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UNDERSTANDING AN ARBITRATION PROCESS, AND ITS SCOPE IN SINGAPORE



Arbitration is an alternative dispute resolution process, in which the parties to a contract, present the arguments and evidence to an independent and neutral third party known as the "arbitrator" who is appointed by mutual consent or a statutory provision. This arbitrator who acts as a judge makes a determination named as an "award" which is legally enforceable and binding on both the parties.

The arbitration process is similar to going to courts, but is distinct in various forms of other non-binding dispute resolutions like mediation and conciliation. Arbitration is the best alternative to court-based litigation and it is more expedient, neutral, efficient, enforceable and confidential. The next question that arises in one's mind is, "Which laws will be applicable here?" Well, usually the arbitration agreements seldom make any provisions for the governing law of the arbitration agreements. In International arbitration what needs to be perused are a number of factors like, the laws that govern the contract, the arbitration agreement, the arbitration procedure or the legal seat of arbitration and the law of the States where the award will stand enforceable.

The arbitration agreement is a contract in its own right, and is separable from the substantive contract entered into by the parties. This depicts the doctrine of separability which means that the arbitration agreement can be governed by a different law than that of the governing law of the substantive contract. It is always advisable to incorporate a governing law clause in the arbitration agreement to obviate in future, and in case if it's not specified in the agreement, then the guidelines laid down by the Court of Appeal in the English courts are referred to.

Arbitration is preferred to litigation because the parties can select neutrals of appropriate nationality and choose the applicable law, language, venue and the Seat of arbitration.

Seat of Arbitration:

The seat of arbitration is also known as "the place" of arbitration or "the locale" and plays a significant role in arbitration as it determines the governing procedural law of the arbitration and the enforceability of the award. It is the legal jurisdiction to which the arbitration is tied and will determine the procedure or rules which govern the arbitration and also makes the mandatory national laws of that country applicable. The canonical model for arbitration is based on "lex arbitri" which means 'the law of arbitration' and this varies from country to country. It also contains provisions that regulate the internal and external elements like the composition and appointment of the tribunal, requirements for the arbitral procedure and due process, the enforceability of award, the neutral nature, and many more.

The Geneva Protocol on Arbitration Clauses 1923 exemplifies an early perception that the law applicable to the arbitration should be that of the arbitral seat, and the arbitral procedure including the constitution of the arbitral tribunal shall be governed by the will of the parties and the law of the country in whose territory the arbitration takes place. The basic approach of the Model law is that the law applicable to each arbitration (the lex arbitri) will be the law of the place where the arbitration takes place (the lex loci arbitri) and the selection of the "Seat" of arbitration ordinarily



Success is a lousy teacher. It seduces smart people into thinking they can't lose

-Bill Gates



results in the arbitration being conducted in accordance with the jurisdictions legal framework, with such derogations or variation as may be permitted. So if Singapore is selected as the “seat” of arbitration, it mandatorily and automatically adopts the Singapore Arbitration Act or the International Arbitration Act. The place of arbitration is different from the physical venue of arbitration which is the place where the arbitral tribunal carries on the hearing witnesses, experts or the parties. Traditionally the most popular seats of arbitration were London, Paris, New York and Geneva, where the oldest arbitral institutions are based, but the latest surveys shows Singapore growing to be one of the most popular preferences.

The International Arbitration Survey, conducted yearly by the School of International Arbitration since 2006 has depicted improvements and innovations in International Arbitration practices and trends worldwide. It has Ranked Singapore as the fourth most preferred and widely used seat in the 2015 International Arbitration survey, making Singapore a leading venue for international Arbitration. Asia has seen a significant growth in Arbitration due to the global economic evolvments making the two financial centres of Asia, Singapore and Hong Kong major seats in that region.

Singapore is today one of the most illustrious and renowned seats of Arbitration because of the well-developed infrastructure, modern national legislation, and a strong position as a financial and commercial centre in Asia. Singapore has a wide spectrum of efficient arbitrators from across the globe ranging from seasonal dispute resolution generalists to highly specialized practitioners and expertise covering the entire legal and technical area of intellectual property. The Courts of Singapore is famous for its integrity, cost-efficiency, neutrality, competency and impartiality and also offer a high level of support for arbitration with minimum intervention. Moreover Singapore has many renowned local and overseas law firms and professionals who expertise in arbitration.

The obsequious nature of the people of Singapore towards the legal system is a

notable factor. Singapore also welcomes foreign arbitrators and allows them to arbitrate in Singapore without a work permit and without withholding tax. According to the Singapore laws only a Singapore qualified lawyer from Singapore law practice can appear before the High Court for International arbitration related matters even though the original contract which was the subject matter of the arbitration may have been governed by a foreign law. Singapore also ensures that the arbitration legislation is kept responsive to the global legal and commercial developments. A recent study shows that Singapore is challenging the established centres of arbitration like London, Paris and Stockholm. Another factor that favours Singapore is its geographically convenient location and this makes it a neutral venue for parties from different parts of the globe.

The United Nations Commission on International Trade Law (UNCITRAL) the Model Law recognizes the incorporation and the enforcement of the arbitral award provisions by giving effect to the New York Convention of 1958 within its ambit. As Singapore is a signatory to the 1958 New York Convention, the Arbitral awards issued in Singapore are enforceable in over 150 UN Member states, and also in certain Commonwealth jurisdictions under the Reciprocal Enforcement of Commonwealth Judgement Act. The Awards are final and binding in nature and have no right of an appeal. In fact if parties to an arbitration can appeal it defeats the sole purpose or “raison d’etre” of arbitration.

In the meanwhile the High Court of Singapore has the power to monitor various arbitration related matters, decide on applications to set aside the awards. Singapore is also a party to the 2005 Hague Convention on Choice of Court Agreements (the Convention), along with EU and its member states excluding Denmark and Mexico. Other countries like China, the USA, Ukraine and Montenegro have also signed but have not yet ratified the same. On January 9th 2018, the Supreme Court of Judicature Amendment Bill was passed in the Parliament in Singapore. The Bill elucidates that the Singapore International Commercial Court has the same jurisdiction as the High Court to hear proceedings related to international Arbitration Act (IAA) and removes the pre-action

certification procedure. Also under the IAA the High Court of Singapore has jurisdiction over certain matters in relation to international commercial arbitration and also provides for the Rules of Court to prescribe as to what actually constitutes an international commercial arbitration and the conditions to be incorporated thereof. The Ministry of Law also plays a significant role by working closely with the Supreme Court to enhance the enforceability of the Arbitral Awards and other Singapore court judgements.

Singapore is also known for its mediation and conciliation services as a nonbinding alternative dispute resolution. The International Mediation Centre was started in November 2014 and has collaborated with the Singapore International Arbitration Centre to offer a service known as Arbitration-Mediation-Arbitration. This allows parties to attempt mediation after they start arbitration proceedings. If the dispute is settled then this is classified as a consent award and in case they choose to contest further then they can continue the arbitration. Arbitration has been growing to be the most preferred dispute resolutions of modern day among the parties entering into cross border contracts and transactions.

Singapore is world renowned for its city state dynamism and excellence in infrastructure and its growing marine industries like shipping, trading, port services and also high-tech ship building ,with a strong maritime tradition .Singapore has established a separate wing for maritime dispute resolutions named the Singapore Chamber of Maritime Arbitration (SCMA) in 2004, as a joint effort by the Working Group on Maritime Arbitration formed under the Singapore Maritime Foundation (SMF), the Singapore International Arbitrators Association,(SMAA), the Maritime Law Association of Singapore (MLAS) the Singapore Institute of Arbitrators(SIArb) and the Law Faculty of the National University of Singapore(NUS). Singapore is the regional base to over 4,000 International Shipping companies and these are the few among the many reasons that makes Singapore one of the most preferred destinations for arbitration and is ranked in the 4th position globally.

INDIA OPENING UP TO FOREIGN FLAG VESSELS ON ITS COASTLINE

The Indian Govt is considering a proposal to permit foreign flag vessels to operate on its coastline with a view to reduce logistics cost, enhance port efficiency and boost the domestic shipping industry, thereby facilitating easy transportation of cargo between different ports along India’s coasts.



The Cabotage rules, which governs this activity at present, makes it difficult for foreign flag vessels to operate between two Indian ports. Rather, it gives first preference to Indian Flag Vessels over Foreign Flag Vessels.

Currently, there is scarcity of Indian Flag Vessels in the country and

it impacts smooth movement of cargo and consignments and the new move would hence, help cut shipping costs and transportation time.

Many State Govts have been demanding relaxation in the norms for quite some time now and the new move would be sure to bring some solace to the affected parties.



TIPS & HOT NEWS

AMAZON THREAT HAS MAERSK RACING TO STOP CLIENTS BECOMING RIVALS

Maersk is trying to stop customers like Amazon.com and Alibaba from becoming competitors in just a few years' time

London/Copenhagen: The world's biggest container shipping line is trying to stop customers like Amazon.com Inc. and Alibaba Group Holding Ltd from becoming competitors in just a few years' time.

"Amazon is a threat if we don't do a good job for them," Soren Skou, the chief executive officer of A.P. Moller Maersk A/S, said in a phone interview. "If we don't do our job well, then there's no doubt that big, strong companies like Amazon will look into whether they can do better themselves."

Shares of FedEx Corp. and UPS Inc. dropped last week on a report that Amazon plans to handle more deliveries to its customers' doorsteps. The question the maritime industry is now asking itself is to what extent the online retailer will also try to take greater control of transportation of shipments bound for Amazon warehouses. For now, those tend to be handled by Maersk and companies like it.

Taking greater control of shipments would give Seattle-based Amazon more flexibility and help it avoid possible congestion in its warehouses.

Skou is betting his strategy of combining the Maersk conglomerate's container activities—including a shipping line, a port operator and a freight-forwarding service provider—will offer Amazon and others like it the integrated supply chain they need.

It's not just a question of a smooth delivery, said Skou. Giant retailers like Amazon also want better information about shipments to manage supply chains as effectively as possible. Maersk is rolling out a new digitization strategy to modernize an industry in which bookings often still take place by phone. Last month, it formed a joint venture with IBM to develop the use of blockchain technology to manage and

track cross-border trade.

"Amazon is not interested in phones and email -- they want to be hooked up electronically and digitally so the business transacts on its own," Skou said. "This matches our new strategy: they want end-to-end container shipping and we want to offer the whole service."

The Copenhagen-based company has already come a long way. In 2014, it took more than 2 hours to complete a container booking at Maersk. In 2016, the average was 22 minutes, and management wants to bring that down to as little as 2 minutes this year.

By creating more integrated, digitized shipping systems, companies like Maersk and Amazon could also speed up automation across supply chains, said Luis Benito, a Southampton, England-based innovation strategy director at Lloyd's Register, which has been classifying the world's merchant fleet since 1760. To begin with, that could mean optimizing delivery slots for vessels as they arrive at ports. Longer term, successful digitization may serve as a catalyst for multiple other aspects of automation in the maritime industry, he said.

"The ability of Maersk to understand the market and integrate with a big company like Amazon is very clever," Benito said. "They realize that Amazon can be a disruptor, so it's better to try and work together."

While Maersk is a giant in container shipping and in port operations, its freight-forwarding and supply management service unit Damco is relatively small and will need to grow to fulfill the conglomerate's ambitions.

"Damco can in principle deliver it all, but doesn't have the same global footprint and scale," said Skou. "We're not planning any large acquisitions, but there may be small corners where it makes sense for us to buy a small company that brings technology, skill or a capability that we don't already have." **Bloomberg**

– Live Mint

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