

APPOINTMENT OF ARBITRATOR IN AN INTERNATIONAL COMMERCIAL ARBITRATION

INTRODUCTION

International Commercial Arbitration is a means of resolving disputes arising under International Commercial Contracts.

It is used as an alternative to litigation and is controlled primarily by the terms agreed upon by the contracting parties. The parties have the liberty to stipulate the forum, procedural rules and governing law in the contract.

Arbitration can be either “institutional” or “*ad hoc*.” The terms of the contract determine the type of Arbitration.

INTERNATIONAL COMMERCIAL ARBITRATION-DEFINITION

Section 2(1)(f) of the Arbitration and Conciliation Act, 1996 (hereinafter referred ‘the Act’) defines ‘International Commercial Arbitration’ as follows:

“International Commercial Arbitration” means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—

- i. an individual who is a national of, or habitually resident in, any country other than India; or*
- ii. a body corporate which is incorporated in any country other than India; or*
- iii. a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or*
- iv. the Government of a foreign country;*

INTERNATIONAL LEGAL FRAMEWORK ON ICA

The UNCITRAL is the essential legal body of the United Nations in the area of International Trade Law. It was established by the United Nations General Assembly after the realization that differences in national laws governing international trade are creating hurdles to the free flow of trade. Hence, this commission was established with the view

to play an active role in reducing or removing these hurdles.

APPOINTMENT OF ARBITRATOR IN ICA

In an International Commercial Arbitration, the aggrieved party must approach the Supreme Court for appointment of the arbitrator. This is governed by Section 11(9) of the Act which provides that in case of appointment of a sole or third arbitrator in international commercial arbitration, the Supreme Court or the person/instituted designated by that Court may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

Further, according to the Act, the Court is bound to dispose of the application of appointment of arbitrator in 60 days, thereby providing an expedient remedy to the party. The same has also been provided under “The Arbitration and Conciliation (Amendment) Act, 2015.”

It is important to note that the Order of the Court under Section 11 of the Act attains finality and hence cannot be appealed. Therefore, the party approaching the Court must be cautious of the same.

WHEN A PARTY CAN APPROACH SC IN ICA DISPUTES?

In case, where a dispute arises between parties to an arbitration agreement, any one party can invoke an arbitration clause stipulated therein. If the other party does not co-operate, i.e., fails to appoint an arbitrator within 30 days from receipt of the request, then the party invoking arbitration can approach the Supreme Court in case of International Arbitration to have an arbitrator or arbitral tribunal appointed.

GROUND TO CHALLENGE THE APPOINTMENT OF ARBITRATORS

The appointment of arbitrators can be challenged only on two criteria:

1. When there are circumstances that raise reasonable suspicions about his or her independence or impartiality; or
2. The arbitrator does not possess the qualities that the parties require.

WAY FORWARD

Due to several conventions, arbitral awards are getting recognition throughout the world and can be also easily enforced. This has led to an increase in the usage of the cost-effective process of International Commercial Arbitration in the disputes

involving transnational relations/transactions.

Hence, it can be concluded that International Commercial Arbitration has proved to be a preferable method of dispute resolution in international transactions.

Disclaimer:- *This Article is meant for informational purpose only and does not purport to be advice or opinion, legal or otherwise, whatsoever. Utkrishtha Law Offices do not intend to advertise its services through this Articles.*

CONTACT US

UTKRISHTHA LAW OFFICES

Advocates & Solicitors



Address:- 29, Kailash Hills, NewDelhi

Email:- contact@utkrishthalaw.com

Phone:-8750021607, 9999309222

[Website:www.utkrishthalaw.com](http://www.utkrishthalaw.com)