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Comparative Analysis of International Arbitral Institution

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ABSTRACT

Arbitration is presently the most common way for states, people, and organisations to settle international disputes. As a result of increased globalisation of world trade and investment, specialised international arbitration practitioners who speak a common procedural language, whether they practise in England, Switzerland, Nigeria, Singapore, or Brazil, have become increasingly harmonised in their arbitration practises. And in recent times, international arbitration plays a key role in resolving cross border commercial disputes as there is no involvement of national courts which clearly indicates that there is no biasness in the procedure and award.

These standardised practises are based on complex arbitration rules administered by organisations such as the International Chamber of Commerce (ICC), the American Arbitration Association (AAA), and the London Court of Arbitration Centre, which are located throughout Europe, Asia, the Middle East, and elsewhere. The standardised rules are themselves supported by enlightened national arbitration laws inspired by the United Nations Commission on International Trade Law (UNCITAL) Model Law. The purpose was to maximize the effectiveness of the arbitral process and to minimize the judicial intervention.

The result is a powerful edifice of laws and procedures, backed up by treaties like New York convention 1958, which impose an obligation on national courts around the world to recognise and enforce both arbitration agreements and arbitration award.

The awards and the procedure followed by such institution greatly affect the procedure followed by the national courts. As it helps the national court to adopt flexible rules and modify their existing laws if there is any inconsistent. Such development in the national court can help the arbitrational process to be speedy mechanism.

In this paper we are going to analysis first different types of international arbitration institution and secondly how they different from each other on different aspect.

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I. INTRODUCTION

(A) Different Types of International Arbitral Institutions

1. Singapore International Arbitration Centre (SIAC): -

SIAC is one of the most leading international arbitration institutions, which offers a fair, neutral and independent dispute resolution platform to enterprises all over the word, particularly those doing business in Asia. It was established on 1 July 1991 as a not-for-profit organisation and located in Singapore.

When we say fair and neutral means, parties often do not want to bring a dispute for resolution in the domestic court of the other side's jurisdiction because of the anticipation of "home court advantage" which clearly indicates that bringing arbitration into a neutral forum benefits to have fair, even-handed process that is final, and time and cost-effective.

The primary aim of SIAC to be recognised as a truly worldwide arbitration institute which is committed to provide world-class quality and efficient service while promoting arbitration as a preferred means of dispute settlement.

In 2020 there was 674 new cases were filed which shows that it has immensely succeeded as a hotspot for commercial arbitration.

To determine how SIAC differ from other from other arbitration centres? Three pillars of SIAC must have to be seen. The **first** one is Singapore's international arbitration framework with reputable international arbitration environment, as well as a reliable legal system that upholds the rule of law. Also, the arbitration legislation is constantly reviewed and revised to ensure that it is progressive and user friendly. The **second** pillar is the SIAC rules. These rules are innovative and offers a cost-saving and fix timing mechanism. For instance, the current rules are the 6th edition which are adopted globally as a best practice in international arbitration with some elements of common law and civil law legal system. These rules keep on revising and on when taking the recent development on arbitration practice and procedure, it has tried to serve better the needs of business, financial institution and governments. The **third** pillar is the member of court who are wealth of experiences, deep specialist and knowledge. The vast experience and knowledge of the person helps in giving fair judgment. Such contribution of the members ascent to the popularity of SIAC as a premier global arbitral institution.

SIAC also have multinational secretariat (the legal team) comprising of 500 arbitration experts from 40 jurisdictions, including arbitrators who are bilingual and have experience to administer arbitration in variety of languages.

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India also recognises SIAC rules. Even in recent case of Amazon.com NV Investment Holding LLC v Future Retail Limited & Ors. Where the Supreme Court allowed the enforcement of an order passed by an emergency arbitrator under SIAC rules in arbitration situated in New Delhi and clarifying that India does recognises emergency arbitration though there is no such express provision mentioned in Indian arbitration legislation. This case is a clear-cut example of pro-arbitration, "providing parties to an India seated arbitration an additional avenue to seek urgent interim relief and potentially paving the way for greater judicial support in the enforcement of emergency arbitrator awards rendered in foreign arbitration"[2].

2. International Chamber Of Commerce: -

"Basically, in the year 1919 ICC was established in order to serve world business by promoting trade and investment, open markets for goods and services, and the free flow of capital"[3]. But as the world market started growing there is rise in cases, and to neutralise such disputes and maintain the policy between countries, the ICC's International Court of Arbitration (hereinafter referred as "the court") was created in the year 1923. It is an independent arbitration body of ICC which deals to resolve any international commercial disputes. This institution carries more than 1000 arbitrators (having knowledge and experience) from 90 different countries. The court does not itself resolve the dispute, it administers the resolution of dispute by arbitral tribunal, in accordance with the rules of arbitration of ICC. The procedure followed by them is very flexible and it can be adopted by the other international arbitral institution.

If we compare the cases which have been filled, there has been increases in number from 2019 to 2020 which clearly indicates that the companies prefer to file their disputes in this institution because it provides fair and effective judgment which can be referred to different cases by different arbitrable institution.

"The main role of the ICC court is to provide supervision of arbitration proceeding in accordance with the ICC Arbitration Rules"[4]. Specifically, its function includes: "(a) deciding the place of arbitration; (b) to see whether there is prima facie ICC arbitration agreement; (c) taking necessary decision in complex multi-party or multi-contract arbitrations; (d) confirming, appointing and replacing arbitrators; (e) deciding any challenges filed against arbitrator; (f)

[2] *Indian Supreme Court enforces SIAC's emergency arbitrator order in India-seated arbitration: Impact and consideration for foreign investors* (no date) *Allen & Gledhill*. Available at: https://www.allenandgledhill.com/perspectives/articles/19285/sgkh-indian-supreme-court-enforces-siac-s-emergency-arbitrator-order-in-india-seated-arbitration-impact-and-consid (Accessed: 23 June 2023).
[3] International Chamber of Commerce, *Wikipedia*, https://en.wikipedia.org/wiki/International_Chamber_of_Commerce
[4] ICC Arbitration, Aceris law LLC

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observing and monitoring the arbitral process; (g) scrutinizing and approving all arbitral awards; (h) setting, managing and, if necessary, adjusting the cost of the arbitration; (i) overseeing emergency arbitrator proceeding"[5].

The institution tries to update and improve their rules in order achieve the neutrality in the proceeding. And if we consider the new ICC arbitration rules 2021, it tried to mark a further step towards greater efficiency, flexibility and transparency by introducing the new provisions pertaining to consolidation and joinder, party representation and disclosure of third-party funding[6].

3. UNCITRAL Rules: -

The UNCITRAL Arbitration Rules occupy an important position, both historically and in contemporary arbitration practice. In the year 1973, UNCITRAL proposed the preparation of model arbitration rules[7]. The prime objective of the UNCITRAL Rules was to form a neutral, predictable and stable procedural framework for international arbitration without stifling the informal and flexible character of such dispute resolution mechanisms[8]. These rules were formulated with the aim that it should be acceptable to common law, civil law, and other legal system. The rules keep on revising and the recent UNCITRAL Rules 2013 provides provisions related to transparency in the proceeding.

Earlier, the UNCITRAL Rules were designed for the use in ad-hoc international commercial arbitration so in this regard there were only few sets of rules available for that purpose. Although alternative now exists,[9] more states, which generally have supported the Rules in the UN debates, and their state-owned entities, often find it difficult to object to their use in an arbitration agreement or arbitration proceeding[10].

The rules of UNCITRAL were significantly adopted by the other institution to harmonize the international arbitration procedure. Although the rules were designed earlier for international trade dispute but now it can be applied to commercial disputes as well as to state-to-state and investor-state dispute. The rules also provide provisions confirming the presumptive separability of the arbitration clause from the underlying contract and the tribunal's power to

[5] Introduction to ICC arbitration, https://www.cliffordchance.com

[6] As described by the ICC Court of Arbitration President Alexis Mourre (https://iccwbo.org/media-wall/news-speeches/icc-unveils-revised-rules-of-arbitarion/.)

[7] Report of the United Nations Commission on International Trade Law, 6th Sess., U.N.Doc.A/9017,85 (1973)

[8] Report of the Secretary-General on the Revised Draft Set of Arbitration Rules, UNCITRAL, 9th Session, Introduction, 17, UN Doc. A/CN.9/112 (1975).

[9] The International Institute for Conflict Prevention and Resolution has published, since 1989, a set of "Rules for Non-Administered arbitration".

[10]Experience with the UNCITRAL Rules has been positive. *See* Permanent Court of Arbitration: Optional Rules for Arbitrating Disputes Between Two States, effective 20oct. 1992, 32 INT'l leg.Mat.572 (1993)

consider jurisdictional objections[11] .

If we see the current status of UNCITRAL Rules in India, the government of India has tried to address the dispute by applying UNCITAL model law. As the UNCITRAL Model Law on International Commercial Arbitration, 1985 secures both domestic and international commercial arbitration, they ensure arbitration to be flexible, cost-effective and speedy mechanism for the settlement of commercial disputes and in this regard, they introduced the Arbitration and Conciliation Act, 1996 ('Act'). While the Act was enacting, the lawmakers have taken due consideration of UNCUTRAL rules and the same has been highlighted in the preamble which clearly states that the provision of the Act are in connection to and based of the same rules. The similarity can be seen by the section 9 of the Act which has been updated from Article 9 of the Model Law which talks about arbitration agreement and interim measures by the court. Therefore, we can conclude that India has somewhere adopted some rule from UNCITRAL.

II. COMPARATIVE ANALYSIS OF SIAC, ICC AND UNCITRAL RULES

1. **Deemed start date of arbitration:** - As per rule 2.2 and 3.3 of SIAC rules 2016, the day request is *delivered* to registrar the commencement of arbitration process has started.

And as per Article 3.3 and 4.2 of ICC Rules 2012, the day request is *received* by Secretariat of International court of arbitration the arbitration process has started and under Articles 2.5, 3.2 UNCITRAL Ad hoc rules 2013, the day request is *delivered or attempted* to be delivered to respondent the commencement of proceeding has said to be started.

2. **Default deadline for response:** - As per Rule 4.1 of SIAC rules 2016, 14 days from the receipt of notice of arbitration by respondent is considered as deadline for response. And under Article 5.1 of ICC Rules 2012, 30 days from receiving request from ICC Secretariat by respondent. Also, Article 4.1 of UNCITRAL Rules 2013 states 30 days from receipt of notice of arbitration by respondent to be considered as deadline for response.
3. **Default number of arbitrators:** - Under SIAC Rules 9.1 sole arbitrator decide the dispute and under ICC Rules 2012, Article 12.2 states sole arbitrator can decide the matter but in deemed complex cases, the default number of arbitrators is three. Now if we see Article 7 of UNCITRAL ad-hoc rules 2013 it clearly states three arbitrators should be there for deciding the matter.
4. **Default appointment of a sole arbitrator:** - As per rule 10 of SIAC rules 2016, within 21

[11] 1976 UNCITRAL Rules, Art.21, 2010 UNCITRAL Rules, Art.23; infra p.219

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days from receipt of request by Registrar if the parties have not reached an agreement on the nomination of a sole arbitrator then the president of SIAC will appoint the sole arbitrator and under ICC rules 2012, if the sole arbitrator is not appointed by the parties, after 30 days then the court will appoint it for the same (Article 12.2). Also, under Article 8.1 states that if the parties fail to appoint sole arbitrator within 30 days then appointing authority using list procedure appoints for the same.

5. **Default appointment of three-member tribunal:** - As per rule 11 of SIAC rules 2016, each party nominates an arbitrator, if within 14 days of first nomination a party fails to nominate its arbitrator, President of SIAC will appoint on its behalf; chairperson appointed by President of SIAC. And under Articles 12.2, 12.4, 12.5 of ICC rules 2012, each party nominates an arbitrator, chairperson appointed by ICC. Also, Article 9 of UNCITRAL Rules 2013 states, each party shall appoint an arbitrator and if within 30 days of first nomination a party fails to nominate its arbitrator the appointing authority will appoint on its behalf, the two arbitrators appoint the chair within 30 days from appointment of second arbitrator.

6. **Time limit for challenging arbitrator:** - As per Rule 15.1 of SIAC rules 2016, 14 days from appointment or 14 days from becoming aware of relevant circumstances the parties can challenge for arbitrator with notice to the Registrar stating the reason for the same. And under Article 14.2 of ICC rules 2012, 30 days from appointment/confirmation or 30 days from becoming aware of relevant circumstances, the parties can challenge for arbitrator after making a written submission to the Secretariat with specifying the facts and circumstances on which the challenge is based. Now considering Article 13 of UNCITRAL rules 2013, 15 days from appointment or 15 days from becoming aware of relevant circumstances the challenge can be made.

7. **Joinder:** - As per rule 7 of SIAC rules 2016, On application by a party or non-party either before or after formation of tribunal may file an application with the Registrar if they find third party is *prima facie* party to arbitration agreement or all parties including the additional party has consented to be the joinder. Under Article 7.1 of ICC rules 2012, On request by a party to the Secretariat, the additional party can be joined only prior to confirmation/appointment of any arbitrator. And as per Article 17.5 of UNCITRAL rules 2013, on request by party and only if third party is party to arbitration agreement; joinder cannot prejudice any party i.e. the arbitral tribunal may allow one or more third persons to be joined in the arbitration.

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8. **Consolidation:** - As per rule 8 of SIAC rules 2016, On request by party, SIAC Court or tribunal can consolidate where:

- parties agree;
- claims under same arbitration agreement; or
- compatible arbitration agreements and disputes arise out of same legal relationship, principal and ancillary contract or same transaction or series of transaction.

Also, Article 10 of ICC rules 2012 states on request by party, ICC Court can consolidate pending ICC arbitrations under ICC Rules where:

- the parties agree; or
- all claims made under same arbitration agreement; or
- same parties, in connection with same legal relationship, and ICC finds arbitration agreements compatible, whereas there are no such provisions under UNCITRAL rules 2013.

9. **Tribunal's discretion to order Interim Measures: -** As per rule 27 of SIAC rules 2016, The tribunal has the power to order or award any injunction or any other interim relief if the tribunal finds it appropriate and also the tribunal may ask for security from requesting party.

And as per Article 28.1 of ICC rules 2012 on the request by any party, the tribunal has the power to order any interim measure whatever it deems fit or appropriate. Now considering Article 26.1 of UNCITRAL ad hoc rules 2013, on the request by any party the tribunal has the power to order any interim measures.

10. **Confidentiality:** - As per rule 39 of SIAC rules 2016, unless the parties are agreed, all matters relating to proceedings and award, disclosure permitted in limited circumstances i.e. it is remained confidential. Now if we see Article 22.3 of ICC rules 2012, Any party can apply for confidentiality of proceedings, or to protect trade secrets or confidential information. And under Article 34.5 of UNCITRAL ad-hoc Rules 2013, Award may be made public if all parties consent or other limited circumstances.

11. **Time limit for issuing award: -** Under rule 32.2 of SIAC rules 2016, Tribunal to give draft award to Registrar within 45 days from close of proceedings; award to be delivered as soon as practicable afterwards following Registrar comments. And as per Article 30 of ICC rules 2012, Within 6 months from date of last signature by the arbitral tribunal or by the parties of the Terms of Reference is considered as time limit for issuing award. Now if we see UNCITRAL ad hoc rules 2013 in this regard there is no such provision

12. **Expedited / summary procedure:** - as per rule 5 of SIAC rules 2016, before the tribunal

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is formed, a party may file an application to the registrar for the expedited procedure only if they satisfy that the amount of dispute is not more than $6,000,000 and the parties agrees for the procedure or the in cases of exceptional urgency. Under ICC rules 2012 and UNCITRAL ad hoc rules 2013 there is no such provision is available.

13. **Availability of emergency arbitrator: -** Schedule 1, paragraph 1 of SIAC rules 2016 talks about the emergency arbitrator but it should be appointed prior to the constitution of the tribunal. Article 29 and Appendix V of ICC rules 2012 states that the party may file an application to the secretariat for the urgent interim or conservatory measures and such application shall be accepted only if it is filed prior to the transmission of the file to the arbitral tribunal. In UNCITRAL rules 2013 there is no such provision available.

14. **Cost allocation: -** As per rule 35.1 of SIAC rules 2016, tribunal has the discretion to specify in the award the total amount of the cost of the arbitration unless otherwise agreed by the parties. Under Article 37.4, 37.5 of ICC rules 2012, the court has the discretion to decide or fix the cost of the arbitration in the award and which party shall bear them or in what proportion it shall be borne by the parties. Also, while making decision in regards to cost the arbitral tribunal shall take all the circumstance and factor into account. Considering Article 42 of UNCITRAL rule 2013 In principle, costs will be borne by the unsuccessful party but tribunal has discretion.

III. CONCLUSION

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 previously agreed upon by the contracting parties, rather than by national legislation or procedural rules. Most contracts contain a dispute resolution clause specifying that any disputes arising under the contract will be handled through arbitration rather than litigation. The parties can specify the forum, procedural rules, and governing law at the time of the contract.

In this regard there are various international arbitral institution like SIAC, ICC and UNCITRAL Rules who tries to resolve the disputes arising from commercial contract between the countries or individual. If we see **SIAC**, it is one of most leading arbitral institution which offers a fair, neutral and independent dispute resolution platform to enterprises all over the world. And in 2020 there was 674 new cases were filed which shows that it has immensely succeeded as a hotspot for commercial arbitration. There rules keep on revising so that it should meet requirements of the disputants. In fact, there rules are considered to be cost and time saving like they consolidate the matter if they are in same transaction or of same kind. Now considering the

ICC arbitral institution, it an independent body who deals with the international commercial dispute. It is one most common arbitral institution which is preferred by the disputant and if we see the cases filed in year 2019 and 2020 there is rise cases which clearly indicates that the companies prefer to file their disputes in this institution because it provides fair and effective judgment which can be referred to different cases by different arbitrable institution. In this there is a sole arbitrator who decide the matter but in complex cases, the default number of arbitrators is three. The rules of ICC keep on revising so that it should be flexible for the other arbitral institution to adopt. Recently new ICC arbitration rules 2021 has come which tried to mark a further step towards greater efficiency, flexibility and transparency by introducing the new provisions pertaining to consolidation and joinder, party representation and disclosure of third-party funding. At last if we see **UNCITRAL Rules**, it occupies an important position, both historically and in contemporary arbitration practice. The prime objective of the UNCITRAL Rules was to form a neutral, predictable and stable procedural framework for international arbitration without stifling the informal and flexible character of such dispute resolution mechanisms. As the UNCITRAL Model Law on International Commercial Arbitration, 1985 secures both domestic and international commercial arbitration, they ensure arbitration to be flexible, cost-effective and speedy mechanism for the settlement of commercial disputes and in this regard, India introduced the Arbitration and Conciliation Act, 1996 ('Act'). While the Act was enacting, the lawmakers have taken due consideration of UNCUTRAL rules and the same has been highlighted in the preamble which clearly states that the provision of the Act are in connection to and based on the same rules. The similarity can be seen by the section 9 of the Act which has been updated from Article 9 of the Model Law which talks about arbitration agreement and interim measures by the court. Therefore, we can conclude that India has somewhere adopted some rule from UNCITRAL.

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IV. REFERENCES

1. *Indian Supreme Court enforces SIAC's emergency arbitrator order in India-seated arbitration: Impact and consideration for foreign investors* (no date) *Allen & Gledhill*. Available at: https://www.allenandgledhill.com/perspectives/articles/19285/sgkh-indian-supreme-court-enforces-siac-s-emergency-arbitrator-order-in-india-seated-arbitration-impact-and-consid (Accessed: 23 June 2023).
2. International Chamber of Commerce, Wikipedia, https://en.wikipedia.org/wiki/International_Chamber_of_Commerce
3. Introduction to ICC arbitration, https://www.cliffordchance.com
4. the ICC Court of Arbitration President Alexis Mourre (https://iccwbo.org/media-wall/news-speeches/icc-unveils-revised-rules-of-arbitarion/)
5. The International Institute for Conflict Prevention and Resolution has published, since 1989, a set of "Rules for Non-Administered arbitration
6. https://www.nyulawglobal.org/globalex/International_Commercial_Arbitration.html
7. International commercial arbitration system: a critical analysis https://blog.ipleaders.in/international-commercial-arbitration-system-critical-analysis/

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