

SIGNIFICANCE OF SEAT OF ARBITRATION IN CROSS BORDER IN DISPUTE RESOLUTION

The need for cross border arbitration emerges with the proliferation of international trade and for the need to solve these disputes in an amicable and hassle-free manner. Unlike domestic arbitration, in international arbitration the parties determine the substantive procedural and contractual laws which shall be applicable to the arbitration proceedings can be much more complex

Seat of arbitration is one of the crucial aspects in any arbitration proceeding which may affect the rights of party to arbitration. Seat of arbitration does not only delineate as to the venue of the arbitration it rather it determines the substantive and procedural laws applicable to the proceedings.

There are several common misconceptions regarding the seat. The seat is not required to coincide with the governing law of the contract or the location of the arbitral institution. Consequently, there is no reason why a contract cannot be governed by English law while also providing for Paris-based ICC arbitration. Moreover, counsel are not required to be qualified in the law of the seat, so there is no reason why a party could not appoint French attorneys in an arbitration taking place in Singapore if it so desired.

ARBITRATION SEAT: KEY CONSEQUENCES

The practical and legal consequences flowing from the selection of the seat of the arbitration makes the decision “one of the most important aspects of any international arbitration agreement,” forcing the parties to choose it carefully. Considering its significance, the reputation and recognition of certain locations as proper forums to conduct arbitral procedures have been considered the main reasons explaining the selection of a particular city or country as the seat of an international arbitration. Henceforth are some of the consequences flowing from the seat of the determination

I. The recognition and enforcement of arbitral awards;

The recognition of an award is different from its enforcement; therefore, it is possible to recognize and not enforce an award, but impossible to enforce it without previous recognition. The selection of the seat could have consequences in the recognition and enforcement of a foreign arbitral award because selecting a jurisdiction that is not party to the New York Convention could impede its recognition and enforcement in a different country. “Credibility

of international arbitration as a preferred method of dispute resolution in commercial matters depends mainly on the cross-border enforceability of arbitral awards,”

II. The court which shall exercise jurisdiction over the arbitration;

The selection of the seat will determine which courts exercise jurisdiction over the arbitration, which is extremely relevant because such courts could have important roles to play in issues related to the annulment of the arbitral award, the speed of the proceedings, and the costs associated with the arbitration.

As the arbitral seat is the place where the award is formally made, its laws govern the proceedings to annul it, indicating the situations in which an award could be “contested by the parties and possibly set aside by a judge.” Moreover, the courts located in the arbitral seat will decide on the actions to annul an arbitral award

III. Some procedural rules that could apply to the arbitration;

For instance, the selection and removal of arbitrators, evidence taking in aid of the arbitration, and the possibility of granting interim measures. Additionally, the seat’s laws could determine issues such as the parties’ autonomy to agree on procedural issues, the rights of foreign counsels to act in the arbitration, and the application of pleading and evidentiary rules.

IV. The costs of the procedure;

International arbitration procedures tend to be costly, with expense levels rising—according to some “at an unsustainable rate.” Nowadays, costs are “perceived as the worst characteristic of international arbitration”; thus unsurprisingly, when selecting the arbitral seat, parties must consider “relatively mundane issues of convenience and cost,” which can be relevant to “the conduct and outcome of an arbitration.”

V. The way in which conflict of laws are solved; and

It is possible to distinguish between four different choice of law issues that could arise in relation to an international commercial arbitration:

- a) the law applicable to the substance of the dispute;
- b) the law governing the arbitration agreement;
- c) the procedural law applicable to the arbitral proceedings; and
- d) the conflict-of-law rules applicable to select each of the aforementioned laws.

In each of the four scenarios, the arbitral seat could play an important role.

VI. Mandatory norms that could apply to the arbitration

Selection of a particular arbitral seat could impose mandatory requirements that the parties ought to consider before selection. Mandatory standards impose "significant restrictions on the parties' ability to define the arbitration framework" and can vary based on the arbitral seat. In Chile, for instance, it is not possible to forgo the power to seek interim relief. Consequently, despite the debate "concerning the strictness of the actual limits created by mandatory norms on the parties' autonomy to set the rules of the arbitration," it is evident that the laws of the arbitral seat could impose mandatory requirements with the potential to affect the arbitral procedure.

As stated, "the law of the seat of arbitration" may impose mandatory requirements on the parties regarding the form and/or content of the arbitration agreement. For instance, "the arbitration agreement may need to be signed, the seat may need to be that of a governmental party, and/or the participation of an arbitral institution may need to be specified." Simply put, the selection of a specific arbitral seat may impose mandatory requirements upon the parties, which they must consider prior to selection.

CONCLUSION

Therefore, the arbitral seat has a direct impact on the likelihood of achieving the goals sought through arbitration. A poor choice could result in at least unenforceable awards susceptible to broadsided challenges. For instance, if the country where the award was issued is not a signatory to the New York Convention, it may not be possible to enforce the award in another country where valuable assets are located. In turn, if the laws of the seat permit a thorough review of international arbitral awards, there is a greater likelihood that these decisions will be overturned.

In addition, the selection of the arbitral seat determines the economic and practical feasibility of a party's participation in international commercial arbitration, influencing the cost and success rate of arbitrating within a given framework. For instance, if the selected court does not assist with the appointment of arbitrators or if the court interferes unreasonably with the arbitration, the parties will likely incur additional costs and processing time to resolve the dispute. Given the preceding, it is undeniable that seat selection is crucial and may even be decisive for the outcome. Hence in strength of the same of the it is important for one conduct

a thorough research before selecting an arbitration seat as same holds enormous potential in terms of determining one's outcome and conveniences in an international arbitration.