



DA PIÙ DI 50 ANNI, AL CENTRO DELLE RELAZIONI ITALO-INDIANE  
SINCE MORE THAN 50 YEARS, AT THE CENTER OF INDO-ITALIAN RELATIONS

MUMBAI • DELHI • KOLKATA • CHENNAI • BANGALORE



**AD IDEM**

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

in partnership with



**Bilateral Mediation & Arbitration Chamber**



# 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



- 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
<b>Lack of Neutrality</b>	<p>Many international commercial disputes are, by default, resolved by litigation in national courts.</p> <p>However, commercial parties frequently doubt that national courts, particularly the courts of the jurisdiction of the counterpart, will render an unbiased and competent decision. In many instances, well documented concerns about the integrity of national courts further erode confidence in cross-border litigation</p>
<b>Lack of Experience and Expertise</b>	<p>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&amp;A disputes)</p>
<b>Risk of Parallel or Multiple Litigation</b>	<p>Cross-border disputes often lead to litigation in multiple fora – the place of performance, the jurisdiction of the counterpart, the enterprises’ own national courts and jurisdictions where the counterpart has assets for enforcement – with each proceeding potentially involving multiple appellate levels.</p>



# The needs for International Mediation and Arbitration?

ISSUE	DESCRIPTION
<b>Cost and Time to Resolve Disputes</b>	Multiple and parallel proceedings in cross-border disputes lead to prohibitive costs and delays. Parties often have to “layer” counsel, first engaging local counsel and then appointing foreign counsel in each of the various relevant jurisdictions. 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
<b>Obstacles to Enforceability of Judgments</b>	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
<b>Uncertainty and Unpredictability</b>	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



# 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



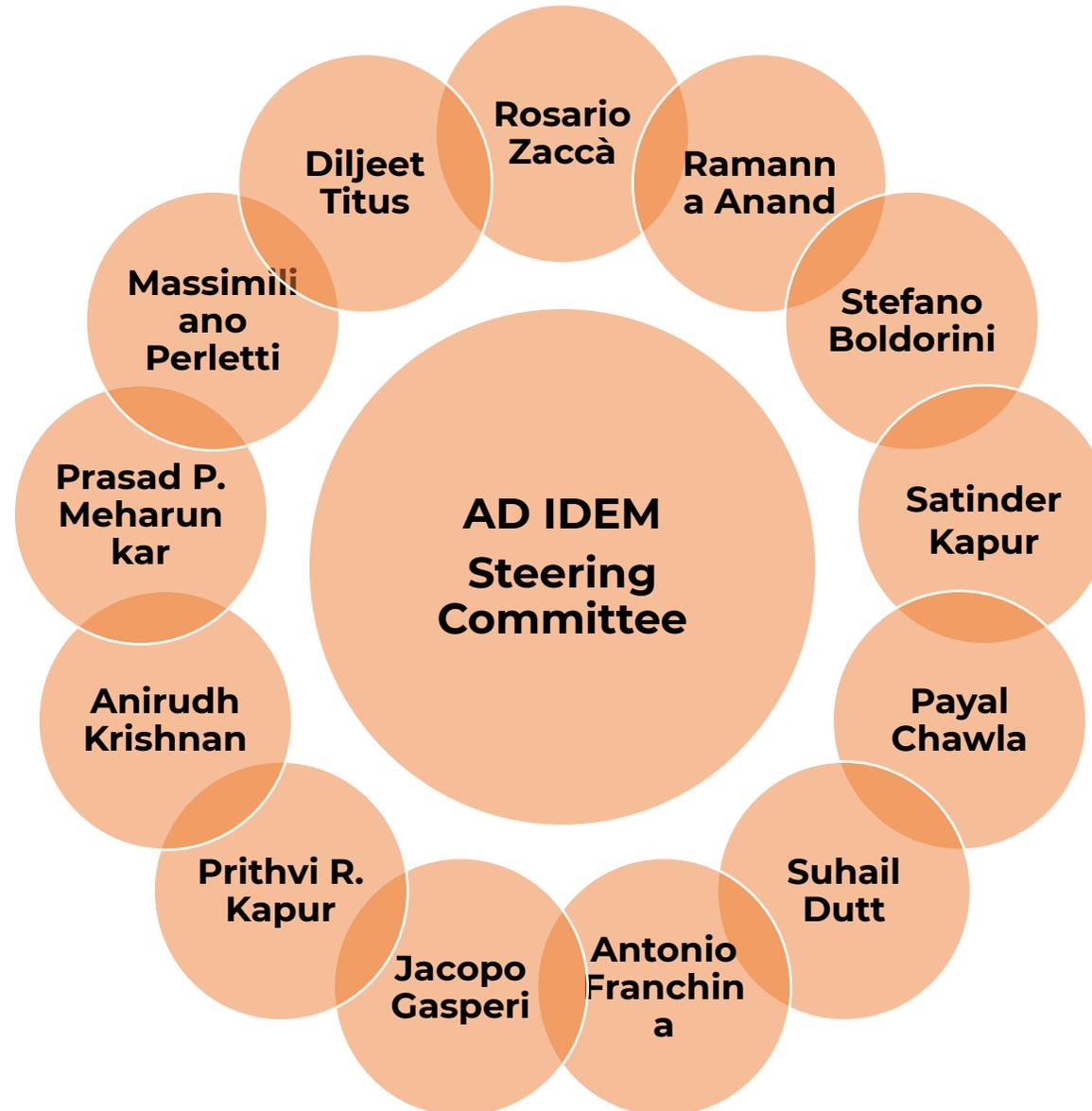
# Background of the initiative

- Indo-Italian business has consistently grown over the last decade. Yet, several Italian and Indian companies highlight the difficulties in finding out efficient and effective solutions to commercial and investment related disputes
- Several members of the IICCI 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, 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 prepared and developed the regulatory and administrative framework of the bilateral mediation and arbitration chamber, considering both the Italian and the Indian laws.

**ON 26<sup>TH</sup> 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

<b>Rosario Zaccà</b>	Specialises in corporate and commercial law, merger & acquisitions and private equity, he has been with the firm since 1994
<b>Ramanna Anand</b>	Entrepreneur - more than 50yr in Industry and trade, intensive practical training with leading European manufacturers of machinery.
<b>Satinder Kapur</b>	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
<b>Stefano Boldorini</b>	Entrepreneur and Business Consultant for market strategies and internationalization of enterprises, working since 1996
<b>Payal Chawla</b>	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
<b>Suhail Dutt</b>	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
<b>Antonio Franchina</b>	Attorney at law, he is founder partner of the law firm Studio Legale Franchina & Associati, specialized in Civil law, commercial law, Employment & Labour law
<b>Jacopo Gasperi</b>	Advocate, working with Titus & Co, having 14 yr. of experience in international contracts & internationalisation of Italian companies



# AD IDEM Steering Committee

<b>Prithvi R. Kapur</b>	Counsel SKAA advocates & Solicitors, Specialises in commercial Arbitration ,investment arbitration and commercial dispute resolution
<b>Anirudh Krishnan</b>	Arbitration Specialist at AK law Chambers, Area of Practice: litigation & Dispute Resolution
<b>Prasad P. Meharunkar</b>	Country head of Italy at TCS, has been with TCS since 1993, with over 25 yr. of experience in various part of the world
<b>Massimiliano Perletti</b>	Attorney at law, co founder of Rodl & Partner Milan since 1998,experience in important law firms in France, England and Germany
<b>Diljeet Titus</b>	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.
<b>Gianni Vettorello</b>	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

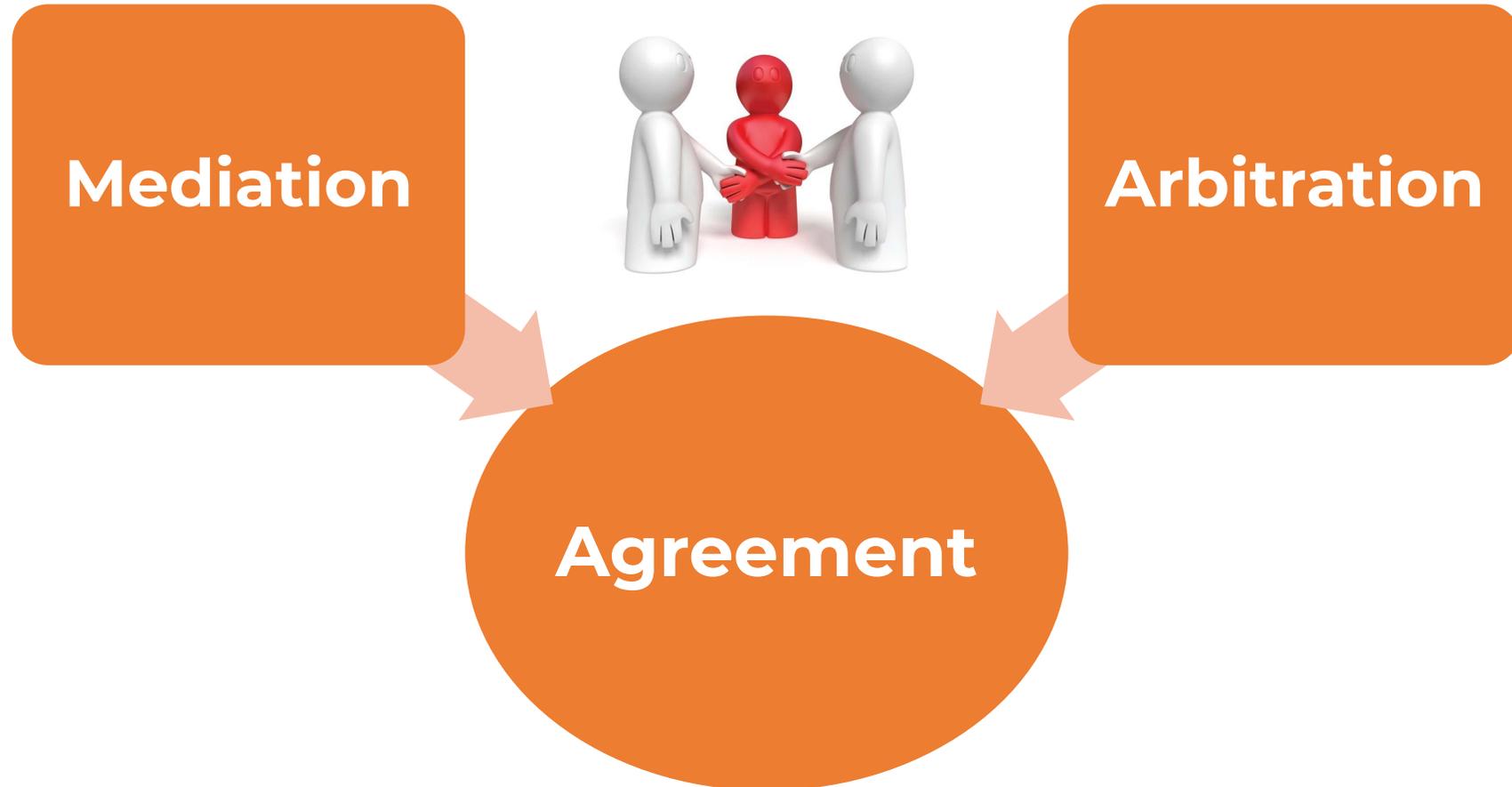
It means: “**in agreement**”: the parties were at idem

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



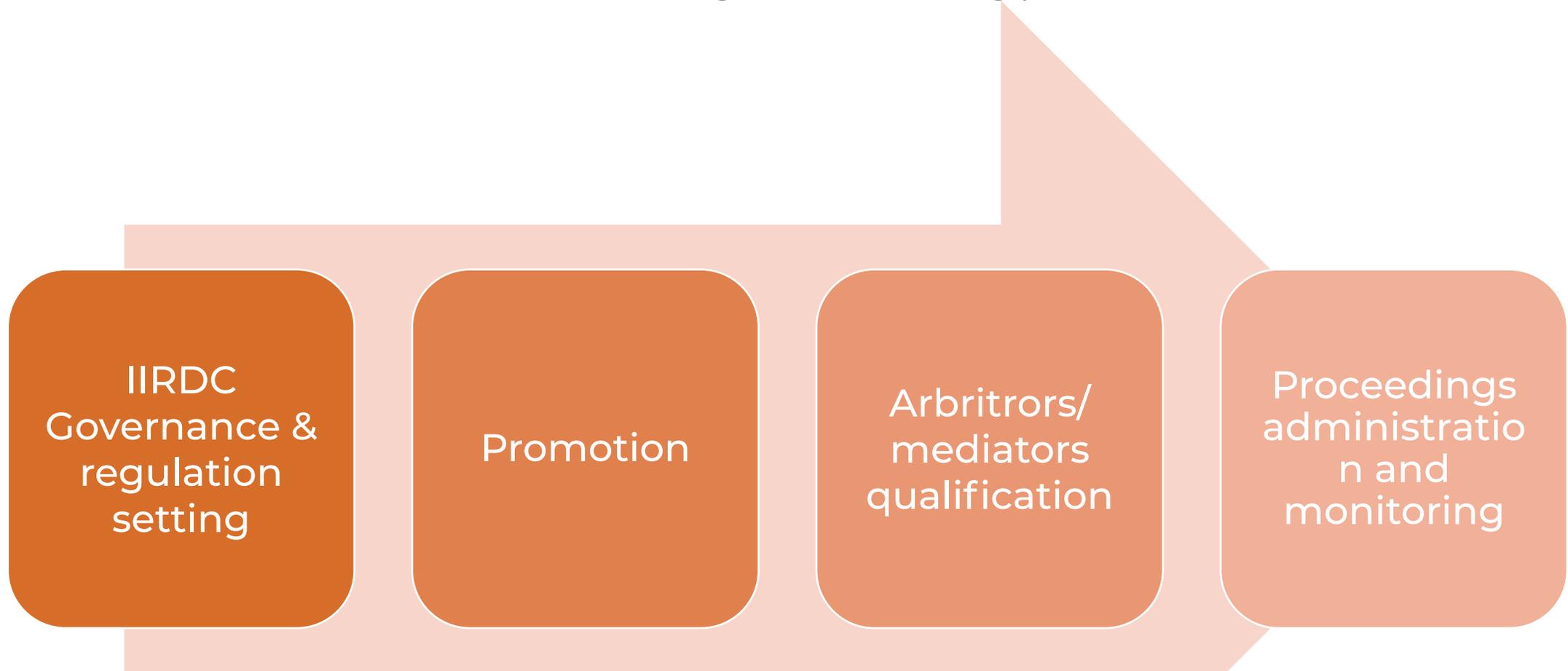
# Two services: Mediation & Arbitration

Comparison	Mediation	Arbitration
<b>Meaning</b>	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.
<b>Nature</b>	Collaborative	Adversarial
<b>Process</b>	Informal	Formal
<b>Role of expert</b>	Facilitator	Judge
<b>Number of expert</b>	One	One or more
<b>Private communication</b>	Meeting between the parties concerned and the counsel takes place jointly and separately.	Only evidentiary hearings, no private meetings with the arbitrator.
<b>Control over outcome</b>	Parties	Arbitrator
<b>Basis of outcome</b>	Needs, rights and interest of parties	Facts and evidences
<b>Outcome</b>	May or may not be reached.	Definitely reached.
<b>Decision</b>	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:

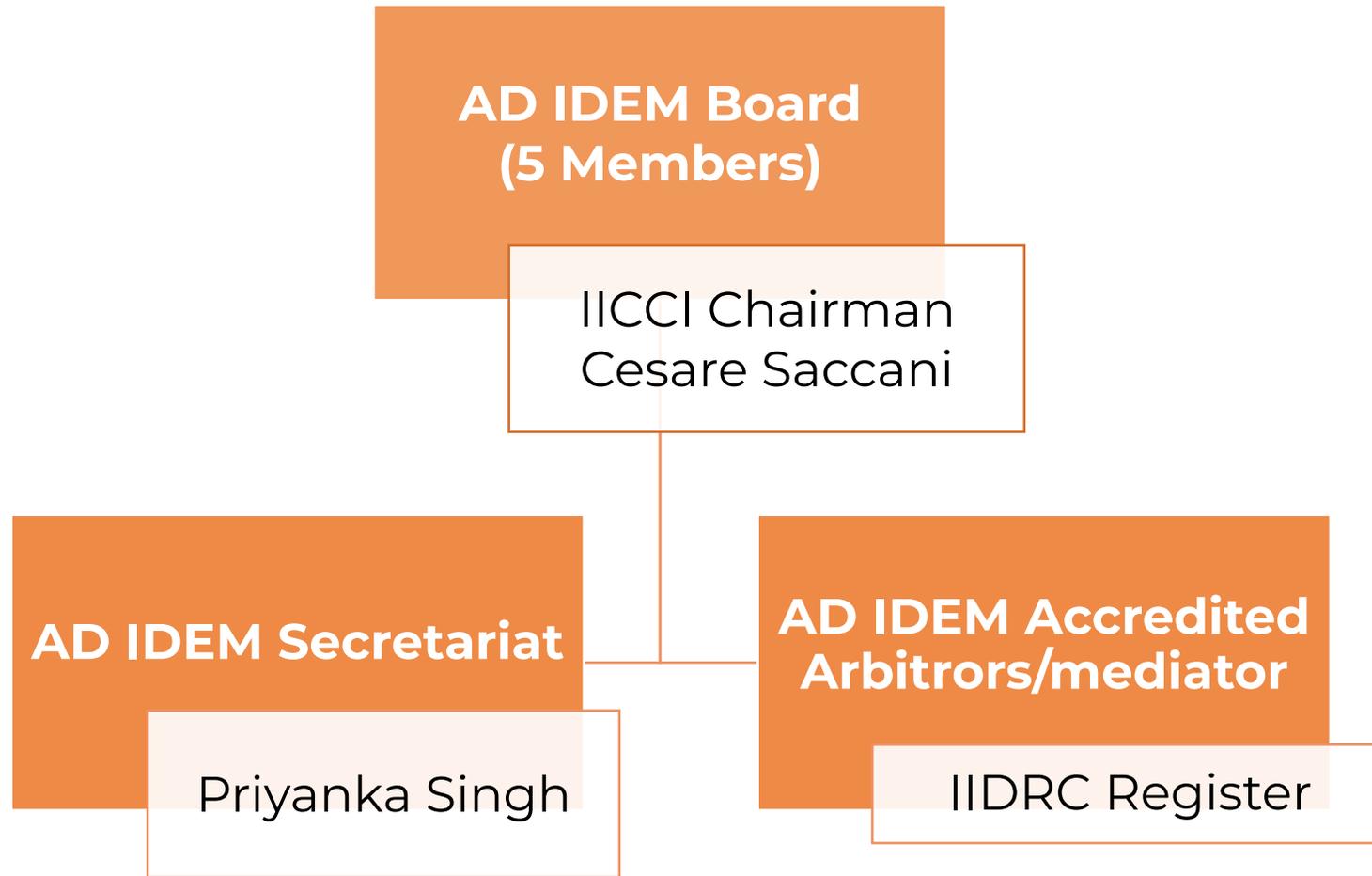




# AD IDEM Governance

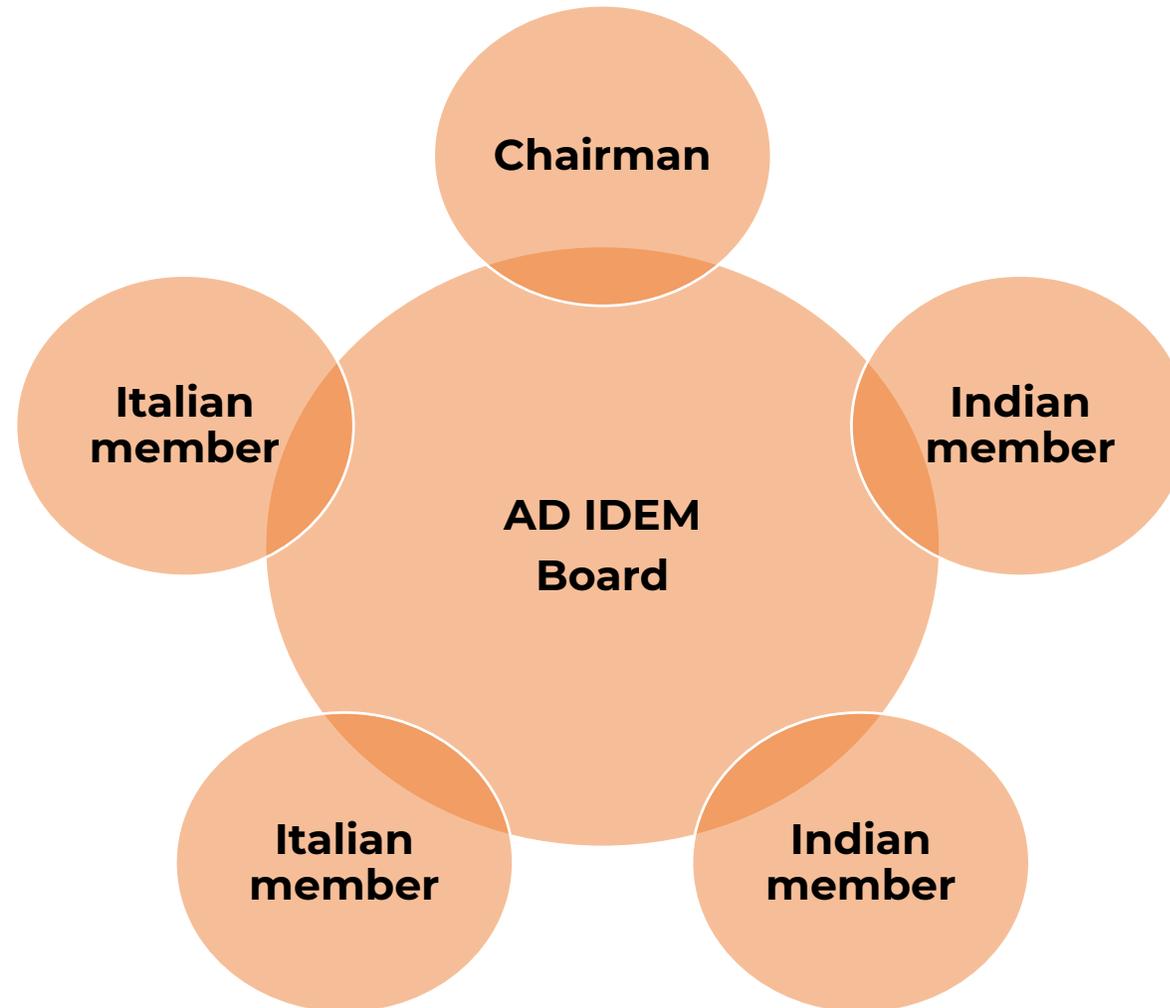
**Scope:** to ensure the compliance of the AD IDEM regulation with the applicable arbitration laws in Italy and India and to provide all interested parties with confidence that mediation/arbitration proceedings ensure competence, integrity, impartiality and confidentiality

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# 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

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- ❑ *Digital communication*  
WEB Site ([www.indiaitaly.com/ad-idem](http://www.indiaitaly.com/ad-idem)), 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

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## **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

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



**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.



## 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 Ad--Idem to constitute the Arbitral Tribunal







# Mediation/Arbitration Fees: no hidden costs

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

DISPUTE AMOUNT	MEDIATION		ARBITRATION		
	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

**Lower fees in comparison with other internationally recognized Arbitration Chambers**



# Benefits

ISSUE	DESCRIPTION
<b>Impartiality</b>	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
<b>Competence</b>	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.
<b>Flexibility</b>	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
<b>Confidentiality</b>	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.
<b>Rapidity</b>	The Mediation and the Arbitration procedures are laid down to ensure that the final resolution of each dispute is achieved in reasonable time.
<b>Reduced legal costs</b>	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.



# Thank You

For more information : [www.indiaitaly.com](http://www.indiaitaly.com)

Contact person:

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