

MODEL LAW ON ARBITRATION

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BACKGROUND OF MODEL LAW ON ARBITRATION

- Adopted on June 21, 1985.
- Based on recommendation that all member states give due consideration to the Model Law in view of the desirability of the uniformity of the procedural law.
- Need for harmonization of laws.
- Often the domestic laws are inappropriate for international cases and there is a considerable disparity between the countries.

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WHAT IS TERRITORIAL SCOPE OF MODEL LAW?

- Model law grant freedom in shaping and enforcement of the rules of procedure.
- Article 8 and 9 provides for recognition of the arbitral agreement even if the place of arbitration is in that state or not in that state or is not determinative.
- Article 35 and 36 provides for recognition of enforcement of the arbitration award whether the place of arbitration is in this state or another state.
- Strict territorial criterion for article 11, 13, 14, 16, 27 and 34 which entrust courts of the respective state with functions of arbitration for assistance and supervision.



WHAT IS THE MEANING OF “COMMERCIAL” IN MODEL LAW?

- No hard and fast definition can be provided
- A wide interpretation to cover all relationships of contractual nature.
- Article 1 of the Model Law is illustrative.
- The determinative test will not be based on what national laws treat as commercial.

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WHAT IS “INTERNATIONAL ARBITRATION” AS PER MODEL LAW?

- Article 1 (3): The parties to an arbitration agreement have at the time of conclusion of the agreement have their place of business in different states.
 - In the following situations as well it is International Arbitration:
 - ◆ If the place of arbitration
 - ◆ The place of contract performance
 - ◆ The place of subject matter of dispute
- is in a state other than where the parties have their place of business.
- If the parties have agreed by the arbitration agreement, that the subject matter relates to more than one country.

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COURT INVOLVEMENT AS PER MODEL LAW

- Interim Measures (Article 8 and 9)
- Article 11, 13 and 14 provides for appointment, challenge and termination of the mandate of an arbitrator.
- Jurisdiction of the arbitral tribunal (Article 16).
- Recognition and enforcement of the arbitral award (Article 36)
- Court assistance in taking evidence (Article 27)
- Beyond this it is stated no court would intervene (Article 5).

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INTERIM MEASURES IN MODEL LAW

- Article 17: Interim measures with respect to dispute can be decided by the tribunal unless agreement otherwise provide.
- It doesn't deal with enforcement of the interim measures and this requires court assistance.

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ARBITRATION AGREEMENT IN MODEL LAW

- Article 7 (1) recognizes the validity and effect of a commitment of a party to submit to arbitration an existing dispute (“*compromis*”) or on future dispute (“*clause compromissoire*”).
- The future disputes are not given full effect under various national laws.
- Article 7 (2) of the New York Convention 1958 requires written form of arbitration agreement.
- The definition of written form is clarified to include telex and other form of telecommunication which document the agreement. (Article II(2) of the New York Convention).

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JURISDICTION OF ARBITRATION TRIBUNAL IN MODEL LAWS

- Principal of “*Kompetenz- Kompetenz*” in article 16(1) and of severability or autonomy of arbitration clause.
- The arbitral tribunal may rule its own jurisdiction including validity of the arbitration agreement subject to court in following ways:
 - ✓ 30 days to resort to court
 - ✓ Court decision is not appealable
 - ✓ Discretion of arbitral tribunal to continue proceeding while the jurisdiction is being decided by the court.
 - ✓ If the decision on jurisdiction is clubbed with final award, the same can still be set aside under article 34 or under article 36
- For that purpose the arbitration clause will be treated as independent of the contract and would not be ipso jure declared invalid even if the contract is declared null and void.

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RIGHTS OF A PARTY TO DISPUTE IN MODEL LAW

- Parties shall be treated with equality (Article 18).
- Each party shall be given full opportunity to present the case. (Article 18)
- No oral hearings of the evidence unless parties have agreed to that effect. (Article 24 (1))
- Appointment of expert (Article 24 (1))
- Communication of all the documents and evidence to the other party. (Article 24(3))

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MAJORITY RULE IN ARBITRATION

- Arbitral tribunal should have plurality of arbitrators
- Award should be passed by the majority
- Award to be signed by majority.

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GROUNDS FOR SETTING ASIDE ON MODEL LAW

- Article 36 (1) provides the similar grounds as provided in the Article V of the New York Convention.
- Setting aside of an award at the place of origin prevents its enforcement in any other country. (article 36(1)(a)(v))

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RECOGNITION AND ENFORCEMENT OF FOREIGN AWARDS IN MODEL LAW

- Recognition and enforcement of the award whether foreign or domestic should be governed by the same provisions.
- Model laws recognises the enforcement of the award under New York Convention, 1958.
- Irrespective of the country it is made it is binding and enforceable.

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For any question or query please write to us.

Thank You

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