

UNCITRAL ARBITRATION RULES, 2010: Enforcing Effective Arbitration Mechanism

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INTRODUCTION

Arbitration has proved to be preferred method for resolving the dispute amicably and it also maintains neutrality, certainty and efficacy by enforcing the principle of party autonomy. In the last couple of years, the pervasiveness of Arbitration in resolving disputes had generated a number of gaps requiring the rules and customs which were absent in the early stages of development of Arbitration. The need was felt to remove the problems experienced in the Arbitration Mechanism and particularly in complex or multi-party proceedings so as to prevent the scope for misuse of Arbitration Process.

Considering the need for modifications and improvements as evolved in the prevalence of the rules, the working group of UNCITRAL completed the revision and new UNCITRAL Arbitration Rules, 2010 came into force on 15 August, 2010 and were made applicable to all Arbitration Agreements concluded after that day and also providing the discretion to choose among 2006 or 2010 Rules. The important modifications in the UNCITRAL Rules [4] can be categorized as follows:-

- 1. Institutionalization*
- 2. Arbitral Tribunal*
- 3. Arbitral Procedure*
- 4. Technological Advancement*

Arbitration and Conciliation Act, 1996 has been enacted on the lines of UNCITRAL Model Law. The technological advancement under UNCITRAL Rules has already been incorporated by the non-obstante clause in the Information Technology Act, 2000 which makes electronic documents functionally equivalent to the other documents and also provides for attribution, acknowledgment and dispatch of electronic records which deals with communication in electronic medium.

The Information Technology Act, 2000 also provides for secure electronic signature, secure electronic records and thus, provides for a better level of assurance in the electronic communication than, UNCITRAL Rules, 2010 particularly keeping in view the Cyber Security Threats which may give challenge to the authenticity of electronic communication. However, India needs to incorporate the modifications made in UNCITRAL Rules, 2010 as these modifications are quite effective in enforcing the Arbitration Mechanism and would make the delivery of justice as expeditious, efficacious and cost effective. These amendments are required to be introduced to make it compatible in context of International Trade Laws as other countries are

likely to follow these rules as happened subsequent to the UNCITRAL Arbitration Rules, 1976.

The institutions adopting the UNCITRAL Arbitration Rules as their Institutional Rules will certainly need to add provisions or to carry out certain modifications which may diverge from the UNCITRAL Arbitration Rules and such modifications may include:-

- i.** Effective date of application of revised rules.
- ii.** The communication channel between the parties and the institution before the constitution of arbitral tribunal for which an institution may adopt **Article 3 & 4**. The corresponding modification may be required in the each article referring to communication.
- iii.** Substitution of the reference to the “appointing authority” by the name of the institution and make the corresponding modification in the other rules.
- iv.** If the functions of the appointing authority are fulfilled by an organ of the institution, it should be explained.

The modification is to be made in **Article 41** by the institution to include its Schedule of Fees and also provision of **Article 40(2)(f)** would not apply.

CONCLUSION

The new UNCITRAL Rules are quite comprehensive, incorporating the modifications to fill the gaps that are evolved during the last three decades. These contemporary changes sought to counter some of the pervasive problems of Arbitration as comprehended by various arbitral institutions and bodies throughout the world. The new rules leveraging institutional framework would alleviate the number of problems particularly in complex, multi-party arbitration. The new rules aims at expediting the arbitral award by giving more discretion to the tribunal and making it mandatory that the proceedings are conducted efficiently, fairly and in most effective manner. These changes would certainly bring reforms and would provide quick and effective dispute resolution through arbitral proceedings. India needs to amend the Arbitration and Conciliation Act, 1996 to incorporate these modifications which will positively contribute to the efficient conduct of Arbitration. The effectiveness of the new rules would also depend upon its adoptability by the member states and international arbitration institutions and trade associations so as to bring uniformity in legal framework for international trades.

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Thanks & Regards

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