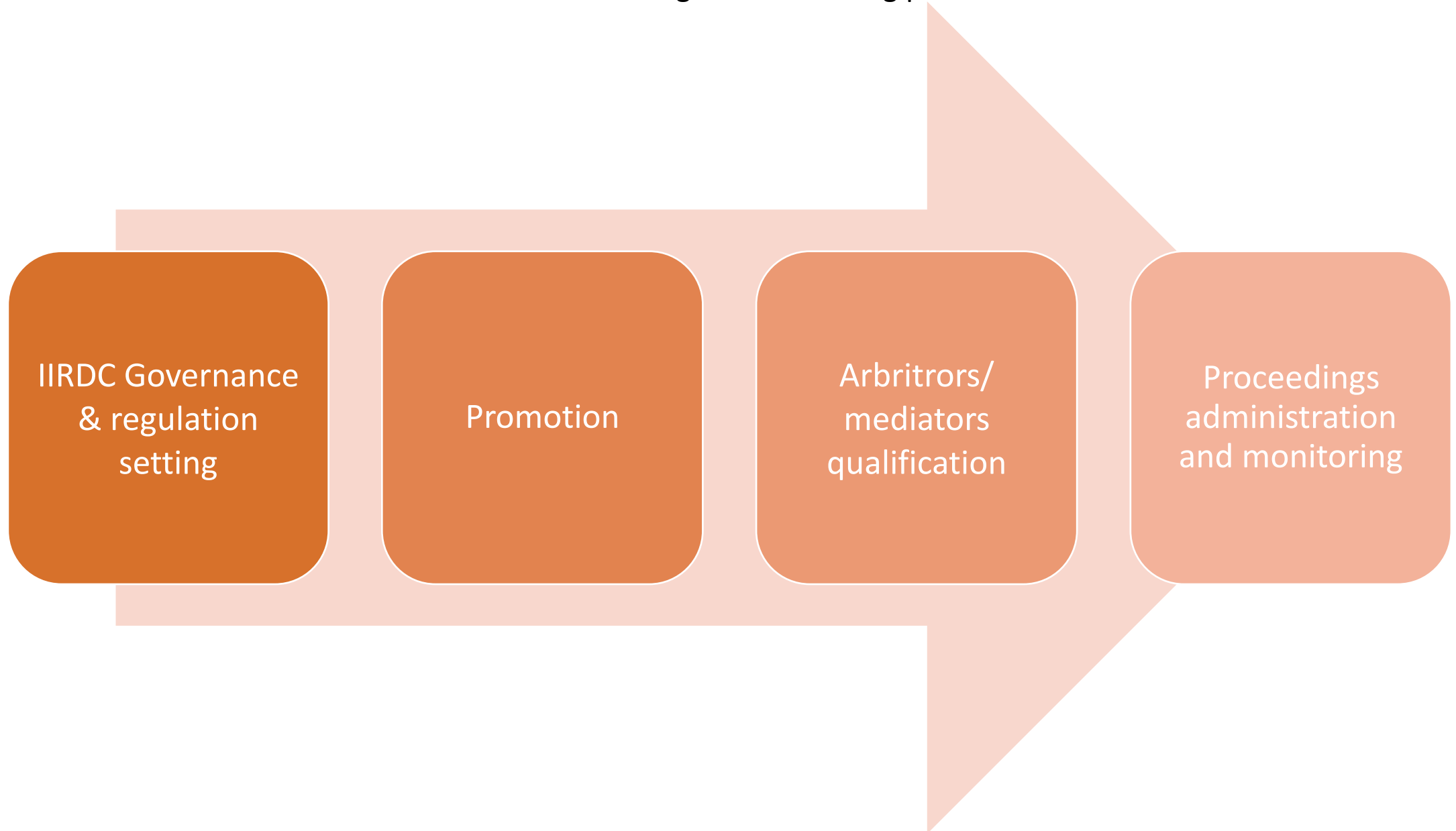
Two services: Mediation & Arbitration

Comparison	Mediation	Arbitration
Meaning	Process of resolving disputes wherein an independent third party, assist the parties involved in arriving at solution, agreeable to all.	Arbitration is a substitute of public trial, with no need of going court, wherein an independent third party analyses the entire situation and makes a decision binding on the parties.
Nature	Collaborative	Adversarial
Process	Informal	Formal
Role of expert	Facilitator	Judge
Number of expert	One	One or more
Private communication	Meeting between the parties concerned and the counsel takes place jointly and separately.	Only evidentiary hearings, no private meetings with the arbitrator.
Control over outcome	Parties	Arbitrator
Basis of outcome	Needs, rights and interest of parties	Facts and evidences
Outcome	May or may not be reached.	Definitely reached.
Decision	The mediator does not pass any judgement, but makes settlement only with the approval of parties.	The decision of the arbitrator is final and binding upon the parties.



The role of the IICCI

The IICCI manages the following processes:

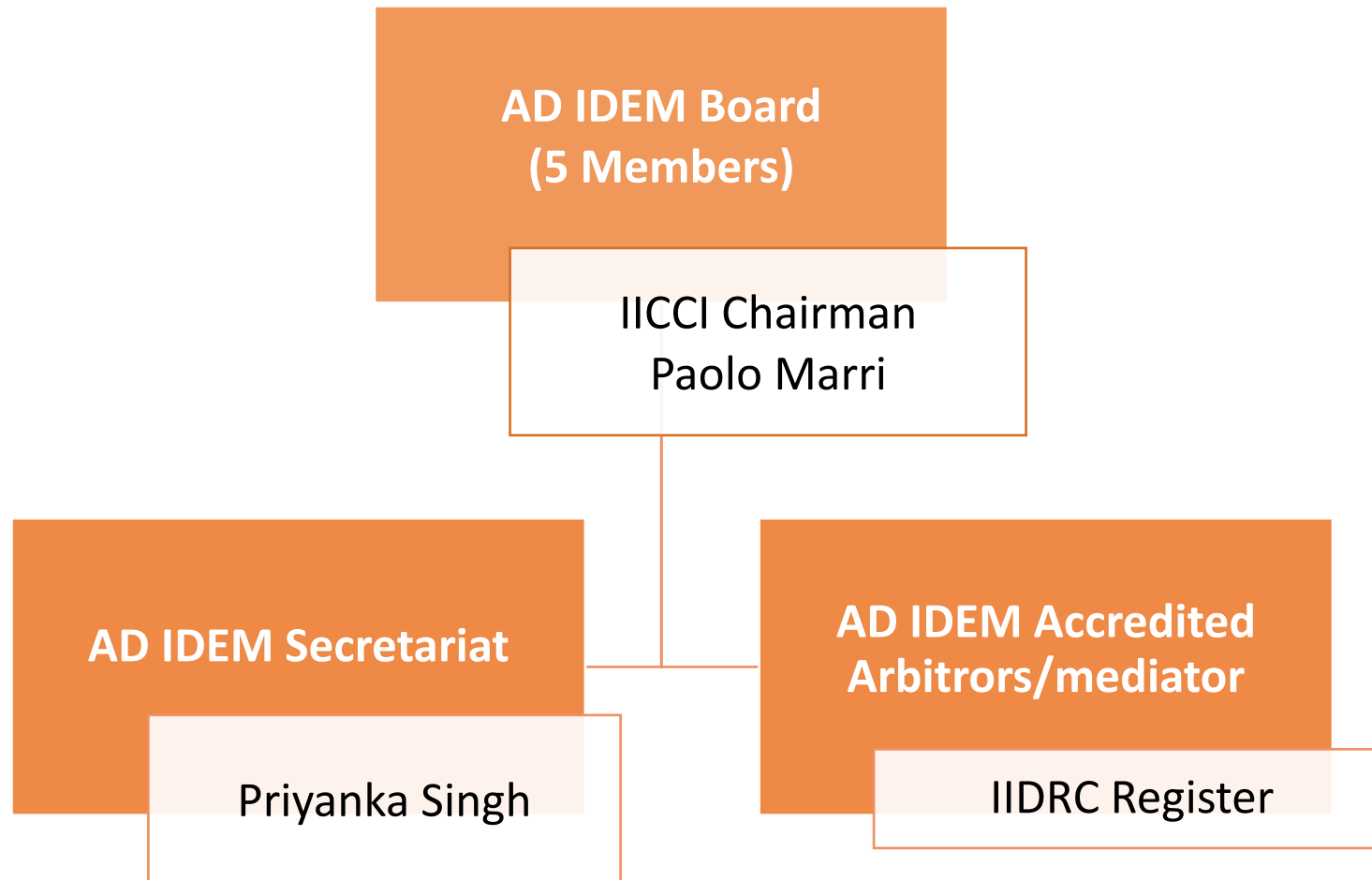




AD IDEM Governance

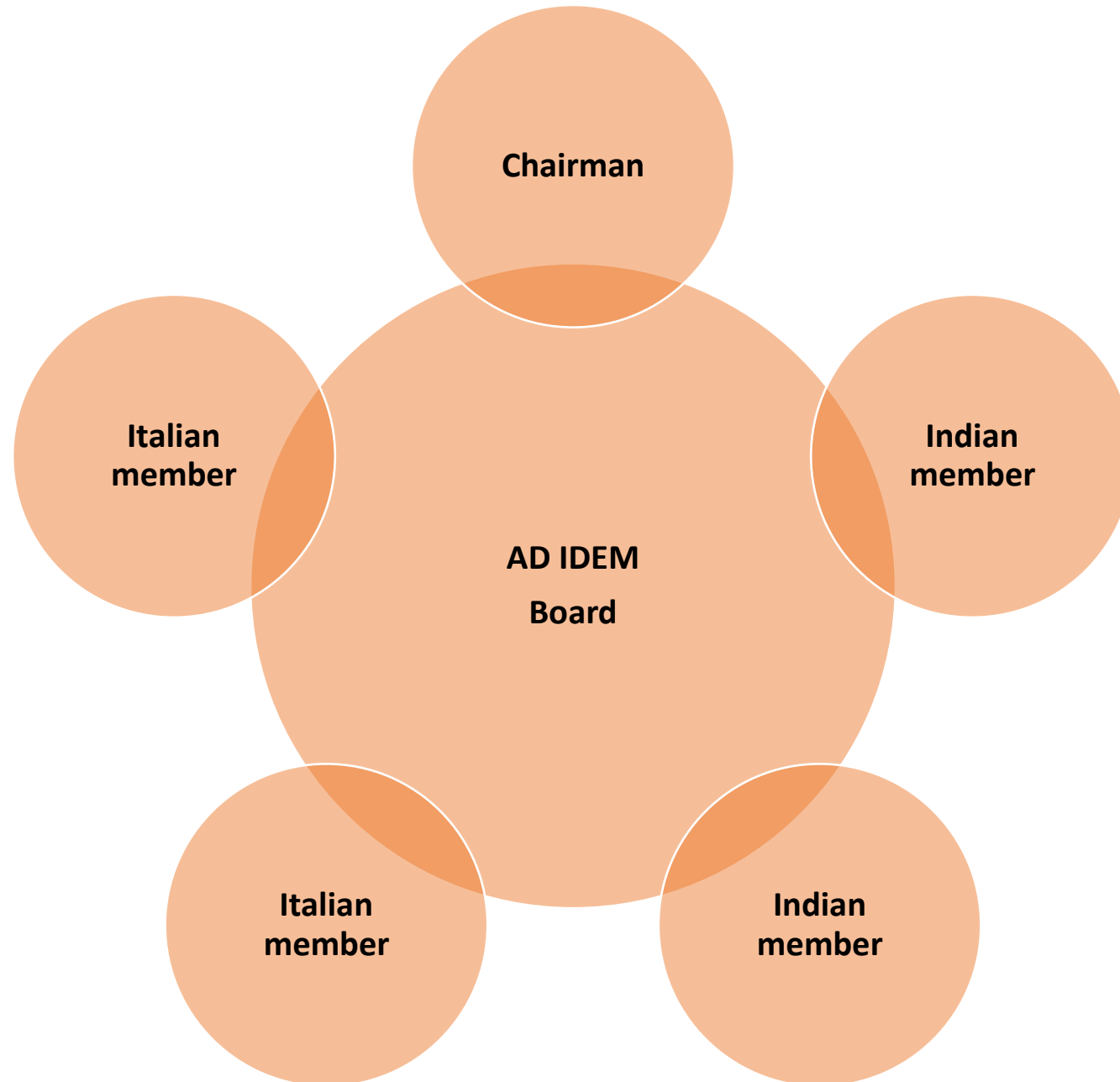
Scope: to ensure the compliance of the AD IDEM regulation with the applicable arbitration laws in Italy and India and to provide all interested parties with confidence that mediation/arbitration proceedings ensure competence, integrity, impartiality and confidentiality

AD IDEM roles





AD IDEM Board





Scope: to create awareness of the fundamental role of mediation and arbitration as a solution that would enable more efficient, more expert, more neutral, more objective, and more fair dispute resolution

AD IDEM roles

☐ *Digital communication*

WEB Site ([www.....](http://www.adidem.org)), Newsletter, Blog, Social groups

☐ *Printed materials*

Brochures, FAQ, Papers, etc.

☐ *Studies and research*

Dissemination of the culture of arbitration, mediation and other alternative forms of dispute resolution, concerning domestic and international economic relationships.

☐ *Awareness programs and events*

Roadshows and events to present AD IDEM and create awareness of the role and benefits of mediation/arbitration to resolve international disputes.

☐ *Training*

AD IDEM achieves the goal of providing all interested parties with a practical approach starting from the daily practice in the management of arbitration and mediation by providing training courses.



Arbitrators / Mediators qualification

Scope: to ensure competence, integrity and impartiality of arbitrators/mediators by creating and managing a publicly available register of AD IDEM accredited arbitrators and mediators

Competence map definition

AD IDEM Board has established the skills (education, work experience, mediation/arbitration experience) required to be accredited

Reception of application

The Applicant sends the application documents to the AD IDEM General Secretariat along with the evidences required.

Evaluation and accreditation

The application is evaluated by the AD IDEM Board and, once the decision is taken, an official communication is sent to the applicant.

Register's publication

The register of accredited arbitrators/mediators is publicly available in the AD IDEM Section of the IICCI Web site.

The list of mediator contains a significant representation of women

AD IDEM roles

Only accredited Mediators and Arbitrators can be appointed to resolve a dispute under AD IDEM



Proceedings administration and monitoring

Scope: to ensure impartiality, confidentiality and effectiveness to mediation/arbitration by providing administrative support and suitable facilities wherever the Parties wish to negotiate the dispute

AD IDEM roles

☐ **Registration**

Reception of Demand for Mediation or Arbitration by a Party (the applicant). The other Party (the respondent) is notified by the AD IDEM General Secretariat and a deadline is set for a response.

☐ **Mediator / Arbitrator appointment**

AD IDEM officially appoints the mediator / Arbitrator chosen by the Partie among the list of accredited Mediators/ Arbitrator.

☐ **Logistic**

AD IDEM provides the interested parties with comfortable facilities and other services facilitating the dispute resolution

☐ **Certificate of settlement**

AD IDEM issues to the Parties a certificate attesting the positive conclusion of the settlement.

Comfortable and friendly facilities help create a positive climate for resolving disputes.

VIVITALIA Mumbai will be the AD IDEM preferred facility





DISPUTE RESOLUTION WITHIN 18 MONTHS (AS PER INDIAN LAW)

- The amendments to the Arbitration and Conciliation Act (Amendments) Act, 2019, sets the time period for the delivery of the award by the Arbitral Tribunal: 12 months from the date of competition of pleadings.
- The pleadings, per the amendments to the Arbitration and Conciliation Act (Amendments) Act, 2019, are required to be completed within 6 months from the date of appointment of arbitrator.
- A definite time period for the IIDRC to constitute the Arbitral Tribunal





Certificate of settlement

1. Unless otherwise agreed by the parties in writing, a settlement agreement is deemed to be reached only upon signature by the relevant parties.
2. the AD IDEM Secretariat may issue certified copies of the settlement agreement to the parties.
3. AD IDEM Secretariat may provide the parties with a certificate of authenticity of the settlement agreement (duly signed by the Chairman).



**SETTLEMENT AGREEMENT
CERTIFICATE**

Parties
XXXX YYYYY

Date
The Chairman

Certificate template to be prepared



Mediation/Arbitration Fees: no hidden costs

Fees charged to the parties for a mediation/arbitration depend on the amount of the dispute

	MEDIATION		ARBITRATION		
DISPUTE AMOUNT	Administration FEE	Mediator FEE	Administration FEE	Sole Arbitrator/ Chairman Fee	Individual Co-Arbitrator Fee
0-50.000,00	€ 560,00	€ 2.400,00	€ 800,00	€ 4.000,00	€ 3.000,00
50.000,01-100.000,00	€ 840,00	€ 3.400,00	€ 1.200,00	€ 6.000,00	€ 4.500,00
100.000,01 - 200.000,00	€ 1.260,00	€ 4.400,00	€ 1.800,00	€ 6.600,00	€ 4.950,00
200.000,01 - 400.000,00	€ 1.400,00	€ 5.200,00	€ 2.160,00	€ 7.920,00	€ 5.940,00
400.000,01 - 600.000,00	€ 1.765,00	€ 6.000,00	€ 2.808,00	€ 9.504,00	€ 7.128,00
600.000,01 - 800.000,00	€ 2.550,00	€ 7.500,00	€ 3.931,20	€ 11.404,80	€ 8.553,60
800.000,01 - 1.000.000,00	€ 3.830,00	€ 9.500,00	€ 5.896,80	€ 14.826,24	€ 11.119,68
1.000.000,01 - 1.500.000,00	€ 4.770,00	€ 12.000,00	€ 7.665,84	€ 20.756,74	€ 15.567,55
1.500.000, 01 - 3.000.000,00	€ 6.050,00	€ 15.500,00	€ 11.498,76	€ 24.908,08	€ 18.681,06
3.000.000,01 - 6.000.000,00	€ 9.580,00	€ 21.000,00	€ 18.398,02	€ 37.362,12	€ 28.021,59
6.000.000,01 - 12.000.000,01	€16.890,00	€ 35.000,00	€ 31.276,63	€ 59.779,40	€ 44.834,55

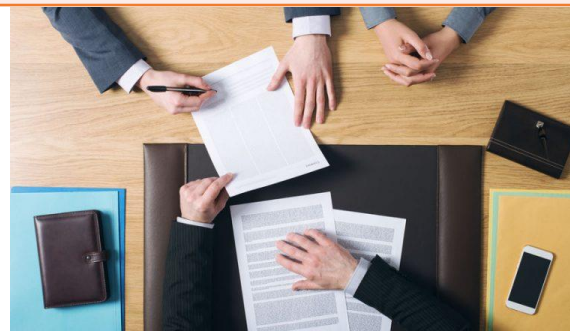
All fees charged to the parties for a mediation/arbitration procedure are publicly available.

To promote the use of mediation/arbitration the IICCI has approved lower fees in comparison with other internationally recognized Arbitration Chambers



Benefits

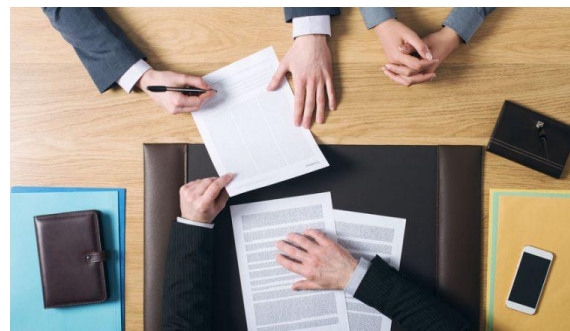
ISSUE	DESCRIPTION
Impartiality	The IICCI and the AD IDEM procedures provide all the interested parties with confidence that the mediation/arbitration are managed without any kind of bias or potential conflict of interest. Specific provision are set to ensure that the parties appoint mediators without any potential bias. The behavior of mediators/arbitrators is monitored
Competence	Mediators/Arbitrators are accredited for their deep knowledge of both the Italian and Indian regulatory framework and practice. Their competence is verified during the accreditation process. AD IDEM provides the parties with relevant information to evaluate the specific competences of a mediator/arbitrator in the field of the dispute. Disputes will be handled at a reduced cost in a more expert and efficient fashion.
Flexibility	The Parties are free to chose the Mediator/Arbitrators (among those accredited and included in the AD IDEM register), the seat of the arbitration, the language of the proceedings (Italian or English), the rules applicable to the proceedings and to the merit of the dispute.





Benefits

ISSUE	DESCRIPTION
Confidentiality	The IICCI and the AD IDEM procedure ensure that confidentiality of every document delivered by each Party to the General Secretariat. AD IDEM may publish the award in a format according to the Arbitration Rules and Guidelines drawn up by AD IDEM itself.
Rapidity	The Mediation and the Arbitration procedures are laid down to ensure that the final resolution of each dispute is achieved in reasonable time.
Reduced legal costs	All fees charged for resolving a dispute are fixed and publicly available. No hidden costs. AD IDEM allows companies to avoid the appointment of local counsel and then foreign counsel in each jurisdiction. The decision taken at the end of the Mediation or Arbitration procedure is final and enforceable. The procedure does not admit further delays for appellate review and further delays for enforcement.





Standard mediation and arbitration clause

It is always preferable to insert a clause in contracts, in order to use Arbitration & mediation as a way to resolve disputes. That is why we suggest the following Standard Arbitration & Mediation Clause.

Clause.. : Any dispute arising out of or relating to this agreement, including any question regarding its existence, validity or termination, shall be referred to and finally settled under the Rules of Mediation and or Arbitration, which are deemed to be incorporated by reference into this clause, by one or more arbitrators appointed in accordance with said rules.

Parties agree to submit all disputes arising in connection with this agreement to the Mediation & Arbitration attempt managed by AD IDEM, the Indo-Italian Dispute Resolution Chamber established by the Indo Italian Chamber of Commerce at Mumbai to solve the dispute with an agreement in accordance with the Rules adopted by the same IICCI AD IDEM

In the clause, parties can also agree on:

- the law applicable to the merits of the dispute
- the seat of the arbitration;
- the language of the arbitration.

These are all of great importance in case the dispute involves parties with different nationalities or legal seats as well as in case where a relevant part of the agreement must be performed in a foreign country.





If the mediation / arbitration clause is not written?

If the clause is not written in the existing contracts?

The Parties may agree AT ANY TIME, to prepare and sign an addendum including a clause superseding to any clause in the existing contract addressing the dispute resolution to a Court and specifying the reference to the mediation and arbitration provided by AD IDEM, a service provided by the Indo Italian Chamber of Commerce.

The text of such amendment is publicly available in the AD IDEM web site at [www.....](http://www.adidem.org)



Thank You

For more information : www.indiaitaly.com

Contact person:

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