Why Arbitration

Arbitration is a process by which parties voluntarily refer their disputes to an impartial third person, an arbitrator, selected by them for a decision based on the evidence and arguments to be presented before the Arbitration Tribunal.

The parties agree in advance that the arbitrators' determination, the award, will be accepted as final and binding upon them.

Why Arbitration?

It is generally conceded that arbitration is an alternate dispute resolution mechanism that offers a number of advantages.

■Arbitration generally costs less to the disputing parties than litigation.

■Arbitration is usually faster than litigation. Complexity of court procedures combined with backlogs normally extend litigation for years.

■Arbitration is informal and flexible. Procedures are chosen by the parties to the arbitration or in an institutionalised arbitration, by the institute.

■Arbitration proceedings are confidential and remain so unless one of the parties pursues an appeal to Court.

■Arbitration allows for the selection of an expert in the area of the subject of dispute. Judges who hear disputes ranging from family matters to complex commercial matters cannot be experts in every area.

■Arbitral Tribunals are politically and culturally neutral, a factor that is important where one or both parties are foreign.

The expeditious, cost-effective and confidential resolution of disputes is particularly attractive to commercial men who have ongoing business dealings. Arbitration allows them to resolve ultimate disputes without 'poisoning' or destroying their entire commercial relationship, which is often the case in prolonged litigation in courts.

A choice that has to be made by a party is whether to conduct an ad hoc arbitration (conducting of arbitration under no specific rules) or make use of an arbitration centre such as the The Institute for the Development of Commercial Law and Practice (ICLP) Arbitration Centre, which provides its own set of rules for arbitration. Though ad hoc arbitration may appear flexible to parties, it can involve considerable time and expense as there is no set procedure agreed upon, which can lead to delay in the resolution of the dispute. Thus one of the greatest advantages of institutionalised arbitration is that it provides a framework of rules for the entire proceedings.

Institutional arbitration also provides rules that can help parties avoid other potential problems such as establishing the arbitrator's fees, arranging for interpreters and stenographers, reserving hearing rooms and sending notices of hearings.

Though Sri Lankan legislation provided for settlement of disputes through arbitration, the Court sanction had to be received prior to referring such disputes to arbitration, before the enactment of the Arbitration Act No. 11 of 1995.

ICLP, a private body set up solely for the purpose of developing commercial law in Sri Lanka, assisted the Government of Sri Lanka, to enact this modern arbitration law with the co-operation and assistance of the Swedish International Enterprise Development Corporation (SwedeCorp) now known as SIDA and the Swedish Institute for Legal Development (SILD), both of Stockholm, Sweden. The said Arbitration Act is a modern law based on the UNCITRAL Model Law and incorporating many features of the new Swedish Arbitration Bill.

ICLP Arbitration Centre

The ICLP Arbitration Centre is a separate body within the ICLP, established to enable the businessmen to make the best use of the law.

The ICLP Arbitration Centre is an arbitration centre of international standard which facilitates the resolution of commercial disputes in a speedy, cost-effective, confidential and efficient manner.

The ICLP Arbitration Centre operates under an agreement of co-operation with the Arbitration Institute of the Stockholm Chamber of Commerce (AISCC), which ensures that its operations are always upto international standards.

The Centre is a non-profit body and is funded by its founder members from the private sector. The present founder members of the ICLP are Aitken Spence & Company, National Development Bank, John Keells Holdings, Vanik Incorporation Ltd., Hayleys Limited, Central Finance Company Ltd., Hatton National Bank Ltd., Chemical Industries (Colombo) Ltd., Asia Capital Limited, Seylan Bank Limited, Sampath Bank Limited and Commercial Bank of Ceylon Ltd.

A prerequisite to having a commercial dispute resolved by arbitration at the ICLP Arbitration Centre is the existence of an agreement between the parties to resolve any disputes that may arise between them by arbitration under the Rules of the Centre. The agreement can be in the form of an arbitration clause in a contract or in a separate agreement to enter into arbitration. Such an agreement may be entered into even after the dispute has arisen.

Draft arbitration clauses could be obtained from the secretariat of the Centre. The clause may be supplemented, if the parties so desire, by stipulations as to the number of arbitrators, the place, the language to be used, the applicable substantive law, foreign counsel and exclusion of appeals to the Supreme Court.

The Centre provides the following services interalia: assistance in drafting arbitration clauses, a panel of arbitrators both international and domestic from which parties may select their arbitrators, a choice of venues where arbitration proceedings can be held, secretarial services, interprettions and translations during proceedings, fax, telephone, photo copying and e-mail facilities.

Sri Lanka, like all developing countries, has created an investment-friendly climate to encourage and promote foreign investment. Foreign investors increasingly doing business in the country are generally reluctant to submit their disputes to the local courts and hence invariably negotiate the inclusion of a clause in their contracts for any dispute arising between them and a local party to be referred to arbitration centres in cities such as Paris, London, Stockholm, Brussels and Geneva. This, from a local point of view is very costly and of- ten compels the local investor to concede over an issue rather than undergo the high cost of having it resolved by arbitration. Both local and foreign investors now have the option of resolving disputes that may arise between them by reference to the ICLP Arbitration Centre.

To conclude, perhaps the greatest advantage of resolution of commercial disputes by arbitration in Sri Lanka is that it enables the resolution of these disputes by an alternate dispute resolution method thereby easing the load of commercial work in

the Civil Courts and making those courts available to the public of Sri Lanka to obtain justice expeditiously, in other matters. For more Information on the centre contact: ICLP Arbitration Centre, 5th Floor, BOI Building, 14, Sir Baron Jayathillake Mawatha, Colombo 1, Sri Lanka. Tel: (94 1) 346163, 346164. Fax: (941) 346163.

ICLP is presently focusing its attention on developing and promoting arbitration in the South East Asian region.

Local businessmen compelled to go to arbitration to European Cities due to the lack of international arbitration centres in the region are at a disadvantage because of the prohibitive costs involved in international arbitration's conducted in arbitration centres in Europe. ICLP recognises the need for arbitration centres of international standard in the region.

Usually parties to a commercial dispute who wish to resort to arbitration proceedings of their disputes wish to have the arbitration proceeding conducted at a neutral venue rather than in the country in which the investment was made and in the respective countries of the parties to the dispute. Such parties to commercial disputes both foreign commercial disputes both foreign and local in other countries in the region may well choose Colombo as the neutral venue.

personnel literate in English, five star hotels, modern telecommunication facilities and expeditious services to conduct arbitration proceedings. Thus, Colombo is an ideal neutral venue for arbitration of commercial disputes arising in the other countries in the region.

With the aim of promoting the ICLP Arbitration Centre and creating an awareness of the need for similar centres in the region, ICLP is organising a seminar for Indian lawyers, businessmen and other professionals in Colombo in mid 1997.