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CISG AND ARBITRATION: PROCEDURE FOR MINIMIZING CONFLICT OF LAWS

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Abstract: Applicable law or governing law is one of the prime issues in international trade law. Application of governing law may depend on jurisdictional capability of a competent forum of a state. Jurisdiction may be classified into two types, national jurisdiction and foreign jurisdiction (i.e. combination of more than one states). Conflict of laws may arise in both classified jurisdictions. Competent forum may solve the conflict of laws either by expressly or impliedly. "Implied term theory" may depend on circumstances of each case, i.e. Freedom of choice or discretion of the competent court. It is easier to solve the conflict of laws within national jurisdictional capability of a competent forum. But complexity may arise while dealing with conflict of laws within different jurisdictions. It may be termed as "transnational complexity of conflict of laws". Conflict of laws may not be solved completely but may be minimized by applying uniform law. This research emphasizes as to how we may minimize the conflict of laws in arbitration by applying uniform law, i.e. CISG.

Keywords: Applicable law, international trade law, conflict of laws, CISG, Arbitration.

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INTRODUCTION:

Arbitration is considered as a popular method of resolving disputes. It may be termed as "privatization of justice". Arbitration is popular because of existence of freedom of choice and governing law. Freedom of choice (i.e. appointment of arbitrators, the

language, place of arbitration etc.) may be considered by either competent court or contractual parties. The Freedom of choice is defined by Article 6 of CISG, i.e. "the parties may exclude the application of this Convention... derogate from or vary the effect of any of its provisions".

The governing law is an important "considerable tool" to interpret the arbitral disputes in right track. In international commercial transactions, conflict of laws may arise due to "conflict of different governing laws" in an arbitral agreement. Choosing uniform law (i.e. CISG), conflict of laws in arbitral agreement may be solved.

From the above discussion, it may be suggested that CISG may be applied in arbitral agreement to resolve any contractual disputes in arbitral agreement. CISG is known as United Nations Convention on Contracts for the International Sale of Goods 1980 (Vienna, 1980). As of 17 September 2019, 91 states signed CISG. The major trading states like China, Canada, Mexico, France, Italy, Germany, Australia, US, Mexico signed CISG.

MINIMIZING CONFLICT OF LAWS IN ARBITRATION BY APPLICATION OF CISG IN ARBITRAL AGREEMENT

Conflict of laws may be termed as "Private international law". Conflict of laws is a part of national law and consists of foreign element. When national law is applied as governing law in transnational commercial transactions, conflict of laws may arise. For example, a Hong Kong trader agrees to sell goods to a UK trader and applicable law is English Sale of Goods Act 1979. Again, if a Hong Kong trader sells goods to a USA trader and applicable law is UCC. English Sale of Goods Act 1979 and UCC are national laws of UK and USA respectively. When

either law is inserted into "transnational arbitral agreement" as governing law, then either SOGA 1979 or UCC may be considered as "foreign element" for international commercial transaction.

From the above examples, it may be suggested that the governing law for all international arbitral agreements may be a particular law of one particular state and technically, it is not international law. Any particular international law (i.e. UCC) may be unknown to any other state (i.e. Malaysia, Indonesia, India, Bangladesh etc.). This foreignness nature of law may lead contractual parties to more expenditure for understanding the foreign law and hiring foreign lawyers or arbitrators to resolve the arbitral disputes. Finally, contracting parties may not be put on "equal footing" due to variation of governing laws in arbitral agreement.

To put parties on equal footing, parties may choose uniform law or convention (i.e. CISG) as governing law in international arbitral agreement. CISG may ensure the international standard interpretation for arbitral agreement dispute settlements.

CISG enables parties to tailor the contract according to their necessity and may top up into international standard, i.e. Article 6 of CISG. Again judges or arbitrators of competent forum may interpret the arbitral agreement according as international standard and good faith in accordance with Article 7

of CISG. Even, parties may take consideration of any trade usages for resolving their arbitral disputes under Article 9 of CISG. Trade usages may enable parties to consider any rules, regulations or guidelines (i.e. Guidance Exporting to Hong Kong).

It can be suggested from above dissuasion that CISG is a uniform and international standard law for resolving arbitral disputes. So, it is better for parties to insert CISG expressly into their arbitral agreement to top up into "international standard arbitral agreement" by minimizing trade risk.

COMPARISON BETWEEN CISG AND OTHER INTERNATIONAL LAWS

Every trade laws are essential part of "sustainable trade globalization". But, any uniformity of law (i.e. CISG) may minimize the conflict of laws by ensuring international standard to any arbitral agreement.

CISG may suit better for international sale arbitral agreement or contract. Empirical research of Spagnolo suggested that CISG is more efficient for international sale of contracts comparing to English Sale of Goods 1979 or UCC. This suggests that CISG is a good option for inserting as governing law into arbitral agreement or sale contract.

CONCLUSION

CISG is becoming popular day by day. Now a days, non-contracting states of CISG are conducting seminars or workshops on CISG, i.e. ICC-HK conducted a workshop on CISG on 17th March 2016. For arbitral agreement, parties need not to be contracting state of CISG to choose CISG as governing law. Choosing CISG as governing law for arbitral agreement, it may enable contracting parties to put them to an equal extent and keep minimizing conflict of laws and ensuring international standard.

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