

Dispute Resolution Hotline

September 24, 2008

GOOD NEWS FOR INTERNATIONAL ARBITRATIONS: PERMANENT COURT OF ARBITRATION TO SET UP A REGIONAL FACILITY IN INDIA

With the rapid transformation of the Indian economy into a global destination for international business, various steps are being taken to create an atmosphere conducive for foreign corporations desirous of investing in India. In view thereof, efficient dispute resolution machinery is the need of the hour. The government is therefore keen on taking steps towards institutionalizing arbitration which is emerging as an efficacious and acceptable means of dispute resolution. As a significant move in this direction, the Government of India has decided to set up a regional facility of Permanent Court of Arbitration (“PCA”) headquartered at Hague, in New-Delhi. This would facilitate resolution of international commercial disputes, not only between states but also non state entities, including private parties as well. The regional facility of the PCA at New Delhi is expected to be operational by the end of this year and is likely to function from the International Centre for Alternate Dispute Resolution at New Delhi.

BACKGROUND:

The PCA is an intergovernmental organization with over 100 member states, established in 1899 when the Hague Conference not only codified the law as to arbitration but also laid the foundation of PCA. Formed with the objective of promoting arbitration as a dispute resolution mechanism between states, the PCA has developed into a modern, multi-faceted arbitral institution armed with the expertise of resolving disputes arising out of multilateral, bilateral, territorial, environmental and investment matters. Aimed at making the dispute resolution services more widely accessible, the PCA concludes “host country agreements” with states that are contracting parties to the Hague Conventions of 1899 or 1907. India is a signatory to the 1899 convention.

The host country agreements aim at increasing domestic and regional awareness of arbitration and other methods of dispute settlement offered by the PCA and thereby increasing the accessibility of PCA-administered dispute resolution. The PCA has concluded such host country agreements with Lebanon, South Africa, Costa Rica and Singapore. India will be the fifth nation to conclude such an agreement.

ANALYSIS

In India, the Arbitration and Conciliation Act, 1996 (“Act”) specifically defines International Commercial Arbitration¹. The said definition contemplates the resolution of commercial disputes arising between an Indian national on the one hand and another foreign national, which includes a company incorporated outside India or whose control and management is situated outside India. The PCA having extended its ambit to encompass non state parties as well, disputes falling within the scope of international commercial arbitration under the Act, can, therefore, be submitted to the PCA.

The advantages / benefits perceived, pursuant to the operation of the PCA facility in India are encapsulated below:

1. The regional facility will provide a forum for international arbitrations in India for disputes arising in India and the region, both between state and non state entities, such as foreign corporations which have invested in India.
2. The venue of arbitration being India, the costs of international arbitration will be much lower, which will encourage more frequent recourse to arbitration to resolve disputes.
3. The regional facility would enable more legal experts from India to participate in arbitrations conducted under the auspices of the regional facility and to acquire expertise in this field, which would consequently have a beneficial effect on domestic arbitrations as well.
4. Parties to the dispute will have an opportunity for selecting the persons of their own choice

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having expertise in the field as arbitrators, for amicable settlement of disputes.

5. This move will further strengthen the policy of the Government of India in its endeavor to promote alternative methods of dispute resolution.

CONCLUSION:

We believe that this is undoubtedly a welcome step which would give an impetus to institutionalizing arbitration for proficient resolution of international disputes. Foreign companies can now avail of the expertise of the PCA at Hague in India, thereby diverting a substantial volume of arbitration cases to India in light of certain distinct advantages as discussed above. The use of PCA's arbitration and conciliation procedure and of the regional facility as a forum of choice would therefore positively contribute in improving the overall investment climate in India.

Source: [The Economic Times](#)

- **Gautam Dembla, Advait Sethna & Vivek Kathpalia**

1 According to Section 2 (1) (f) of the Arbitration and Conciliation Act, 1996 "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is —

1. an individual who is a national of, or habitually resident in, any country other than India; or
2. a body corporate which is incorporated in any country other than India; or
3. a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or
4. the Government of a foreign country;

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