PROCEDURAL ASPECTS RELATING TO INTERNATIONAL COMMERCIAL ARBITRATION

Submitted By

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Time is very precious and invaluable because "time is the essence of our day to day life". Everything, nowadays, is measured in terms of time and money. The popular saying "TIME IS MONEY" has become more relevant in the present day context of globalized economy and commerce. To meet with the pace of life, persons both natural and artificial have developed a tendency to save time in every possible manner and in all aspects of their dealings. A person's requirements are more based upon time saving gadgets. Time saving requirements have become the essence of administration of justice system also. In process of saving time, every one wants not only effective justice but also quick justice.

The world at present is moving towards a reign of speedy justice and speedy resolution of disputes. In the quest of reaching to speedy resolution of disputes, the process of arbitration has achieved a very remarkable and important position. It is felt that by using arbitration process as alternative dispute redressal machinery one can get a speedy resolution of dispute as compared to the method of adjudication through the conventional Courts.

Due to our increasingly interrelated and globalized economy, the world has witnessed a phenomenal growth in

commercial disputes transcending national borders. In addition to issues in interpretation of commercial agreements and practices, differences in custom, language, culture, and religion continue to fuel conflicts and disagreements between commercial players.(1)

Arbitration – A Mode of Determination of Disputes:

The determination of disputes by the decision of one or more persons is called arbitration. Halsbury (2) defines arbitration as 'the reference of dispute or difference between not less than two parties, for determination, after hearing both the sides in a judicial manner, by a person or persons, other than a court of competent jurisdiction'. Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.

The principal characteristics of arbitration are:

1. Arbitration is consensual

Arbitration can only take place if both parties have agreed to it. In the case of future disputes arising under a contract, the parties insert an arbitration clause in the relevant contract. An existing dispute can be referred to arbitration by means of a submission agreement between the parties. In contrast to mediation, a party cannot unilaterally withdraw from arbitration.

(1) Faisal Kutty, Osgoode Hall Law School of York University; "The Sharia factor in International commercial arbitration".
(2) Earl of Halsbury, The Laws of England, Vol. I, Butterworth & Co., London, 190

2. The parties choose the arbitrator(s)

Under the WIPO Arbitration Rules [3], the parties can select a sole arbitrator together. If they choose to have a three-member arbitral tribunal, each party appoints one of the arbitrators; those two persons then agree on the presiding arbitrator. Alternatively, they can suggest potential arbitrators with relevant expertise or directly appoint members of the arbitral tribunal.

3. Arbitration is neutral

In addition to their selection of neutrals of appropriate nationality, parties are able to choose such important elements as the applicable law, language and venue of the arbitration. This allows them to ensure that no party enjoys a home court advantage.

4. Arbitration is a confidential procedure

It protects the confidentiality of the existence of the arbitration, and making disclosures during that procedure and the award, are strictly prohibited. In certain circumstances, the party is allowed to restrict access to trade secrets or other confidential information that is submitted to the arbitral tribunal or to a confidentiality advisor to the tribunal.

5. The decision of the arbitral tribunal is final and easy to enforce

The arbitral awards or the arbitral decisions made by the arbitral tribunal are binding and enforceable. This explains the emphasis on ensuring the finality of arbitral decisions. In fact, one of the objectives behind the web of international laws, treaties, national laws, and arbitration rules; which attempt to regulate international commercial arbitration; is to ensure that 'arbitral decisions are binding'.

[3] WIPO Arbitration and Mediation Rules (WIPO Publication No. 446).

INTERNATIONAL COMMERCIAL ARBITRATION

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International commercial arbitration is essentially arbitration between or among trans-national actors, between states or private parties. Arbitration has become the preferred mechanism to resolve international commercial disputes.

International commercial arbitration is designed to assure parties from different jurisdictions that their dispute will be settled in a neutral fashion. At its most basic, commercial arbitration is a private dispute resolution system which allows parties to resolve their disputes faster and cheaper than court proceedings. It is chosen because it provides parties more flexibility and control over the proceedings and helps eliminate the uncertainties in choice of decision-maker, forum, and applicable law.

In this realm of international commercial transactions, arbitration has become the preferred method of dispute resolution. Arbitration is preferred over judicial methods of dispute resolution because the parties have considerable freedom and flexibility with regard to choice of arbitrators, location of the arbitration, procedural rules for the arbitration, and the substantive law that will govern the relationship and rights of the parties.

Moreover, arbitration tribunals can maintain jurisdiction over parties who have submitted to it pursuant to an agreement or arbitration clause. Perhaps most importantly, commercial arbitration provides the mechanism to internationally enforce arbitral awards, at least within the nations that are signatories to the relevant conventions and treaties.

In addition to transnational treaties, international commercial arbitration is governed by several sources of law, including: (1) the national law governing the parties' capacity

to enter into the arbitration agreement; (2) the law governing the arbitration agreement itself; (3) the law controlling the arbitral proceedings, such as the rules of a permanent arbitral institution like the International Arbitration Forum or an ad hoc arbitral body established by the parties; and (4) the law governing the substantive issues in the dispute. (4)

International Commercial Arbitration under UNCITRAL and ICC:

Arbitration can be ***ad hoc*** or institutional**.** ***Ad hoc*** arbitrations are conducted by parties without the assistance or supervision of an arbitral institution. The parties can either adopt the rules of the United Nations Commission on International Trade Law ("UNCITRAL") or select another set of procedural rules. Parties have to be more careful in planning when involved in ***ad hoc*** arbitration, as they will lack the expertise available from the institutions.

An institutional arbitration is one entrusted to a major arbitration institution. The best known of these institutions include the International Chamber of Commerce, the London Court of International Arbitration, and the American Arbitration Association. It is important to note that these are not the only arbitral institutions, though these have become the most respected and experienced. Each of these arbitral institutions, as well as the others, has enacted sets of procedural rules that apply where parties have agreed to arbitration pursuant to such rules.

These institutions do not arbitrate the dispute, but merely facilitate and provide support and guidance to the arbitrators selected by the parties. The institutional rules set out the basic procedural framework for the arbitration process. Generally,

(4) Supra Note 1.

the rules also authorize the arbitral institution to: act as an "appointing authority" in the event the parties cannot agree, set a timetable for the proceedings, help resolve challenges to arbitrators, designate the place of arbitration, help set or influence the fees that can be charged by arbitrators, and in some situations, review the arbitral award to reduce the risk of unenforceability.

The United Nations Commission on International Trade Law Arbitration Rules ("UNCITRAL Arbitration Rules")

UNCITRAL also has contributed significantly to the spread of international commercial arbitration by harmonizing arbitration procedures. The UNCITRAL Arbitration Rules could be used by parties who wanted to participate in *ad hoc* arbitration, as well as those who did not wish to use existing arbitral institutions. The Commission also drafted the UNCITRAL Model Law in 1985 for use in international commercial arbitration. The Model Law has served as the basis for the arbitration laws of many nations.

The question of what matters can be arbitrated becomes problematic when you consider the public policy implications. Consider for instance that the UNCITRAL Model Law[5] provides that recognition and enforcement of an arbitral award may be refused, ***inter alia***, "if the court finds that: the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or the recognition or enforcement of the award would be contrary to the public policy of this State."

A similar provision is found in the New York Convention[6] provides that recognition and enforcement may be refused if:

[5] Article 36, The UNCITRAL Model Arbitration Law.
[6] Article V (2), The New York Convention.

(a) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or (b) the recognition or enforcement of the award would be contrary to the public policy of that country.

The International Chamber of Commerce ("ICC"):

The International Chamber of Commerce ("ICC") is the world's leading arbitral institution. The ICC's International Court of Arbitration ("the Court"), established in 1923, and currently boasts membership from over eighty nations. The ICC remains a pioneer in the development of international arbitration and its Rules of Conciliation and Arbitration ("ICC Rules") are used extensively. Since its inception, the Court has handled more than 13,000 cases, and in 2003 about 580 new matters involving 123 jurisdictions were filed with the Court.

The ICC Rules were ratified at the ICC Congress in 1923 and were most recently revised in 1998. Pursuant to the ICC Rules, the ICC is involved extensively in the administration of individual arbitrations. This role includes, but is not limited to, the following: (1) determining whether there is a *prima facie* agreement to arbitrate, (2) deciding on the number of arbitrators, (3) appointing arbitrators in the event one party defaults or the parties cannot agree, (4) deciding challenges against arbitrators, (5) ensuring that arbitrators are conducting the arbitration in accordance with the ICC Rules and replacing the arbitrators if necessary, payments on account of costs, (6) determining the place of arbitration,(7) fixing and extending time-limits,(8) determining the fees and expenses of the arbitrators,(9) setting and collecting (10) reviewing the "Terms of Reference" which define the issues to be arbitrated, and (11) scrutinizing arbitral awards.[7] It should also be noted that

(7) Supra Note 4.

most developed trading states (and many other countries) have enacted national arbitration legislation. These national laws, *inter alia*, provide for the enforcement of international arbitration agreements and awards, limit judicial interference in the arbitration process, authorize specified judicial support for the arbitral process, affirm the capacity of parties to enter into valid and binding agreements to arbitrate future commercial disputes, provide mechanisms for the enforcement of such arbitration agreements, and require the recognition and enforcement of arbitration awards. In addition, most modern arbitration legislation restricts the ability of national courts to interfere in the arbitration process, both when arbitral proceedings are pending and in reviewing ultimate arbitration awards. Some domestic legislation even authorizes limited judicial assistance to the arbitral process.

The Advantages of International Commercial Arbitration:

Decision making is Quick and Cheap:

Comparing with the conventional adjudication method, the parties can seek redressal to their disputes quickly and at an agreeable low costs. Decisions are binding upon the parties and have universal application. The UNCITRAL Model Law adopted in 1985 on International Comercial Arbitration has harmonized the concepts on arbitration and conciliation of different legal systems of the world and thus contained provisions which were designed for Universal application. With these MAL (Model arbitration Law) the enforcement of certain foreign awards was made easy and applicable through the world countries.

Acquaintance with the arbitrator:

The parties themselves mutually agree to appoint the sole arbitrator or a panel of arbitrators. Generally such arbitrators are related with the same field and possessing the required technical expertise. Therefore, the parties have personally acquaintance with such arbitrators and hence, they feel more comfortable to depose and express their views and opinions before the arbitral tribunal.This helps the arbitral tribunal to come to a conclusion very easily and speedily.

Representation through Law professionals is not mandatory:

Matters at the arbitral tribunal need not be exclusively represented through the Law Professionals. The parties themselves, with the help of experts in the subject matter of the dispute, represent their grievance before the Arbitral tribunal. It not only saves the time but also prevents the delay.

Arbitral Tribunal is empowered to prescribe the Language and Procedure:

Eventhough the arbitral tribunal is exempted from adjuctive Law, it has to follow the Principle of natural Justice, which includes adjuctive Laws inherently. Further the tribunal should stricly abide and follow the substantive Laws.

The parties can agree mutually the terms regarding the Language and the Procedure to be followed in the proceedings.(8)

The Qualifications of Arbitrator:

Man having Confidence and faith of the Parties:

Generally the appointment and the authority of the arbitrator flow from the arbitration agreement or from the arbitration clause in the original contract. The parties mutually

(8) Northern Health Authority V. Derek Crouch Ltd.., (1984) 2 All ER 175 CA.

agree, as per the terms of arbitration agreement, a sole arbitrator or one arbitrator each. In any case, the appointment of arbitrator reflects the confidence of the parties upon him. If the parties do not have confidence, trust, faith and reliability upon such person, they would not have been appointed him.

Man of Integrity and Impartiality:

It is the general and the foremost required principle in arbitration law, that the arbitrator should be impartial and possess integrity of high standard. He should not show any interest orpartiality towards any party to the dispute. If he does so, the very purpose of the arbitration fails.

Man with minimum required technical and legal knowledge:

The arbitrator need not possess any technical and legal qualifications.It is sufficient for him to understand the nature and subject matter of the dispute on hand so as to proceed with the technical and legal concepts which come across in finding the facts and to resolve the dispute. It has been the general practice that the persons from the similar trade or business or profession are opted by the disputing parties, so that they could use their acquired vast experience and knowledge to resolve the dispute.

Not to have any vested interest in the subject matter of the dispute:

The persons appointed as arbitrators must act impartially and therefore, it is necessary that he must not have any, personal, vested interest in the subject matter of the dispute. Unless both the parties agree, the person appointed must not relate with any one of the parties or have concern over the subject matter, as it leads to partiality.

Free to refuse or accept the appointment:

There should not be any compulsion, upon the person who is so appointed as an arbitrator by the parties, to accept the appointment. He may refuse or accept the appointment and in case, if he refuses to act as an arbitrator, he cannot be forced or compelled. In his place another arbitrator shall be appointed. Russel, the renouned jurist explains the qualifications of an arbitrator as follows:

"An arbitrator is neither more nor less than a private judge of a private court (called arbitral tribunal)who gives a private judgment (called an award).He is a judge in that a dispute is submitted to him; he is not mere investigator but a person before whom material is placed by the parties, being either or both of evidence and submissions; he gives a decision in according to his duty to hold the scales fairly between the disputants in accordance with some recognized system of law and the rules of natural justice. He is private in so far as (1) he is chosen and paid by the disputants, (2) He does not sit in public, (3) He acts in accordance with privately chosen procedure so far as that is not repugnant to public policy, (4) So far as the law allows he is set up to the exclusion of the state Courts, (5) His authority and powers are only whatsoever, he is given by the disputants' agreement and (6) the effectiveness of his powers derives wholly from the private law of contract and accordingly the nature and exercise of these powers must not be contrary to the proper law of the contract or the public policy bearing in mind that the paramount public policy is the freedom of contract is not lightly to be interfered with."

Powers of the Arbitrator/Arbitral tribunal:

No Interference by the Judicial Authority:

Arbitration is one of the important modes of settlement of disputes outside the regular conventional courts, that too with the consent of the parties to the dispute. The arbitrator/arbitral tribunal enjoys its extreme jurisdiction to entertain the arbitral proceedings. The Courts have no authority or power to interfere with such arbitral proceedings or with the powers of the arbitral tribunal, except where so provided in the domestic legislations.(9)

Power to appoint or to seek Administrative Assistance:

To conduct the arbitral proceedings, the arbitral tribunal requires assistance. Arbitral tribunal is empowered to appoint such required number of administrative assistants for conducting and smooth running of the arbitration proceedings. Competence of Arbitral tribunal to Rule on its Jurisdiction:

The arbitral tribunal may rule on its own jurisdiction. This includes the ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose:-

(a) an arbitration Clause which forms a part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jurie the invalidity of the arbitration Clause.(10)

(9) Article 5, The UNCITRAL Model Arbitration Law.
(10) Article 6 of the UNCITRAL Model Law, 1985.

Determination of Rules of Procedure:

The arbitral tribunal shall not be bound by any specific procedural law. The disputing parties are free to agree upon the procedure to be followed by the arbitral tribunal in conducting its proceedings. Failing any such agreement by the parties, the arbitral tribunal may conduct the proceedings in the manner it considers appropriate. The power of arbitral tribunal to determine the rules of procedure includes the power to determine the admissibility, relevance, materiality and weight of any evidence.(11)

Power to Order certain Interim Measures:

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute. In such a case, the arbitral tribunal may require a party to provide appropriate security. For instance; if the arbitral tribunal passes an order for the preservation or protection or custody of certain property, which is the subject matter of the arbitral proceedings, to a person, the tribunal may ask such person to provide appropriate security for that property.(12)

To Determine the Place of Aritration:

It is universally accepted norm that an opportunity is given to the parties to the arbitration agreement to determine the place of arbitration. In case, there is no such provision or agreement in the arbitration Clause or agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the

(11) Article 19 Sub Clause (1) and (2) of the UNCITRAL Model Law, 1985.

(12) Article 17 of the UNCITRAL Model Law, 1985.

convenience of the parties. The arbitral tribunal may, unless otherwise agreed by the parties, meet at any such place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for

inspection of documents, goods or other property.(13)

Power to determine the Language:

As such the parties are free to agree upon the language or languages to be used in the arbitral proceedings, giving regard to their convenience and usage in the trade, and incorporate such a clause in the arbitration agreement. However, if the parties do not provide such a Clause, and do not come to an understanding, the tribunal has power to determine which language is to be used in the arbitral proceedings. The agreement or determination, unless otherwie specified, shall apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal. The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.(14)

Power to receive the Statement of Claim and Defense from the parties

The arbitral tribunal receives the statement of claim from the party, who initiated the arbitral proceedings, and the statement of defense from the opposite party. The arbitral tribunal is also empowered to receive the evidence and record accordingly. Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant

(13) Article 20 Sub Clause (1) and (2) of the UNCITRAL Model Law, 1985.

(14) Article 22 Sub Clause (1) and (2) of the UNCITRAL Model Law, 1985.

shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defense in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements. The parties may submit with their statements all those documents they consider to be relevant or may add a reference to the document or other evidence they will submit. Unless otherwise agreed by the parties, either party may amend or supplement his claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making.(15)

Powers Relating to Hearings and Written Proceedings:

If the parties agree to conduct the arbitral proceedings orally, the arbitral tribunal conduct the proceedings orally. If there is no such a Clause or agreement between the parties, the tribunal is empowered to determine whether to hold the proceedings orally or in writing. Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held. The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of inspection of documents, goods or other property. All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or

(15) Article 23 Sub Clause (1) and (2) of the UNCITRAL Model Law, 1985.

evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.(16)

Powers on Default of a Party:

It is the obligation of the parties to submit the necessary documents and statements to the arbitral tribunal as and when necessary and directed by the tribunal. If a party fails to submit the statement and evidence, the tribunal is empowered to proceed with the arbitral proceedings, after giving sufficient opportunity to such party.

Unless otherwise agreed by the parties, where without showing sufficient cause,

- The claimant fails to communicate his statement of claim, the arbitral tribunal shall terminate the proceedings;
- The respondent fails to communicate his statement of defense, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant;
- A party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.(17)

Power to Appoint Expert/s:

If the arbitral tribunal opines it necessary to obtain expert opinion, it is empowered to appoint one or more experts in the concerned subject. Unless otherwise agreed by the parties, the arbitral tribunal may:-

- Appoint one or more experts to it on specific issues to be determined by the arbitral tribunal, and

(16) Article 24 Sub Clause (1), (2) and (3) of the UNCITRAL Model Law, 1985.

(17) Article 25 of the UNCITRAL Model Law, 1985.

- require a party to give the expert any information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Unless otherwise agreed by the parties, the expert shall, on the request of a party, make available to that party for examination of all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report.(18)

Power to seek Assistance of the Court in Taking Evidence:

The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the court for assistance in taking evidence. The application shall specify:-

- The names and addresses of the parties and the arbitrator/s;
- The general nature of the claim and the relief sought;
- The evidence to be obtained, in particular:

The names and address of any person to be heard as witness or expert witness and a statement of the subject matter of the testimony required;

The description of any document to be produced or property to be inspected.

(18) Article 26 Sub Clause (1) and (2) of the UNCITRAL Model Law, 1985.

- The Court may within its competence and according to its Rules on taking evidence, execute the request by ordering that the evidence be provided directly to the arbitral tribunal.
- The Court may, while making such an order, issue the same processes(19) to witnesses as it may issue in suit tried before it.
- Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

Power to make an Award

After completing the arbitral proceedings, the arbitrator/arbitral tribunal is empowered to pass an award. The arbitrator, if there is a sole arbitrator, or the arbitrators, if there is a panel of arbitrators, should sign and date on the arbitral award. This award is equal to a Decree of a Court.(20)

Power to Encourage the Parties to Settle the Dispute:

While the arbitral proceedings are pending before him or it; the arbitrator or the arbitral tribunal may encourage the parties to settle the dispute. It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the

(19) Expression 'Processes' includes summons and communications for the examination of witnesses and summons to produce documents.

(20) Article 31 Sub Clause (1), (2), (3) and (4) of the UNCITRAL Model Law, 1985.

parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings, to encourage settlement. If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.(21)

Power to Terminate the arbitral Proceedings:

The arbitral tribunal is empowered to terminate the proceedings under certain circumstances. The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal. The arbitral tribunal shall issue an order for termination of the arbitral proceedings where:-

- The claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
- The arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.(22)

Power to Suspend the Arbitral proceedings:

The arbitral tribunal has the power to suspend the arbitral proceedings in the following circumstances:-

- If the parties claiming or counter-claiming do not deposit the necessary expenses before the arbitral tribunal;

(21) Article 30 Sub Clause (1) and (2) of the UNCITRAL Model Law, 1985.

(22) Article 32 Sub Clause (1), (2) and (3) of the UNCITRAL Model Law, 1985.

- If both the parties do not come forward with clean hands;
- If both the parties do not co-operate with the arbitral proceedings.(23)

Power to Correct, Interpret the Award and Power to pass an Additional Award:

The arbitral tribunal is empowered to correct, interpret the award issued by it. It is also empowered to pass an additional award. Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties,

- A party, with notice to the other party, may request the arbitral tribunal to correct any communication errors, any clerical or typographical errors or any other errors of similar nature occurring in the award;
- if so agreed by the parties, a party with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the above mentioned request to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award. The arbitral tribunal may correct any error of the type referred to, on its own initiative, within thirty days from the arbitral award.

Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make

(23) *ibid.*

an additional arbitral award as to claim presented in the arbitral proceedings but omitted from th arbitral award. If the arbitral tribunal considers such request to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make correction, give an interpretation or make an additional arbitral award.(24)

Power to Fix the amount of Deposit or Supplementary Deposit:

The arbitral tribunal is empowered to fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs referred to, which it expects will be incurred in respect to the claim submitted to it. Provided where, apart from the claim, a counter claim has been submitted to the arbitral tribunal, it may fix separate amount of deposit for the claim and counter claim. Further the arbitral tribunal may order for interest on the sum awarded. When one party fails to pay his share of the deposit, the other party may pay that share. In case, where both the parties to the dispute do not pay the aforesaid share in respect of the claim or the counter claim, the arbitral tribunal may suspend or terminate the arbitral proceedings in respect of such claim or counter claim, as the case may be. Upon such termination of the arbitral proceedings, the arbitral tribunal shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the party or parties, as the case may be.

Power to Lien on Arbitral Award and Deposits as to Costs:

In any case an arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the Court may

(24) Article 33 Sub Clause (1), (2), (3), (4) and (5) of the UNCITRAL Model Law, 1985.

on an application in this behalf, order that the arbitral tribunal shall deliver the arbitral award to the applicant on payment into the Court by the applicant of the costs demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into the Court there shall be paid to the arbitral tribunal by way of costs such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant. Such an application may be made by any party unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal, and the arbitral tribunal shall be entitled to appear and be heard on any such application. The Court may make such orders as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them.

Subject to the above mentioned provisions, and to any provision to the contrary in the arbitral agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.

Power to receive Remuneration:

The arbitrator or the panel of arbitrators are entitled to receive remuneration as per the terms of the arbitration agreement or as per the agreement reached by the parties or as fixed by the Court. When once his fee or remuneration is fixed, he should not demand more than that fixed remuneration or fee. It is against the principle of natural justice and legal provisions, if he demands more than the agreed amount.

DUTIES OF AN ARBITRATOR/ARBITRAL TRIBUNAL

To Give Equal Treatment of Parties

The arbitrator or the arbitral tribunal should conduct the arbitral proceedings without any partiality to any person or party. The parties shall be treated with equality and each party shall be given a full opportunity to present his case.(25)

To Concern with the Dispute only

The arbitral tribunal must concentrate its arbitral proceedings on the dispute only. It should not exceed and go beyond the dispute, otherwise the award passed contrary to this, can be set aside.(26)

To Follow the Provisions of the UNCITRAL Model Law

The arbitrator or the arbitral tribunal should follow the provisions of the UNCITRAL Model Law and other concerned statutes/Instruments in force, otherwise the award passed contrary to this, can be set aside. (27)

To Follow the Public Policy

The arbitrator or the arbitral tribunal should follow the Public Policy, if the proceedings or the award is against the Public policy, it can be set aside.(28)

To be bound by the Principles of Natural justice

The arbitrator or the arbitral tribunal should follow the principles of **Natural Justice.** Principles like- **nemo judex in causa sua and audi alteram partem** should be strictly followed.(29)

(25) Article 18 of the UNCITRAL Model Law, 1985

(26) Article 28 Sub Clause (1), (2), (3) and (4) of the UNCITRAL Model Law, 1985

(27) Article 1 of the UNCITRAL Model Law, 1985

(28) Article 28 Sub Clause (1) of the UNCITRAL Model Law, 1985

(29) Article 28 of the UNCITRAL Model Law, 1985.

To Pass a Complete, Final and Reasoned Award

It is the duty of the arbitral tribunal to see that the award must be in complete and final and also must be reasonable. It must give reasons for its coming to the conclusion of such award.

To Pass a Legal and Possible Award

It is the duty of the arbitral tribunal to see that the award must be legal and possible to implement it.

To Render Accounts

Where the party or the parties deposit the amount before the arbitral tribunal towards the costs and expenses of the arbitral proceedings, it is the duty of the arbitral tribunal to render the account, and return the balance amount to the concerned parties.

To Decide ex aequo et bono or as amiable compositeur

It is the duty of the arbitral tribunal to decide the dispute ex aequo et bono; according to what is just and good or as amiable compositeur; act friendly with both the parties to bring them together and settle the matter in an amicable way.(30)

To abide by the Usages of the Trade

In all cases, the arbitral tribunal shall decide the dispute in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.(31)

To Encourage Settlement of the Dispute

It is also one of the duties of the arbitral tribunal to encourage settlement between the parties.(32)

(30) Article 28 Sub Clause (3) of the UNCITRAL Model Law, 1985.

(31) Article 28 Sub Clause (4) of the UNCITRAL Model Law, 1985

(32) Article 30 Sub Clause (1), and (2) of the UNCITRAL Model Law, 1985

Conclusion:

A Global survey of National Laws on arbitration revealed that there are considerable disparities in the domestic arbitration legislations. This has created a wide gap in resolving international trade related disputes. The United Nations Commission on International Trade Law (UNCITRAL) which prepared a Model Arbitration Law (MAL), is designed to meet the concerns relating to the current state of National Laws on arbitration. The need for improvement and harmonization of arbitration laws, is based on the findings that the domestic laws are often inappropriate for settling the international trade related disputes. The MAL constitutes a sound and promising basis for the desired harmonization and improvement of National Laws. It covers all stages of the arbitral process, from the arbitration agreement to the recognition and enforcement of the arbitral award and reflects a worldwide consensus on the principle and important issues of international arbitration practice. It is applicable to all the States of all the regions and to the different legal or economic systems of the world.

The form of a MAL was chosen as the vehicle for harmonization and improvement in view of the flexibility it gives to respective State Parties in preparing a new arbitration laws. For instance, the UAE arbitration laws, unlike their Saudi counterparts, have been modified on par with the UNCITRAL Model Law and have done away with some of the stringent restrictions such as stipulating the religion and gender of the arbitrator.(33) It is, hence, advisable to follow the MAL as closely as possible, since that would be the best contribution to the desired harmonization and in the best interest of the users of international arbitration.

(33) Federal Law No.11 of 1992 Issuing the Law of Civil Procedure, Ch. 3, Article 206 (1), Reprinted in Business Laws of the United Arab Emirates- Volume IV (Marjorie J Hall & Dawoud Sudqi El Alami trans. 1998).