



Senior leaders of the South Asian countries met in Dhaka in 1985 and signed the charter of establishing the South Asian Association for Regional Cooperation (SAARC). SAARC Arbitration Council (SARCO) is a specialized body of SAARC. SARCO was established in 2005 to promote investment within the SAARC region by ensuring investors have a reliable dispute resolution forum to bring their disputes.

SARCO acts as a “co-ordinating agency” for dispute resolution in the region by promoting the growth of national arbitration institutions, assisting with the enforcement of awards, maintaining panels of arbitrators and experts from the region and providing a legal framework for the efficient settlement of commercial and investment disputes at an affordable price for parties from the SAARC region.

Most of the SAARC countries have opened their doors to foreign investors and have already become quite successful in their endeavor to draw investments. Although the perks offered to investors vary between these countries, some features are common to all, e.g. the liberalization of their economies, deregulation of markets, tax concessions, removal of restrictions on remittance of profits abroad, and making the local currency either fully or partly convertible. Some of these countries have started to revise the legal regimes that apply to commercial matters, while others are contemplating to do so.

An important aspect of concern to foreign investors is dispute settlement. The need to have a reliable, independent dispute resolution mechanism outside of the local courts has become one of the fundamental requirements in modern international commerce. A favorite method of dispute settlement universally accepted in international investment and trade is arbitration.

It is common to have an arbitration clause in an international commercial contract. Outside the South Asian region, arbitration has been embraced to such a degree by businessmen, that it would be most unusual to find an international commercial contract that does not provide for arbitration.

Even if no such provision has been made, frequently parties to commercial contracts make 'submission agreements' or more commonly called 'addendum' to the original business contract, to arbitrate after their disputes arise. The importance of arbitration in international commercial transactions cannot therefore be overemphasized. Commercial arbitrations can be broadly categorized into Ad-hoc and Institutional arbitrations, which are two distinct methods of proceeding. In an ad-hoc arbitration, the arbitration clause in the original agreement, provides for arbitration without naming any arbitral institution and without reference to its rules.

Parties to an institutional arbitration however will decide which arbitral institute shall administer their arbitration and the parties must conduct the arbitration, in accordance with the set of rules of the arbitral institute of their choice.

When parties to a contract have an arbitration agreement for their disputes to be resolved under the SAARC Rules, these disputes can be referred to SARCO. There can be two instances in this regard. Firstly, that the parties have added the SARCO model clause arbitration clause in their business contract. In such a situation the parties shall come to SARCO, in case of any dispute or interpretative issue regarding the business contract. Secondly, the situation where the parties did not include the SARCO model arbitration clause in the agreement in the first place, or did not have provision for a dispute resolution clause, then the parties shall enter into a subsequent agreement to resolve the trade dispute by SARCO, by including the SARCO model clause in an addendum to the initial agreement or a separate agreement giving SARCO jurisdiction to arbitrate.

The parties may choose the law that will govern the arbitration and any country in which the arbitration is to be conducted. If any of the SAARC Rules conflict with a provision of the law that is applicable to the arbitration from which the parties cannot derogate, then that provision shall prevail.

Parties are free to select any arbitrator they so wish. However, SARCO maintains two panels of arbitrators, known as the Primary and Secondary lists, to provide the parties with a choice of potential arbitrators from the region.

SARCO has also updated its detailed Schedule of Fees recently. This Schedule outlines all mandatory and non-mandatory fees payable by the parties to arbitration, this keeping the financial part of the arbitration at SARCO transparent and exclusive of hidden charges. SARCO's competitive fee structure will allow a wide range of parties to access arbitration in the SAARC region. In general, all the fees charged or suggested by SARCO are significantly cheaper than its regional and international contemporaries. Given that every SAARC country is categorized as either a "least developed" or a "lower middle income" country, this competitive fee structure will make arbitration accessible to parties with smaller disputes and encourage parties to include the SARCO model clause in their contracts.

Awards issued by SARCO and by tribunals seated in any of the SAARC member states under the SAARC Rules are deemed to be "Foreign Awards" under the local arbitration law, according to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. As per the New York Convention "...The term "non-domestic" appears to embrace awards which, although made in the state of enforcement, are treated as "foreign" under its law because of some foreign element in the

proceedings, e.g. another State's procedural laws are applied. This includes awards in arbitrations under the SAARC Rules between two parties of the same nationality seated in their domestic state. For example, an award issued under the SAARC Rules in an arbitration between two Indian parties seated in Delhi will not be "domestic" – it will be treated by the Indian courts as a "Foreign Award" in enforcement proceedings, due to the non-applicability of the local laws, for example.

All SAARC agreements will include a dispute resolution clause referring disputes arising from those agreements to SARCO. For example, Article 16 of the SAARC Framework Agreement for Energy Cooperation ("Energy Agreement") dated 27 November 2014 states that, "any dispute arising out of interpretation and /or implementation of this Agreement shall be resolved amicably among the Member States. If unresolved, the Member States may choose to refer the dispute to the SAARC Arbitration Council." The Energy Agreement enables cross-border trade of electric energy between SAARC member states. The Energy Agreement could have gone further and stated that any disputes arising in contracts concluded pursuant to the Energy Agreement should also be referred to SARCO. The host country agreement of SAARC Development Fund (SDF) also has an arbitration clause by SARCO.

To set apart SAARC Arbitration Council as a more efficient and effective institution, the parties to the arbitration proceeding before this Regional Forum, must have a mindset to settle the dispute peacefully and in a friendly manner and they must give up the adverse contesting attitude so that the parties can avoid the recourse to the court's proceeding. The parties must be willing to adhere and comply with the award passed by the Tribunal constituted under the SARCO Rules. There must not exist any resentment in the mind of the parties from the beginning, throughout the proceeding and at the conclusion as well. The disputing party may lose one million dollars getting defeated by the award, but they may gain ten million dollars if they can continue with the trade or business agreement after settlement through the alternate dispute resolution process. Thus, investment climate will be created resulting in the free flow of investment amongst the SAARC member countries. If the parties can practice such kind of settlement, that will ultimately benefit the peoples of the region. As a result, unemployment problems of the SAARC Countries will be reduced to a great extent and overall human development and foreign direct investment (FDI) will be accelerated. The aim of SARCO is to promote by all the efforts in their jurisdiction, the friendly settlement of all disputes as per the Rules on the basis of the principles of equity.



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