

Know All about Role of Experts in Arbitration

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Q.1 What is an Arbitration?

Ans. Arbitration is a process by which parties resolve their dispute outside the court, by referring it to one or more persons whose decision is binding on them. The person to whom the dispute is referred are called Arbitrators, Arbiters or Arbitral Tribunal. Arbitration in the United States and in other countries often includes alternative dispute resolution (ADR), a category that more commonly refers to mediation. It is more helpful, however, simply to classify arbitration as a form of binding dispute resolution, equivalent to litigation in the courts, and entirely distinct from the various forms of non-binding dispute resolution, such as negotiation, mediation, or non-binding determinations by experts.

The Indian Arbitration and Conciliation Act, 1996 is the governing arbitration statute in India. It is based on the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1985.

Q.2 How an arbitrator is appointed?

Ans. Sec 11 of The Arbitration And Conciliation Act, 1996 provides that an Arbitrator can be appointed by –

1. By parties itself,
2. By court

Q.3 What are the role of experts in Arbitration?

Ans. Experts are the person who are appointed by the parties to resolve the disputes. And they are also called Arbitrators, Arbiters.

Role of arbitrators –

1. The experts are usually appointed by the parties and or by arbitration tribunal. Beside of the mode of appointment, the duty of the expert is toward the tribunal and his report is used to decide on the quantum of damages to be paid to the damaged party. Experts may sometimes also give an opinion on a dispute matter of accounting position or financial assertion.
2. An expert has to be an independent professional and should carry out proper due diligence to ensure that he/she, does not have any kind of relationship with the parties to dispute as this may impair objectivity and independence.
3. An arbitrator serves as the decision-maker in an arbitration proceeding, much like a judge during court litigation. The arbitrator is bound by the rules outlined in the parties' arbitration agreement.
4. Arbitrator plays a role in Interpreting and applying the rules and laws applicable to the arbitration. The applicable rules should be outlined in the arbitration agreement. The parties may also designate a particular state's law to govern the dispute in the arbitration agreement.
5. An expert has to be factual and base this report on the facts of the case and refrain from making assumptions which are unsubstantiated or biased. He or she should also avoid taking an advocacy position during the arbitration.
6. An arbitrator reviews testimony and evidence presented by the disputed parties at a hearing and resolves the dispute by issuing a decision that may include an award of money. You can think of an arbitrator as a private judge hired by the disputing parties to resolve their dispute. If the arbitration is binding, the parties cannot seek a reversal of the decision in court except under very limited circumstances. However, the successful party can seek help from a court in enforcing the arbitrator's decision.
7. Arbitrator plays a role of equality. He is must give equal treatment to both the parties and must be impartial and should be concerned with dispute only.

8. He should not misconduct himself or the proceedings. Failure to perform essential duties of an arbitrator is deemed to be a misconduct.
9. The main role of arbitrator is to resolve the dispute in accordance with principle of natural justice and to give speedy decisions in accordance with law.

Q.4 What is International Arbitration?

Ans. It is often said that every arbitration is national or domestic in nature as it will definitely be held at a given place and subject to a particular national or domestic law. However, we can still classify some proceedings as either national/domestic or international due to the nature of the dispute, the nationality of the parties and the place of holding the arbitration tribunal. Arbitration is considered to be international in nature when according to Article 1 (3) of the UNCITRAL Model Law if it falls within the following three ambits:

- i. If the parties to the arbitration have at the time of completion of the agreement, their places of business in different places.
- ii. If one of the following places is situated outside the state in which the parties have their places of business
 - (a) the place of arbitration if determined in or pursuant to the arbitration agreement,
 - (b) any place where a substantial part of the obligation the commercial relationship is to be performed or the place with which the subject matter of the dispute is more closely connected.
- iii. The parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country. The resolution of disputes by arbitration under international commercial contracts is widely conducted under the auspices of several major international institutions and rule making bodies.

India is a party to the following conventions:

- the Geneva Protocol on Arbitration Clauses of 1923
- the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927; and
- the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. It became a party to the 1958 Convention on 10th June, 1958 and ratified it on 13th July, 1961.

There are no bilateral Conventions between India and any other country concerning arbitration.

Q.5 What are the role of experts in International Arbitration?

Ans.

1. Though the arbitrators are bound to apply to the merits of the dispute the rules of law chosen by the parties, as a general rule of international arbitration law, their role is that they must always look carefully at clauses that provide for amiable composition. If such a power has been conferred on them, it does not exclude the application of legal rules. It merely requires the verification of their compatibility with the requirements of equity
2. Arbitrators are not required to apply the conflicts of law rules of the country of the seat of arbitration. The lex arbitri provides them with principles to help them decide the law applicable to the merits of the dispute. These rules, generally supplementary, allow arbitrators in institutional arbitration proceedings to apply the rules contained in the institutional rules
3. Wherever the parties have not chosen the law applicable to the merits of the dispute, the arbitrators role is to have recourse to the conflict rules of one or more States, or to general principles of private international law. They can also resort to the direct method, which enables them to avoid using a conflicts approach and to select the appropriate rules for the purpose of resolving the dispute. Appropriate rules can come from the law of a State or an international convention.
4. One of the important role of expert is to settle dispute within reasonable time. The period of time may be measured from the time the arbitral tribunal was formed, the Terms of Reference were adopted, the case was submitted to the arbitral tribunal or the closure of the proceedings.

5. Within 60 days of its constitution (unless otherwise agreed by the parties), the tribunal shall conduct its first session, whereas the parties may choose the place of proceedings
6. Tribunals must decide questions by majority. An award must deal with all questions submitted by the parties that are decisive to the tribunal's reasoning. Failure to do so may lead to annulment of the award. An award must contain sufficient reasoning to explain how the tribunal reached its conclusion.
7. Lastly, principle of equality lies before experts and their main role is to resolve dispute impartially.