



A Brief Analysis of International Arbitration as a Form of Alternative Dispute Settlements

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Abstract: Over the past decades, the rapid expansion of cross-border commercial transactions has given rise to a concomitant increase in cross-border disputes. As a method of settling commercial disputes, in comparison with litigation, international arbitration has a lot of strengths, which is one reason why it is increasingly popular. Thus this article offers a brief analysis of international arbitration as a form of Alternative Dispute Settlements in order that the concept of international arbitration can be had a clear understanding.

Keywords: International arbitration; Alternative Dispute Settlements; Alternative Dispute Resolution; Tribunals; Litigation

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1 Introduction

In recent years, with the expansion of the world market, more frequent commercial transactions have caused more commercial disputes. Certainly, litigation is a crucial choice for the parties to resolve them, while it has many shortcomings to some extent. Hence, multiple methods of Alternative Dispute Settlements have come into being, whereas within an international commercial relationship, there has been a growing concern with regard to international arbitration as a form of Alternative Dispute Settlements. When a commercial dispute arises, an increasing number of the parties in many cases tend to depend on the arbitration to resolve it rather than an established national court. However, why has

international arbitration been accepted worldwide as a form of Alternative Dispute Settlements? What are the advantages and disadvantages of international arbitration compared to litigation? How can we assess the issue? Consequently, it is quite crucial to do some research and make an analysis.

2 Definitions

The respective explanations of two terms are as follows.

2.1 Definition of international arbitration

There is not a clear definition of international arbitration. However, the term 'international arbitration' can be generally understood as a process where two or more parties, namely two or more individuals, two or more commercial entities or a mixture of two or more individuals and commercial entities within an international commercial relationship are faced with a commercial dispute; they consent to appoint the third party from private individuals to resolve the dispute by drafting the arbitration clause or the submission agreement that the two or more parties agree on; consequently, the third party must make a binding decision called the award on a dispute or a series of disputes based on adequate and appropriate reasons.

2.2 Definition of Alternative Dispute Settlements

Essentially, the term 'Alternative Dispute Settlements' has come to be used to refer to Alternative Dispute Resolution (ADR). Likewise, no agreed definition exists concerning the term. Nevertheless, ADR may be broadly defined as the general name used for different methods of settling commercial disputes, such as mediation, arbitration, adjudication and

negotiations, which are all alternative dispute settlements to going to courts.

3 Advantages and disadvantages compared to litigation

International arbitration has some strengths as follows in comparison with going to courts.

3.1 Advantages

Seven advantages are as follows.

3.1.1 Party autonomy can be fully reflected

Basically, the principle ‘party autonomy’ can obtain usage in international arbitration, which means that the parties are free to choose the substantive law governing the arbitration. Additionally, the procedures that best suit the dispute can also be chosen by the parties. In the submission agreement or the arbitration clause, the parties can choose the quantity of the arbitrators, and the arbitrators who have the relevant background knowledge such as in the field of law, trade or commerce, etc. with regard to the case and whoever they need or accept in accordance with qualities of the arbitrators stipulated in the law governing arbitration. Moreover, they can agree on the place of the enforcement of the award, the rules and the language of arbitration in the submission agreement or the arbitration clause.

3.1.2 International arbitration is a neutral independent forum

In nature, international arbitration is a neutral independent forum that is free from the procedural complaints of either party’s domestic courts, and there is no home bias because the parties choose the arbitrators by themselves usually outside their own background culture and language, which means that they can select a ‘neutral’ place and a ‘neutral’ tribunal in order to get a relatively fair result.

3.1.3 The tribunal with relevant commercial and technical expertise or legal expertise is independent

The parties can find the experts in a relevant field of the case who have acquired relevant legal knowledge or commercial knowledge to be arbitrators to form an independent arbitral tribunal.

3.1.4 The arbitral proceedings are flexible

The disputes can be resolved flexibly. For instance, the parties do not need to list the evidence through

high expenses or make numerous arguments, which can save time as well as improve efficiency on the basis of natural justice and due process.

3.1.5 The arbitral proceedings are usually confidential

Unlike litigation, in most jurisdictions, the whole arbitral proceedings including the decision of the arbitral tribunal are confidential; namely, the press, as well as the public is not entitled to attend unless the parties and the arbitrators agree on being witnessed during the arbitral proceedings, thereby protecting the interests and privacy of the parties.

3.1.6 The award is usually a final award

On the whole, the award of the tribunal can be regarded as a final award, and the parties do not have any right of appeal. There is no doubt that international arbitration is more efficient than litigation.

3.1.7 The award is enforceable

Most countries in the world recognise and enforce ‘the arbitral award’ in commercial disputes under the New York Convention on the recognition and enforcement of Foreign Arbitral Awards 1956.

3.2 Disadvantages

Naturally, every coin has two sides. Four drawbacks can also be seen for international arbitration in comparison with litigation.

3.2.1 The costs of the tribunal

The parties have to pay the costs of the tribunal by themselves on the grounds that the state does not subsidise administering and running an arbitral tribunal.

3.2.2 The delays may take place in convening multi-arbitrator tribunals

Sometimes, the parties who select more than three arbitrators may have difficulty in administering and running the arbitral tribunal, the reason for which is that everyone has his or her own opinion towards the decision of resolving a dispute, and it is hard to reach an agreement in a short time.

3.2.3 Challenging or appealing an award is difficult

In most circumstances, a final award cannot be challenged or appealed once the award was made. In that case, on the condition that the arbitrators make

a mistake in the application of procedures or law, for the purpose of appealing or challenging the award, the appropriate reasons must be given.

3.2.4 The arbitrators have no coercive powers

Furthermore, if a party does not comply with a court order of the tribunal, arbitrators are not qualified to punish it. This may result in adverse consequences.

4 Conclusion

On account of the above, it can be concluded that as a method of Alternative Dispute Resolution, international arbitration will have a brighter future and prospect based on the advantages of it compared with litigation. Nonetheless, in order to make international arbitration proceedings more appropriate, more reasonable and fairer, further studies on the current topic are therefore recommended.

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