

No. 10/2/2012-Coord (Vol. II)  
Govt. of India  
Ministry of Water Resources

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Shram Shakti Bhawan, Rafi Marg  
New Delhi. Dated March 2014

21 MAR 2014

OFFICE MEMORANDUM

**Subject: Use of Arbitration clause in the commercial contracts for resolving commercial disputes- regarding.**

I am directed to forward herewith a copy of Office Memorandum number 37/1/2004-tpd (Vol. II) dated 24.2.2014 received from Department of Commerce, Ministry of Commerce & Industry on the subject mentioned above for kind information and compliance.



**Encl.: As above.**

(Arun Kumar)

Under Secretary to the Govt. of India  
Tel. No. 23716894

6/3/2014 (E-I)  
27/3/14

To,

1. Heads of All organizations under MOWR.
2. All Wing Heads/ All Division Heads in the Ministry.
3. Guard file.

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25.3.2014

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Secretary C.W.C.

Dy. No. 668

Date 27/3/2014

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**Most Urgent**

No.37/1/2004-TPD(Vol.II)  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
(Trade Policy Division)

Udyog Bhawan, New Delhi  
Dated 24 February 2014

**OFFICE MEMORANDUM**

Subject: Use of Arbitration clause in the commercial contracts for resolving commercial disputes - *regarding*.

With the expansion of world trade and with more Indian and Foreign corporations entering into trade agreements, the potential for international business disputes has risen significantly. Increasingly, companies are using international commercial arbitration to resolve any contractual disputes, as arbitration offers many advantages to the resolution of international business disputes. It offers the freedom to choose arbitrators with expertise in the subject-matter of the dispute, identify the place of arbitration, and provide a platform for expeditious resolution of disputes, flexibility of procedure and confidentiality in the proceedings, which are often more conducive to settlement and less adversarial than court litigation.

2. It is noticed that many Indian parties while making business transactions do not have agreements in writing with the foreign parties. In cases where the agreement is in writing, the arbitration clause is not included in the contract. In case the arbitration clause has been used, no reference is made to institutional arbitration, which essentially leaves parties with the option to resort to adhoc arbitration for resolving the dispute. Adhoc arbitration proceedings often suffer from innumerable legal and practical problems which cause inordinate delays and costs in actual practice. This is because adhoc arbitrations do not have the advantage of any institutional machinery set up under the comprehensive rules of procedures of an arbitral institution.

3. In this regard, attention is invited to the Department of Commerce's Office Memorandum No.37(1)/98-TPD dated 1 June, 1999 [copy enclosed]. The basic purpose of the said office Memorandum, recommending all Government Departments to facilitate use of Arbitration clauses in commercial contracts, was to promote the cause of Arbitration in the commercial contracts as an alternative and faster resolution mechanism of such disputes. In the said communication, while referring to the Arbitration institution, reference was made for only one such Institution namely the Indian Council of Arbitration (ICA) as at that point of time, ICA was the only institution, in operation in India. Since then, a few other arbitration institutions have started operating and providing a sound and effective mechanism for dispute resolution.

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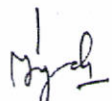


4. It may therefore consider recommending to the concerned department in the organization to opt for use of arbitration conducted by institutions such as the International Centre for Alternative Dispute Resolution, Indian Council for Arbitration or arbitration centres founded by the High Courts in India etc. The relevant clause on arbitration that could be built into business contracts entered into with any party in India or abroad could provide for arbitration by any such institutions, and enforcement in accordance with the Arbitration and Conciliation Act, 1996. A sample clause is provided below for reference:

"In the event of any dispute arising between the Parties in relation to or under this Agreement, the same shall be settled by arbitration conducted in accordance with the Rules of Arbitration of the (*name of the institution*). The decision of the arbitration tribunal shall be final and binding. The venue for the arbitration shall be (*insert place*). The arbitral award shall be enforced in accordance with the provisions of the Arbitration and Conciliation Act, 1996."

5. The above arbitration clause could be used in all commercial contracts concluded by all departments under the organization so that the arbitral institutions in India may be able to assist through arbitration/mediation for economical and expeditious settlement of any disputes that may arise under the contracts in future.

6. This may kindly be brought to the notice of all concerned for promotion of the cause of arbitration in the commercial contracts.

  
(Tapan Mazumder)  
Director to the Govt. of India  
Room No.279C  
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E-mail : [dltpd-doc@nic.in](mailto:dltpd-doc@nic.in)

To

1. All Ministries/Departments of Government of India.
2. All Public Sector Undertakings/EPCs/Commodity Boards under Ministry of Commerce.
3. Commodity and Territorial Divisions in the Ministry of Commerce

Copy for information to :

1. Joint Secretary & LA (Shri Suresh Chandra), Department of Legal Affairs, Shastri Bhavan, New Delhi.
2. The Additional Director, Indian Council of Arbitration, Federation House, Tansen Marg, New Delhi.



124-86

No.37(1)/98-TPD  
Government of India  
Ministry of Commerce  
(Trade Policy Division)

New Delhi, the 1st Jun, 1999

OFFICE MEMORANDUM

Subject : Utilisation of the services of the Indian Council of Arbitration in resolving commercial disputes.

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With the expansion of world trade and with more Indian and foreign corporations entering into trade agreements, the potential for international business disputes has risen significantly. Increasingly, companies are using international commercial arbitration to resolve their international contract problems. Arbitration offers many advantages to the resolution of international business disputes. It offers privacy; freedom from national courts and the strict application of national procedural law; freedom to choose one's arbitrators; place of arbitration and Rules to govern the arbitration proceedings and a flexible, informal procedure, often more conducive to settlement and less adversarial than court litigation. Treaties and Conventions ensure simple and expeditious enforcement of foreign arbitral agreements and awards virtually all over the world. International arbitration today is an important tool of the international business community and serves to resolve a wide variety of transnational commercial disputes.

2. It is noticed that many Indian parties while making business transactions do not have agreements in writing with the foreign parties. In cases where the agreement is in writing, the arbitration clause is not included in the contract. In case arbitration clause has been used, no reference is made to the Institutional Arbitration. Instead adhoc arbitration is used for resolving the dispute. Adhoc arbitration proceedings often suffer from innumerable legal and practical problems which cause inordinate delays and costs in actual practice. This is because adhoc arbitrations do not have the advantage of any arbitration machinery set up under the comprehensive rules of procedures of an arbitral institution.

3. The Indian Council of Arbitration has its own Rules of Arbitration and provides arbitration services nationally and internationally. The Council has also a large number of eminent and experienced persons in the law and practice of international arbitration on its panel of arbitrators. The panel not only includes persons from India but also from the foreign countries. The ICA panel has been used on a number of occasions by courts and in ICC arbitration cases also.



4. Therefore, you may like to consider recommending to the concerned department in your organisation to use the Indian Council of Arbitration clause of arbitration indicated below in all business contracts entered with any party in India or abroad.

"Any dispute or difference whatsoever arising between the parties out of or relating to the conclusion, meaning and operation or effect of this contract or the breach thereof shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties."

The above arbitration clause could be used in all commercial contracts concluded by all departments under your organisation so that the ICA may be able to assist through arbitration/mediation for economical and expeditious settlement of any disputes that may arise under the contracts in future.

5. After the enactment of the new Arbitration and Conciliation Act, 1996, the ICA has brought out a study comparing the old and the new law. A copy of the study on the Arbitration and Conciliation Law in India which compares the main features of the old and new laws of arbitration is enclosed.



(K.M. Chandrasekhar)  
Joint Secretary to the Govt. Of India

To

1. All Ministries/Depts. of Government of India
2. All Public Sector Undertakings/EPCs/Commodity Boards under Ministry of Commerce.
3. Commodity and Territorial Divisions in the Ministry of Commerce.

Copy to: Secretary, Indian Council of Arbitration, New Delhi - w.r.t. his letter dated 6th April, 1999.

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