Third Issue August, 2017

# SAARC Arbitration Council

NEWSLETTER



## H.E. Mr. Amjad Hussain B.Sial, Secretary General, SAARC visits SAARC Arbitration Council

H.E.Mr.Amjad Hussain B.Sial, Secretary General, SAARC visited SAARC Arbitration Council (SARCO) on 23rd May, 2017. He was accompanied by Mr. Ali Haider Altaf, Director (ETS) of the SAARC Secretariat.

He was received by Director General, Mr. Thusantha Wijemanna and other officials of the Council. After a short presentation made by Ms. Mehnaz Khurshid Gardezi, Marketing & Communications Consultant, the parties discussed about the selection of the next Director General to be appointed in the last quarter of the year and future strategy of the council. The Director General brought to the notice of Secretary General some of the outstanding matters. The Secretary General pledged to support the activities of SARCO and to intervene and resolve these matters as soon as possible. This was the first visit of Secretary General to the Council after assuming duties in March, 2017.

## In This Issue


- SARCO's maiden event in Bhutan
- Women in Arbitration
- Recent changes in Enforcement of Arbitration in the region
- Implied Choice of Law in Arbitration Agreements

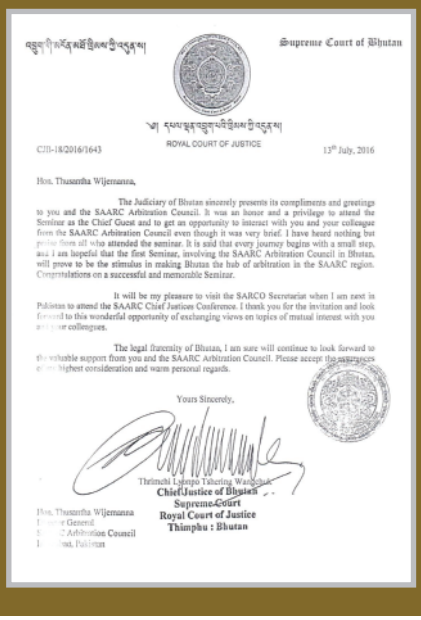

## SARCO and SEC Joint Study

SAARC Arbitration Council (SARCO) is selected as the Dispute Resolution institution in the SAARC Framework Agreement for Energy Cooperation (Electricity) signed in November 2014.

SARCO and SAARC Energy Center (SEC) have commenced a Joint Study to "Develop a Template for Dispute Settlement Mechanism between SAARC Member states regarding Interpretation and Implementation of SAARC Framework Agreement for Energy Cooperation (Electricity)". Selection interviews were conducted and this study has been awarded to a Short- term Expert in the field of Arbitration. The final report shall be available by October 2017.

## SARCO Participation in Arbitration Training Workshop at Lahore

Legal Research Officer of SARCO, Mr. Faazaan Mirza participated in a two day training workshop of arbitrators in Lahore. This training event was held by Young ICCA in collaboration with and the support of CIICA, LUMS and Clyde & Co. President of LHBCA and the Dean of Laws at LUMS welcomed the participants. Master trainers of international reputation and standing conducted this training.



Supreme Court of Bhutan

ROYAL COURT OF JUSTICE

CJB-18/2016/1643 13th July, 2016

Hon. Thusantha Wijemanna,

The Judiciary of Bhutan sincerely presents its compliments and greetings to you and the SAARC Arbitration Council. It was an honor and a privilege to attend the Seminar as the Chief Guest and to get an opportunity to interact with you and your colleague from the SAARC Arbitration Council even though it was very brief. I have heard nothing but praise from all who attended the seminar. It is said that every journey begins with a small step, and I am hopeful that the first Seminar, involving the SAARC Arbitration Council in Bhutan, will prove to be the stimulus in making Bhutan the hub of arbitration in the SAARC region. Congratulations on a successful and memorable Seminar.

It will be my pleasure to visit the SARCO Secretariat when I am next in Pakistan to attend the SAARC Chief Justices Conference. I thank you for the invitation and look forward to this wonderful opportunity of exchanging views on topics of mutual interest with you and your colleagues.

The legal fraternity of Bhutan, I am sure will continue to look forward to the valuable support from you and the SAARC Arbitration Council. Please accept the assurances of my highest consideration and warm personal regards.

Yours Sincerely,

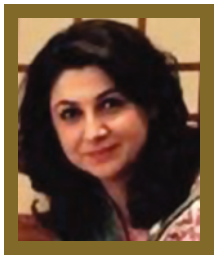
Thrimchi Lyonpo Tshering Wangchuk
Chief Justice of Bhutan
Supreme Court
Royal Court of Justice
Thimphu : Bhutan

Hon. Thusantha Wijemanna
Director General
SAARC Arbitration Council
Islamabad, Pakistan

# Seminar at Thimpu, Bhutan


With the collaboration of Attorney General's office a full day workshop was held at the Hotel Taj Tashi, in Thimpu, on 27th June 2016. This event was inaugurated by the Chief Justice of Bhutan, His Lordship Mr. Tshering Wangchuk, who delivered the keynote address and the Attorney General of Bhutan, Mr. Shera Lhundup, delivered the welcome address. Senior Judicial officers, practicing attorneys, Govt. officials and members of the business community participated in this Seminar. Director of the Judges Training Institute, Mr Tharchean, explained Bhutan's experience regarding ADR. Mr. Thusantha Wijemanna, Director Genral and Mr. Faazaan Mirza, Legal Research Officer of SARCO conducted the workshop. The vote of thanks was delivered by Deputy Attorney General, Mr. Tashi Gyalpo. SARCO would like to express its appreciation to Mr. Tashi Gyalpo for the support extended to the council in organizing this workshop. The workshop was well received by the participants.

**SARCO has commenced work to propose a "Common Enforcement Mechanism of Arbitral Awards" for the SAARC region**



*Natasha Jehangir Khan*

# Women in Arbitration

The South Asian Association for Regional Co-operation Arbitration Council aims to provide a framework for "fair and efficient" settlement of disputes referred to it by the member states or their people. Such fairness and efficiency is mostly assured through the institution of procedural checks and balances. However, recent literature suggests that ensuring gender balance on an arbitrators panel also goes a long way towards furthering the goals of fairness, neutrality and efficiency.

This becomes evident when we consider the nature of arbitration as an alternative to formal judicial methods. Arbitration serves a diverse group of individuals, often from various countries and backgrounds, who present their factual as well as legal case before a select panel to neutrally engage with them and come to a reasoned conclusion on the fairest outcome of their dispute. It therefore follows that diversity on the panel of arbitrators will be "essential for democratic representation of the parties in disputes" which in turn improves the chances of all parties to get effective justice. Diversity also improves the perception of the arbitration process by the parties since it makes the panel more reflective of the individual circumstances of the parties. By way of example, a female investor appearing before a panel of arbitrators would be more likely to positively perceive an arbitral award against her if there is at least one female on the panel giving the decision.

Once the case for diversity on the panel is made out, the question arises as to how women contribute in that diversity. Studies have shown that gender biases are less likely to arise with women arbitrators in the panel. One study of over five hundred arbitration proceedings found men to be 74% more likely to rule in favour of female parties than for male parties, while female arbitrators the other hand treated both male and female parties equally. This lends support to the contention that having women arbitrators on a panel could help remove gender biases, which in turn will aid in ensuring fair and efficient arbitration proceedings.

Additionally, women have also been found to remain empathetic under high stress conditions, which better equips them to be able to relate with the claimants appearing before them. On the other hand, stress has been found to cause men to be less able to distinguish their own emotions and intentions from those of other people. It would follow that having a female on the panel would increase understanding of the parties by the panel, thereby increasing the chance of a satisfactory resolution.

These, along with other factors, advocate the case that enhancement of female participation in the domain of ADR is important to improving the quality of proceedings as well as acceptance and positive perception of arbitration proceedings by claimants. To this end there have also been a number of international initiatives to facilitate gender diversity in arbitration, including the development of the Equal Representation in Arbitration Pledge, which calls for enhanced gender diversity in international arbitration to augment the 'fair representation' standard in international arbitration. Similarly, "ArbitralWomen" has existed informally since 1993, actively since 2000 and officially as a non-profit organisation since 2005 with the "primary objective of advancing the interests of women and promoting female practitioners in international dispute resolution" . However, it is clear that there is still more which needs to be done.

These initiatives have come about in order to battle constraints to female participation in the alternate dispute resolution arena, the first one arising from the fact that the legal profession itself is a male dominated profession. There are therefore fewer women training for or partaking ADR. Moreover, since arbitrators are mostly selected from a pool of senior litigators or judicial officers, both of which have limited female representation, the selection of women as arbitrators automatically becomes limited. Even those women who do fall within the acceptable pool of selection for arbitrators will be less likely to be selected as such on account of social stereotyping and gender biases.

In order to explain how stereotyping affects women in the legal workplace, a study conducted by members of the Law and Policy Lab at Stanford Law School gives the example of "when a woman lawyer is not given a high-status assignment because her supervisors assume that family commitments will detract from the time she can commit to her work, but is then denied partnership because she has not taken on enough challenging assignments, stereotypes with respect to women lawyers' family commitments and commitment to their work are reinforced." Similar stereotypes regarding the ability or effectiveness of a woman as an arbitrator have played a debilitating role in women entering into the ADR domain.

So, what do we need to do to utilise such a large segment of the population of the South Asian Region to assure claimants of a "fair and efficient" arbitration process in the face of these constraints. For one thing, the women already successful in the legal arena have to come forth in encouraging more females to participate. Mentoring of younger female lawyers will go a long way towards achieving the goal of effective gender diversity in international arbitration in the long run.

Secondly, cultural sensitivities have to be incorporated into the work culture at legal offices such as provisioning for child care support at the workplace. Work hours for women in the South Asian Region may be limited and they may be allowed to clock hours from their home offices under certain circumstances. The Bar councils must also take the initiative to develop an environment where women can comfortably work alongside their male counterparts. Therefore, by enhancing the pool from which female arbitrators are selected, we increase the opportunity for women to show case their talents and competencies in the field of international ADR. These are initiatives which we will have to take collectively and proactively, since the "..failure of legal practice to advance women is not self-correcting".

However, the most important initiative which needs to be taken is by the women themselves, by not feeling the need to prove that they are unlike other women so that they can succeed. The mindset that only an extraordinary woman will succeed in the legal workplace is misplaced and one which we will have to make an effort to change. It is only by challenging the stereotyping of why women cannot succeed in legal fields that we can change stereotypes, and not by conforming to or feeding into such stereotypes.

It is through these systemic and social changes which enhance gender diversity in arbitration panels that we can aim towards improving the provision of fair, efficient and neutral dispute resolution opportunities under the umbrella of the South Asian Association for Regional Co-operation Arbitration Council.

*The writer is an energy sector expert at Asian Development Bank(ADB).*

## Meeting with Ambassador for Afghanistan

A meeting between H.E.the Ambassador for Afganistan and Director General, SARCO was held at the embassy to discuss the nomination of the new Director General and the possibility of holding a seminar in Kabul for the business community on SARCO.The Director General, Mr. Thusantha Wijemanna also explained the work carried out by SARCO in the region and wanted the support of the Ambassador to expedite some the activities to be carried out during the coming year. The Director General was accompined by Finance Officer, Mr. M.Amjad and Marketing and Communications Consultant and, Miss Mehnaz Khurshid Gardezi.

## Meeting with High Commissioner for Bangladesh

Mr. Thusantha Wijemanna, Director General, SAARC Arbitration Council, called on the High Commissioner of Bangladesh to Pakistan, to update the activities carried out by the SAARC Arbitration Council and also to expedite the nomination for the forthcoming Governing Board meeting. The parties recognized the role that could be played by SAARC Arbitration Council (SARCO) in the expansion and facilitation of trade and investment in the region. The envoy appreciated the work carried out by the SAARC Arbitration Council during the past year and pledged their full support to its future activities.

## Meeting with High Commissioner of Maldives to Pakistan

Mr. Thusantha Wijemanna, Director General, SAARC Arbitration Council, called on along with his team to the High Commissioner of Maldives, H.E. Ahmed Saleem .The meeting gave the opportunity to understand how ADR is used by the business community and the commitment of Maldives Government. The parties recognized the role that could be played by SAARC Arbitration Council (SARCO) in expanding and facilitating trade and investment in the region. High Commissioner appreciated the work carried out by the SAARC Arbitration Council Secretariat during the past year and pledged to their full support to its future activities.

SARCO officials meet with High Commissioner of Maldives to Pakistan (Former S.G SAARC) H.E. Mr. Ahmed Saleem.

## Meeting with President Sarhad Chamber of Commerce and Industry (SCCI)

## Meeting with President, Women Chamber of Commerce & Industry Peshawar Division.

## Visit of SARCO officials to SAARC Energy Center Islamabad.

## Meeting with the President Rawalpindi Chamber of Commerce & Industry

The 7th Governing Board (GB) meeting of SAARC Arbitration Council (SARCO) was held in The Ashok Hotel, New Delhi on 22nd and 23rd September, 2016.

## SARCO holdes its 7th Governing Board meeting in New Delhi, India.

The 7th Governing Board (GB) meeting of SAARC Arbitration Council (SARCO) was held in The Ashok Hotel, New Delhi on 22nd and 23rd September, 2016. Delegates from all eight Member States participated in the meeting. Secretary General of SAARC was represented by Ms. L. Savitri, Director (ETF) from the SAARC Secretariat. The meeting was chaired by Mr. Phanindra Gautum, Joint Secretary, Ministry of Law, Justice and Parliamentary Affairs, Nepal. The meeting deliberated on the items of the agenda in detail and decided to recommend to the programming committee of SAARC the insti-tutional and program budgets of SACRO for the year 2017. Having adopted the administrative report of the Director General highlighting the activities carried out by SARCO, the GB expressed its appreciation with regard to performance of SARCO and commended the staff for their hard work done in developing profile of the institution.

## SAARC Arbitration Council enters into Memoranda of Understanding with Multan & Bahawalpur Chambers of Commerce & Industries.

## SARCO Seminar on "Arbitration- A key to Secure Business Environment" in Karachi.

SAARC Arbitration Council (SARCO) organized a seminar on "Arbitration - A key to secure Business Environment" in December, 2016 at Pearl Continental Hotel Karachi. Mr. Thusantha Wijemanna, Director General, SARCO opened the event with his welcome remarks. He talked about Arbitration & Conciliation as alternate means for settlement of commercial disputes in SAARC countries. He said that a quick and cost-effective dispute resolution system is the central pre-requisite of trade and investment to flourish and an arbitration council like SARCO will facilitate cross border trade and investment in the SAARC region. He also emphasized the need to create awareness among the business community of methods of Alternate Dispute Resolution (ADR).

The chief guest, Mr. Syed Zulfiqar Gardezi, Additional Secretary Ministry of Foreign Affairs, Pakistan said the increase in commercial disputes and delay in dispute resolution process under-mine the potential of SAARC to re-emerge as global trade hub. He emphasized that SARCO should focus in transforming this region to a global growth center by providing credible and efficient settlement for commercial disputes.

## Meeting with President of Gujrat Chamber of Commerce and Industry (GCCI)

*Faazaan Mirza,*
**Legal Research Officer**

# Enforcement of Awards

The arbitral process is only completed upon the successful enforcement of the award by the winning party. The enforcement of the award can become complicated but at the same time, the enforcement of awards is one of the main advantages of international commercial arbitration over international litigation. There would be little point in arbitration if the final award could not be enforced against the losing party.

The right to enforce derives from a contractual undertaking to honour the award and therefore the non-performance of the award is a breach of the agreement under which the arbitration took place.

An arbitral award is final and binding on the parties subject to either party's right to challenge the award. An arbitral award unlike an order or judgment of a court does not immediately entitle the successful party to begin execution against the assets of the unsuccessful party. It is first necessary to convert the award into a judgment or an order of the court, only then can the successful party can begin executing the award. A challenge of the award can only be made on the grounds given in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the New York Convention on the recognition and enforcement of foreign arbitral awards.

An example of challenging enforcement of award on grounds of public policy was recently seen in the case of IPCO (Nigeria) Limited ('IPCO) v Nigerian National Petroleum Corporation ('NNPC). NNPC had engaged IPCO to design and construct a petroleum export terminal. Pursuant to disputes between the parties under their business contract, arbitration proceedings were commenced and an arbitral award was passed in favour of IPCO. The award directed NNPC to pay USD 152 million and an additional 5 million Naira plus interest at 14% per annum to IPCO. IPCO whereas, filed an application for enforcement of award. In response to this, NNPC filed an application for setting aside the enforcement order on non-fraud challenges. The matter was appealed up to the United Kingdom Supreme Court (UKSC) on ground of payment of security and cost on the issue of seeking adjournment of the enforcement. The UKSC held that there was an error in the Court of Appeal's order as nothing in the Public Policy Challenge provision (or in the underlying provisions of Article V of the New York Convention) provides that an enforcing court can decide an issue pending before it under section 103(2)f of the English Arbitration Act, conditional upon payment of security. It further held that the delays in hearing issues under enforcement before courts are part of decision making process and cannot be interpreted to mean 'adjournment' as envisaged under section 103(5) of the Act. In international disputes, it is crucial that the rights of the creditor be protected but the zeal to protect these rights cannot be at the detriment of the other party. IPCO's own submissions tantamount to imposing 'substantially more onerous conditions' as not only NNPC had deposited a reasonable amount of security in the past but also had a prime facie claim of fraud.

An enforcement mechanism is often compared to enforcement of domestic court judgments. The Queen May University, 2015 International Arbitration Survey: Improvements and Innovations in international arbitration reported that: "Enforceability of awards is seen as arbitration's most valuable characteristic (65 %), followed by avoiding specific legal systems (64%), flexibility (34%) and selection of arbitrators (38%). Enforcement of arbitral awards are seen as time consuming and un-predictable in particular jurisdictions e.g. the use of emergency arbitrators was seen as an unnecessary extra in some jurisdictions because of the perceived effectiveness of the national courts compared to the uncertainty of enforcing an emergency arbitrator's decision. However the norm of progressive arbitral jurisdictions is to provide for emergency arbitrator provisions.

In similar vein, the Supreme Court of India clarified the scope of the seat's exclusive jurisdiction in India seated domestic arbitrations, in the case of Indus Mobile Distribution Pvt Ltd v Datawind Innovations Private and Ors. Brief facts of the case are that, an agreement was entered into between the Appellant and the 1st respondent. The appellant's registered office was in Chennai and as per the commercial arrangement between the parties, goods were to be shipped from Amritsar to Delhi. Subsequently, disputes arose between the parties and the dispute resolution clause vested exclusive jurisdiction on the courts of Mumbai. The 1st respondent, inter alia filed an application before the Delhi High Court for interim relief. The High Court (HC) assumed jurisdiction, and allowed the interim relief sought. On Special Leave Petition to the Supreme Court of India, the Supreme Court (SC) set aside the decision of the HC. The ratio decidendi of the Special Leave Petition was that once the seat of arbitration has been fixed, courts of such seat will exercise exclusive jurisdiction on the proceedings arising out of or in connection with the arbitration. The Supreme Court relied inter alia on Bharat Aluminum Co v Kaiser Aluminum Technical Services Inc. (BALCO), where the Supreme Court of India has maintained its consistent finding that when a seat of arbitration is chosen, by necessary implication, courts of that country will have supervisory jurisdiction over that arbitration.

Arbitration and specially the enforcement of an award has been encouraged domestically by the SAARC member states and this has been the trend internationally as well, even by less opted countries for arbitration e.g. Qatar, a signatory to the New York Convention. Enforcement of foreign arbitral awards in Qatar has been inconsistent and awards have been annulled for reasons which seemingly contradict the provisions of the New York Convention, including, that the arbitration agreement did not explicitly state that any awards would be final and binding and thus the award was open to an appeal on the merits. However, recently in Case No. 173 of 2016, the Qatari Court of Cassation overturned the rulings of the lower courts to find that there was no basis for not enforcing an ICC Paris-seated award in Qatar, which had met the requirements under Article IV of the New York Convention.

In context of the SAARC region, there remains a need for the development of a common mechanism for the enforcement of arbitral awards given within the SAARC member states. This step will be the beginning of the realization of the dream of better SAARC intra-regional trade and attraction of more Foreign Direct Investment in the region.

**Rules of Procedure for Conciliation have been updated and will be adopted in 2017.**

Meeting with Dr. Almut Besold, Head of Country Office- Friedrich Naumann Foundation for Freedom (FNF), Pakistan.


Meeting with the Vice President, Federation of Pakistan Chamber of Commerce and Industry (FPCCI)

Ms. Mehnaz Khurshid Gardezi, Marketing & Communications Consultant, SARCO attended the celebrations of the "World Environment Day" organized by SAARC Energy Centre and Ministry of Climate Change on 5th June, 2017.

The DG addressed the 2nd Symposium on China - South Asia, South East Asia Commercial Legal Cooperation held at Kunming, China.


Dr. Sunil Motiwal, Chief Executive Officer, SAARC Development Fund (SDF), visited the SARCO Secretariat.

**Rules of procedure for Arbitration have been updated in 2016.**

***Mr. Francis Xavier***
Chairman, Chartered Institute of Arbitrators, Singapore
Regional Head, Dispute Resolution, RAJAH & TANN SINGAPORE LLP*

# A Presumption In The Implied Choice of Law Governing Arbitration Agreements? SulAmerica Reconsidered In Singapore

In the absence of an express stipulation, what law governs an arbitration agreement? This vexed question, which appeared to be resolved by the English Court of Appeal in SulAmerica Cia National De Seguros SA v Enesa Engenharia SA [2012] EWCA Civ 638 ("SulAmerica") has resurfaced. In SulAmerica, whilst ultimately characterising the question as one of construction, Moore-Bick U held that there should be a presumption in favour of the substantive law governing the contract. This was preferred over a presumption that the law of the seat should apply. In First Link Investments Corp Ltd v GT Payment Pte Ltd and others [2014] SGHCR 12 ("FirstLink"), the Singapore High Court has preferred the latter view and consciously departed from SulAmerica. The question of the implied choice of law is significant because parties rarely expressly stipulate the law governing their arbitration agreement; yet, the law governing the arbitration agreement determines crucial questions, such as its validity, effect and interpretation.

The parties in FirstLink did not expressly provide for a choice of law to govern their arbitration agreement when they concluded their main contract. After a dispute arose, the plaintiff commenced court proceedings in Singapore against the defendants for a loan amount. The first defendant relied on the arbitration agreement contained in the main contract to apply for a stay of the court proceedings. As the plaintiff resisted the stay application on the basis that the arbitration agreement was invalid, the Assistant Registrar ("AR") considered in some detail the question of the applicable law governing the arbitration agreement, in order to determine its validity.

It was first noted by the AR that the leading decision is that of SulAmerica, where a three-stage sequential enquiry was laid down to determine the law governing an arbitration agreement: (1) the parties' express choice; (2) the parties' implied choice in the absence of an express choice; and (3) the law which the arbitration agreement has its closest and most real connection with. In relation to (2), SulAmerica had essentially created a rebuttable presumption that the express substantive law of the contract would be taken as the parties' implied choice of the proper law governing the arbitration agreement.

SulAmerica's rationalization proceeds on the basis that commercial parties would ordinarily intend to have the whole of their relationship governed by the same system of law. The AR departed from this and expressed that it is more likely than not that when it comes to the quite separate, and often unhappy relationship of resolving disputes subsequently when problems arise, there can be no natural inference that commercial parties would want the same system of law to govern these two distinct relationships. Instead, the natural inference ought to be otherwise. When the commercial relationship breaks down and parties descend into dispute resolution, the parties' desire for neutrality would come to the fore, and primacy is accorded to the neutral law selected by the parties to govern the dispute resolution proceedings, insofar as the law governing the arbitration agreement is concerned. The substantive law would take a backseat in this context and would only take a main role subsequently when the time comes to determine the merits of the dispute.

It was emphasized that in the province of international arbitration, the arbitral seat is the juridical centre of gravity which gives life and effect to an arbitration agreement. Therefore, it would be "rare" for the proper law of the arbitration agreement to differ from the law of the seat, given that an arbitration agreement has a closer and more real connection with the place where the parties have chosen to arbitrate rather than the substantive law of the main contract.

The Singapore High Court further noted that Article V (1)(a) of the New York Convention renders an arbitration award unenforceable if the arbitration is invalid under the law of the country where the award was made in the absence of an express choice of law, and an award may be set aside if the arbitration agreement is invalid under the law of the seat pursuant to Article 34(2)(a)(i) of the Model Law.

Given that rational businessmen must commonly intend their arbitration awards to be binding and enforceable; their attention with regard to the validity of their arbitration agreements would primarily be focused on the law of the seat, rather than the substantive law.

After all, commercial parties would not intend to have an arbitration agreement valid under other laws (including the substantive law), only for it to be declared invalid under the law of the seat.

Moreover, given that the parties' choice of the neutral seat amounts to a selection of the law of the seat to govern procedural aspects of their arbitration (including the supervisory court's powers to determine a jurisdictional dispute in relation to the validity of an arbitration agreement), it would make sense that the parties intended the same system of law to govern the validity of the arbitration agreement to ensure consistency between the law and the procedure of determining the validity of the arbitration agreement.

In the circumstances, and in the absence of indications to the contrary, the above reasons would ordinarily compel a finding that the parties have implicitly chosen the law of the seat as the proper law governing the arbitration agreement. The court in "Firstlink" however, did caution that the determination of the implied proper law ultimately remains a question of construction and each case will have to turn on its own facts.

"SulAmerica" and "FirstLink" are unlikely to have the last say over this vexed area of law, and parties could well do with express agreements as to the proper law governing the arbitration agreement. Nonetheless, it cannot be denied that "FirstLink" makes a persuasive case for the primacy of the law of the seat, as opposed to the substantive law, as the law governing disputes over the validity of the arbitration agreement. Given the parties' chief concern once any dispute has arisen is to ensure the neutrality and integrity of the dispute resolution process itself, it follows that applying the law of the seat to govern any dispute over the validity of the arbitration agreement, rather than the substantive law of the main contract, is more likely to accord with the commercial intent of the parties. It is on this note that the tenor of "FirstLink" is refreshing.

*The views expressed in this article are those of the author's, and do not represent those of the Chartered Institute of ' Arbitrators, Singapore, nor Rajah & Tann Singapore LLP. The author would like to thank Chia Huai Yuan for his assistance.

The Director General, Mr. Thusantha Wijemanna, addresses the Members and Executive Body of Gujranwala Chamber of Commerce and Industries.

## The Director General, SARCO holds a Press Conference at Islamabad Press Club addressing all major media houses of Pakistan.

Mr. Thusantha Wijemanna, Director General SAARC Arbitration Council along with other officials namely Mr. Malik Imran Ahmad (Deputy Director, Law), Ms. Mehnaz Khurshid Gardezi (Communication Specialist) and Mr. Faazaan Mirza (Legal Research Officer) held a press conference on 12th February, 2017 at the National Press Club of Islamabad. DG SARCO highlighted the importance of business community utilizing ADR in settling their disputes. By way of developing close liaison with business community can add value to present services available to the investors for resolving their disputes through conciliation and arbitration. The Director General SARCO, Mr. Thusantha Wijemanna in his address, urged the business people to avail the services of SAARC Arbitration Council (SARCO) to settle their disputes out of the court. He said that SAARC Arbitration Council (SARCO) will always be an outstanding alternative dispute resolution forum in the region and will encourage the people of SAARC Member States to make cross border investment and increase trade within the region.

**The 8th Governing Board meeting of SARCO is scheduled to be held in Colombo in September 2017**


## SARCO Seminar with FPCCI in Islamabad.

SAARC Arbitration Council (SARCO) organized a seminar on "SARCO's role in acting as a catalyst for promoting ADR and Cross Border Trade & Investment " in collaboration with the Federation of Pakistan Chambers of Commerce and Industry (FPCCI), held at FPCCI Capital House, Islamabad, Pakistan on 16th August,2017. Prominent members of FPCCI, were present in large number. SARCO's delegation was headed by Mr. Thusantha Wijemanna, Director General . The Saukaut Masud , Senior Vice President, FPCCI and Mr. Danish Mehmood , Deputy Director SAARC division, Ministry of Foreign Affairs , Pakistan graced the event as a chief guest of ADR and specially SARCO's role in achieving this aim. He recognized and appreciated the efforts made by SARCO for promoting trade and investment in the region.

Mr. Thusantha Wijemanna, Director General and Mr. Faazaan Mirza, Legal Research Officer explained to the gathering , the importance of ADR and that how SARCO can assist in resolving commercial disputes. The seminar was well received by the participants.


# SARCO Model Clause

**Model Arbitration Clause**

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, between the parties shall be settled by arbitration in accordance with the SAARC Arbitration Rules as at present in force, and the award made in pursuance thereof shallbe binding on the parties.
Consider adding to model clause:

a) The appointing authority shall be _____ [institution/person]
b) The number of arbitrators shall be _____ [one/three]
c) The place of arbitration shall be _____ [city/country]
d) The language to be used in arbitral proceeding shall be _____ [language]

**Model Conciliation Clause**

Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by conciliation, the conciliation shall take place in accordance with the SAARC Conciliation Rules as at present in force.


## SAARC Arbitration Council

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