

# LEGAL IMPLICATIONS OF INTERNATIONAL COMMERCIAL AGENCY CONTRACT ARBITRATION IN THE LIGHT OF UNCITRAL RULES

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## ABSTRACT

*International Commercial Arbitration has unbounded itself from Domestic laws to a certain degree particularly by permitting people from different culture and jurisdiction brought together by nexus of commercial relationship to settle their disputes in such a way and manner that would leave the parties feelings that private system of resolving dispute has served justice to them. It affords parties the opportunity to determine how any dispute arising from their contract can be settled. Parties to an international commercial agency transaction are in most cases confronted with the challenges of jurisdictional laws and regulations subjecting them to litigation outside their arbitration agreement in event of dispute. Findings reveal that prevalence of such drastic exposure is caused by lacunas in parties' choice of applicable arbitration rules in their arbitration agreement. Therefore, UNCITRAL Arbitration Rules has been advanced for parties in international commercial agency transaction as a panacea to address the challenges.*

**Purpose:** *The argument of this paper is that arbitration still remains as the most effective means of settling international commercial agent contract dispute if UNCITRAL Arbitration Rules are adopted by the parties to the contract. Its objectives are to advance the adoption of UNCITRAL Arbitration Rules in international commercial agency arbitration agreements as a choice of arbitration rules in settling international commercial agency contract disputes against the backdrop that jurisdictional laws and regulations are in recent times underpinning the use of arbitration as a means of settling international commercial agency contract disputes and thus subsequently raising challenges such as using the lacunae related to jurisdiction primarily to shield contractual breaches and such acts yield in the parties facing hardships, the compulsion to resort to Domestic Courts for dispute resolution that would lead to challenges in enforcing the judgement in other jurisdictions. Hence, the author would justify the position under the UNCITRAL Arbitration Rules to address these legal issues and challenges that may arise in international commercial agency contracts subject to arbitration agreement.*

**Research Methodology:** *This paper will not only rely on the UNCITRAL Arbitration Rules alone but also text books written by renowned authors on international commercial arbitration, internet resources, regulations, statutory and case law authorities to determine the use of UNCITRAL Arbitration Rules in commercial agency contract in a cross-border trade. The information was examined with the view to make recommendations for the best practice.*

**Findings:** *Parties to an international commercial agency contract prefer to adopt arbitration as a means of settling any dispute arising from their relationship. Notably, one among the essential issues the parties that has agreed to submit any dispute arising from their international commercial agent contract to arbitration is the choice of applicable arbitration rules. However, some of the arbitration rules did not comprehensively address envisaged materials issues that may arise in an international commercial agency contract arbitration proceeding, but in such circumstances of lacunas refers the parties to resort to national courts. Hence, adopting UNCITRAL Arbitration Rules in an international commercial agency arbitration agreement has been shown to adequately address such lacunas.*

**Implication:** *The paper focuses on the present situation of law by addressing the technical difficulties and implications surrounding the dispute resolution in agency contracts by addressing certain inefficiencies in the practices adopted and the position of law, focusing on*

*the UNCITRAL Rules and correlated Regulations governing arbitration. Relying on the factors and examples cited in the paper, it can be established that despite any negative imposition, the law regarding arbitration in agency contracts can co-exist with the other domestic and international laws and the courts would further base its actions and approach respecting the international set standards even when it can run to a few dead-blocks that the law would not suffice in providing a remedy to. Hence, it is well observant that the paper can provide for a ground of justification along with a reasonable and rational approach to draw correlations to the domestic and international laws regulating the developing sector of international agency arbitration. Thus, the review of available documents is limited to UNCITRAL Arbitration Rules and by implication cannot be generalized into a broader context.*

**Novelty:** *The paper addresses these primary aspects focusing on arbitrations arising out of agency contracts, along with addressing technical and procedural impediments that can arise due to the nature of the contract, by providing sufficient justification and remedies under the UNCITRAL Model. The paper would revolve around such agency-contract arbitrations by providing for new practical interpretations by contributing to the growing field of legal jurisprudence around commercial laws and dispute resolution. The Author has also proposed a few practices that can be followed by nations to ensure a better legal position when it comes to commercial agency contract arbitration. Hence this paper when compared to the current situation, is imperative as it creates and enters a niche sector of dispute settlement by focusing on agency contract arbitrations.*

**Originality:** *The paper contributes the research about the prevailing issues in commercial agency contracts as arbitration will guarantee parties autonomy and control over how their disputes will be settled using UNCITRAL Arbitration Rules.*

**Keywords:** Arbitration, UNCITRAL Arbitration Rules, Commercial Agency, Contract, Parties Autonomy, Principal, Agents

## INTRODUCTION

International Commercial Arbitration has unbounded itself from nation state's laws to a certain degree. Arbitration is taken by private individuals as resolving their disputes through the decision of other private individuals based on their agreed rules. Its continuous and increasing importance in commercial trade has made it the preferred means of dispute resolution especially for cross border trade. Over the decades, for example, in Europe arbitrable matters have extended from the classic matter of competition law to areas such as consumer protection, insolvency law, the law of commercial agents, white collar crime and even tax law. In consequence, private individuals prefer arbitral tribunal over the state courts to decide disputes arising out of and/or in relating to their cross-border trade. The roles of commercial agents in a cross-border trade are very essential. They offer services to companies to enable them establish themselves in a foreign market as unfamiliarity of local knowledge among others makes the principal to rely on the agents. With commercial agents, foreign companies can circumvent setting up a local subsidiary or branch by exploiting their connections and knowledge of the market. In such commercial relationship principals usually does not pay their agents wages but an agreed commission fixed in their agency contract.

Companies are availed the opportunity to test a foreign market without involving the risk of investing in a new market through the agents. A company that decided to venture in a foreign market can use commercial agents to establish and develop goodwill of their brand in the foreign market. The agent's duty is to carry out the business or services of the principal as defined in the agency contract (Accentuate Ltd, 2010). Parties to a commercial agency relationship always need some level of protection. Protection against some acts that always lead to dispute such as the company breaching the terms of their contract after using commercial agents to develop the goodwill of their brand in the local market and abruptly terminating the commercial agency contract without completing and satisfying the terms of their agreement. On

the other hand, agents also breach the terms of the contract which equally prejudiced the company.

Parties engaging in commercial agency relationship would like to provide in their contract a means of dispute resolution in the event of any dispute that may arise out of and/or in relation to their contract. Since their relationship is a cross border trade, parties are always constrained to subject themselves to the national courts of each party as they are uncertain how such courts will competently protect its interest. In that case, parties usually agree to resort to arbitration in respect of any dispute arising out of and/or in relation to their contract. Such decision to abide by arbitration grants the parties autonomy to determine the manner of resolving any dispute from the contract.

However, some of the arbitration rules did not comprehensively address envisaged materials issues that may arise in an international commercial agency contract arbitration proceeding, but in such circumstances of lacunas refers the parties to resort to national courts. By so doing, a party who is in favour of jurisdictional laws or regulations tend to invoke them to vest jurisdiction on the national court for such dispute to be litigated at the national court in accordance with the provisions of the said laws or regulations which in most cases are always over protective of a party at the expense of the other party in disregard of parties' autonomy which is the hallmark of submitting international commercial agency contract disputes to arbitration (CA, 1993). Hence, adopting UNCITRAL Arbitration Rules in an international commercial agency arbitration agreement has been shown to adequately address such lacunas.

At the time of engaging in international commercial agency contract, parties usually prefer any dispute arising out of and/or in respect of their relationship to be resolved by private individuals appointed by them. In so doing they make the choice of the arbitration rules that will apply in their arbitral proceeding considering the peculiar nature of their relationship. The choice of rules, for example, UNCITRAL Arbitration Rules 2013 (the "Rules") that will not only guarantee and accord the parties autonomy but also address critical issues that may arise which the parties did not advert their mind is crucial (Christian, 2005).

## **INTERNATIONAL COMMERCIAL AGENCY AND UNCITRAL RULES**

Without arbitration parties to international commercial agency contract may continue piecemeal litigation in various jurisdictions upon dispute arising out of and/or in relation to their contract. Arbitration as a private system of adjudication gives the parties therein arbitration agreement substantial autonomy and control on whether the arbitration will be administered by an international arbitral institution or ad hoc arbitral tribunal, the rules chosen by parties to be applied by the arbitral institution or the ad hoc arbitral tribunal, choice of the place of arbitration, language of the arbitration, rules on taking evidence, preliminary relief, technical expert, legal fees and cost.

The need for arbitration in the area of international commercial agency contract is substantial. The reasons for the choice of arbitration to resolve disputes by parties to an international commercial agency contract are basically anchored on the neutrality of the forum and the feasibility of securing enforcement.

However, there is no internationally agreed uniform legislation for commercial agency contract, and parties negotiating agency contract abroad are faced with major difficulty of lack of uniform rules. In most cases, parties rely on national laws. The peculiarity of these national laws is not that it varies from jurisdiction to jurisdiction only but also on the failure to put into consideration the contract's international makeup. Some jurisdictions, for example, the EU have made regulation on commercial agency contract protecting commercial agents against unlawful termination of the agency agreement. However, it has been subject to different level of conflicting interpretation across jurisdictions (Jaradt, 2020). The Commercial Agents (Council Directive) Regulations (the "Regulation") provided for mandatory regime that includes compensation of commercial agent upon termination of agency contract which the parties cannot opt out by mere contractual agreement.

In practice, parties to an international commercial agency contract tend to use choice of law and arbitration clauses in their contract to circumvent the Regulation but not without conflicting interpretation and issues of parties' autonomy in international commercial arbitration. For example, a Canadian company entered into a commercial agency agreement with Accentuate, an English company. In their agency contract, the parties made Ontario their choice of law and agreement to arbitrate all dispute in Toronto Canada. After the principal terminated the commercial agency contract, a dispute arose and the agent initiated arbitration claiming compensation under the Regulation. The arbitral tribunal held that the Regulation does not apply in determining the rights and liabilities of the parties to the arbitration. Further, that those rights and obligations will be determined in accordance with the governing law elected by the parties, therefore the commercial agent will be entitled to compensation based on the governing law. Reasonably, the commercial agent invoked the application of the Regulation not within the ambit of their arbitration agreement as a necessary implication of its provision overriding parties' agreement including international commercial agency arbitration agreements as provided in Articles 17 and 18 of the Regulation. Opposed to the above decision, the European Court of Justice (ECJ) has ruled that Articles 17 and 18 of the Regulation which protect and reserve commercial agent rights to compensation upon termination of the agent contract has international overriding mandatory applicability where the commercial agent undertakes his activity in an EU member state irrespective of whether the principal is established in a non-member state and a clause in the agent contract providing that the contract should be governed by the law of that country.

Just as well, in United Arab Emirates (UAE) their Commercial Agency Law requires commercial agency contract concluded between a commercial agent in UAE and principal to be mandatorily registered with the Emirates' Ministry of Economy. Upon successful registration, the Commercial Agency Law will apply to such commercial agency contract guaranteeing and protecting rights of the commercial agent. To that extent, parties' contractual arrangements that are inconsistent with the provisions of the Commercial Agency Law will therefore be void.

With that, commercial agents in the UAE are inclined to register their agency contract to enjoy exclusivity right provided under the commercial Agency Law. It provides the respective agent, for example, the exclusive right to the product covered by the registered contract and the distribution area covered by the contract. In that case, the agent can exercise right of action in court seeking for confiscation of any imported product without his consent. By extension maintain action in UAE court against the principal for breach of their contract. The Commercial Agency Law also provide stringent conditions for the termination of the commercial agency contract as such even a legitimate termination of the agency contract will not automatically end the contract except the deletion of the contract from the register at the UAE Ministry of Economy. Hence, in practice, termination of the agency contract and deletion from the register is designed to result in payment of heavy cost to the agent by the principal. The implication is that a principal cannot establish his business in UAE after the agency contract has been determined without a court action from the agent or engage in another agency contract in UAE except, he offset the cost imposed on him in respect of former agency relationship. This defeats the fundamental essence of engaging an agent to establish a business brand in a foreign country (UNCITRAL).

On the contrary, commercial agency contract that is not registered with the UAE Ministry of Economy are not foreclosed by local authorities but are restricted from enjoying protection of the Commercial Agency Law in the course of business transaction in the country as well as participate in public invitations to tender or cooperate with publicly held companies among others. That said, it demonstrates how jurisdictional laws compels international commercial agent contract to be subjected to national laws and courts irrespective of whether there is arbitration agreement or not.

Nevertheless, the choice of UNCITRAL Arbitration Rules by the parties will most effectively guarantee parties autonomy in international commercial agency contract from jurisdictional laws and regulations. The Rules recognized the value of arbitration as a method of

settling disputes that may arise in the context of international agency relation thereby preserving parties' autonomy. The Rules envisaged where parties to an international commercial agency contract may not provide for all the essentials in their arbitration agreement but may rely on its provisions which in such circumstance will prevail if the parties stipulate the Rules in their agreement as the governing rules. The Rules apply to arbitrations of parties who adopt it in their agreement and may be varied by the parties in their agreement. It is basically non mandatory but applies in default. In most cases, the Rules contains provisions that says, "Unless otherwise agreed in writing by the parties" which rather means if the parties have not reached their own agreement on a specific topic. Thus, agreement of parties on a particular issue overrides the provisions of the rules except in few instances with mandatory provisions.

Where parties appoint arbitral institution and adopt the Rules if permissible and in the case of ad hoc arbitration, the choice of the Rules will regulate the arbitration throughout the arbitral proceeding in place of applying their institutional rules or drafting their own arbitration rules. The specific rationales for considering the use of the Rules as the most appropriate arbitration rules for adoption in international commercial agent agreement are set out herein.

### **ARBITRATION RULES**

As part of parties' autonomy, the choice of arbitration rules to adopt represent the parties' agreement with respect to how the arbitration proceeding will be conducted. Parties in international commercial transaction preference for arbitration over other methods of settling dispute are pronounced by parties' autonomy to create their own private justice system in their contract. This is particularly important as each party in an international commercial agency contract fears each party's national court advantage as well as subjection of parties to the laws that are not relevant to their transaction. Thus, parties seeking for a method they believe that will guarantee them fair hearing. More so, provide the parties opportunity to select their own arbitrators who are knowledgeable in the subject matter of the dispute and would be able to fashion the dispute resolution process to meet the needs of the parties. Parties to international commercial agency contract may agree to adopt the Rules to apply to their arbitration proceeding. Whether the parties designate arbitral institution or ad hoc arbitration, such arbitration rules adopted by the parties in their agreement prevails. The Rules allows parties to an international commercial agency contract to apply its provisions in settlement of their dispute subject to modifications agreed by the parties in their agreement.

Adoption of the Rules in an international commercial agency contract will eliminate the difficulty and doubts of parties deciding on a party's national arbitration rules that will apply more especially where the dispute is not referred to arbitral institution. Parties in international commercial agency transaction preference of arbitration over other methods of settling dispute are pronounced by parties' autonomy to create their own private justice system in their contract.

Among what are manifest in the Rules is that it is designed recognizing autonomy of the parties to an arbitration agreement, the value of arbitration as a method of settling disputes that may arise in the context of international commercial relations and providing arbitral procedure that would resolve arbitral issues without recourse to the judicial system.

### **CHOICE OF ARBITRATORS**

The danger of appointing arbitrators in the arbitration agreement have made parties to an international commercial arbitration agreement in most cases to allow the procedure specified in their agreed arbitration rules to apply. With the Rules if there is no administering institution named by the parties in their agreement, the parties will not have to resort to court for the appointment of arbitrators. The Rules made explicit provisions for the appointment of arbitrators that serve the interest of the parties to the international commercial agency agreement that are unwilling to subject itself to the jurisdiction of a state's court.

The Rules provides procedures for the parties to follow in appointing the number of agreed arbitrators. On the other hand, the Rules provides for appointing authority. The appointing authority is designed to act where the parties are at impasse in appointing their arbitrators and as well hear application for the disqualification of appointed arbitrators. There are appointed by the parties themselves to appoint credible arbitrators. The Rules provides procedure for the appointment of appointing authority when dispute arise out of and/or in relation to their contract. The Rules further provides that if, for example, the parties have not agreed on the appointment of arbitrators, and if they have not agreed upon an appointing authority, or that the appointing authority is unable to act, either party to the arbitration agreement may apply to the Secretary-General of the Permanent Court of Arbitration at the Hague to designate appointing authority.

Under the Rules, where parties to an arbitration agreement have not provided on the number of arbitrators and unable to agree on the appointment of a sole arbitrator, three arbitrators shall be appointed by the appointing authority or a sole arbitrator on the request of a party to the arbitration. Unless otherwise agreed by the parties or where the appointing authority determines to be inappropriate in its discretion, the Rules provides for the list-procedure for the appointment of arbitrators will apply. The list-procedure to be followed by the appointing authority is to communicate to each of the parties an identical list containing at least three names. Prior to returning the list to the appointing authority, parties are expected to take out his objectionable names and allowing the preferred names in order of preference. The appointing authority thereafter appoints the arbitrator or number of arbitrators in accordance with the order of preference indicated by the parties.

Again, if a party fails to appoint an arbitrator, the appointing authority shall appoint the second arbitrator for the arbitral proceedings. Also, wherein the appointed two arbitrators are unable to agree on the appointment of presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority following the above list procedure.

A party may challenge the appointment of an appointed arbitrator if circumstance exist that gives rise to justifiable doubts as to the arbitrators' impartiality or independence. If after the notice of challenge all the parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may decide to pursue it and seek a decision on the challenge from the appointing authority.

## **JURISDICTION AND THE COMPETENCE-COMPETENCE UNDER THE RULES**

The Rules recognizes the doctrine of competence-competence. It provides that the arbitrators are competent to determine their own jurisdiction to hear and determine the dispute before them. The Rules reserves the arbitral tribunal power to make a ruling on questions concerning its jurisdiction and also any objection as it relates to the validity as well as the existence of the arbitration agreement. To that extent, the Rules further provides that an arbitration clause that forms part of a contract should be treated as an agreement independent of the other terms of the contract. Again, an arbitral tribunal decision that a contract is null does not by implication invalidate the arbitration clause contained in the agreement.

A party under the Rules, who wish to challenge the jurisdiction of the arbitral tribunal on a plea that the arbitral tribunal does not have jurisdiction shall raise it either in the statement of defense, in a counterclaim for the purpose of set-off from the claim, or the claim for the purpose of a set-off. A party is not estopped from raising the plea on basis that he has appointed arbitrator or have taken part in the appointment of arbitrator. Under the Rules such plea that arbitral tribunal is acting ultra vire its ambit of authority is required to be raised timeously on the occurrence of such purported ultra vire acts during the proceedings of the arbitral tribunal. However, the arbitral tribunal may where it deems it fit admit a later plea if it considers the delay justified.

In any event of such plea, the Rules require that the tribunal may rule on such plea as a preliminary question or in an award on the merit.

### **PLACE OF ARBITRATION**

It is a common practice that parties to an international agency contract would want to choose an arbitration friendly jurisdiction. This is because of the nature of agency relationship as a result they would want to consider a place that will be a neutral forum for the parties. Wherein, however, the parties in their agency arbitration agreement did not choose the place of arbitration as may be the case especially in simple arbitration agreement contained in a contract, in such circumstances the Rules grants the arbitral tribunal power to determine the place of arbitration taking into consideration peculiarities of the parties' dispute.

### **LANGUAGE OF THE ARBITRATION**

Although in most cases parties do not specify the language of the arbitration assuming that the language of the contract is the language of the arbitral proceeding, there is need for parties to specify in their agreement the language of their arbitral proceedings. In arbitral proceeding such as commercial agency contract, the Rules provides for cases where the parties may fail to specify the language of the proceedings. Under the Rules, the arbitral tribunal is required upon appointment to determine the language or languages of the arbitral proceedings and as well make order as per whether the original documents to be submitted to them are to be accompanied by translation into such language or languages.

### **APPLICABLE LAW**

The Rules recognizes that the arbitral tribunal shall administer the rules of law designated by the parties as their applicable law to the substance of the dispute. Where the parties fail to designate applicable law, the arbitral tribunal shall apply the law which it determines to be appropriate. The Rules extinguished application of conflict of laws analysis by the arbitral tribunal where the parties fail to designate the applicable law in their contract by allowing the arbitral tribunal to determine the law that will be applicable to the parties' transaction. The parties may also in their agreement provide that the arbitral tribunal may decide their dispute *ex aequo et bono* or as *amiable compositeur*. However, the arbitral tribunal shall decide parties dispute as *amiable compositeur* or *ex aequo et bono* only if the parties in their arbitration agreement have explicitly granted the arbitral tribunal such authority. In most cases parties do not grant such authority to arbitral tribunal assuming that the tribunal inherently has such discretion. On the other hand, the arbitral tribunal is required by the Rules to decide the dispute in accordance with the terms of the contract and if it exists, put into consideration any trade usage applicable to the transaction of the parties.

Nevertheless, parties to the international commercial agency agreement that may not be inclined to subject their dispute to the national court wherein the applicable law was not provided in their agreement as well as for the arbitral tribunal to decide parties dispute as *amiable compositeur* or *ex aequo et bono* are still protected. Such parties that adopted the Rules will have their dispute decided by the arbitral tribunal in accordance with terms of the contract and usages of such business transaction.

### **INTERIM MEASURES**

In a commercial agency contract, the need for an interim relief may arise. The Rules empowers the arbitral tribunal upon the request of a party to the arbitration contract to grant an interim relief on satisfying necessary conditions under the Rules. The arbitral tribunal may in

appropriate cases before granting the interim measure request a party seeking such application to provide security in connection with the measure.

Some of the interim measures a tribunal may grant on the request of a party includes but limited to: maintaining or restoring the status quo pending the determination of the dispute; make available a source of preserving assets out of which a subsequent award may be satisfied; to take specific action; prevent or cease from taking certain action that may likely cause current or impending harm or prejudice to the arbitral process itself; or preserve evidence that may be relevant and material to the resolution of the dispute.

Prior to granting the application for interim measure by the arbitral tribunal, the party seeking the interim measure is required to satisfy the tribunal that harm not adequately reparable by an award of damages may occur if the order is not granted, and such damage and/ or harm to a large extent outweighs the harm that may likely occur to the party not in favor of the measure upon granting the measure; and there is a very likelihood that the party seeking for the measure will succeed on the relative merit of the claim. That said, the arbitral tribunal is conferred with the discretion to make subsequent determination in respect of any measures already granted by it.

Under the Rules, the tribunal is not estopped from making modifications, suspending or if need be, terminate an already granted interim measure on the application of any party or in extreme cases and subject to prior notice to the parties on the tribunal's discretion. Again, the Rules makes any party that obtains interim measure liable for any cost and damages if, for example, that the arbitral tribunal later determine that the prevailing circumstance the interim measure could not have been granted by the arbitral tribunal.

## **CONCLUSION AND RECOMMENDATION**

Arbitration circumvents piecemeal litigation that would have emancipated in international commercial agency contract in a cross-border trade. Lack of uniform legislation for international commercial agency contracts confronts parties therein as they have to address all necessary issues that may arise out of and/or in relation to their contract which will be of serious effect on their agency relationship. The parties will have to consider among others arbitration friendly forum and applicable laws that will be neutral to the parties, recognize parties' autonomy and guarantee fair protection of their interest in accordance with their arbitration agreement. Of particular importance to the parties is the choice of their arbitration rules. It is advanced that parties in international commercial agency contract to be inclined to choose the UNCITRAL Arbitration Rules as their arbitration rules because it is quite encompassing and made explicit provisions on every arbitral issue without the parties having to resort to state's court. In addition, it can be modified and tailored to the needs of the parties depending on the nature of their agency relationship.

Parties to an international commercial agency contract are recommended to use UNCITRAL Arbitration Rules as their arbitration rules on the basis that the Rules guarantees parties autonomy which is the hallmark of arbitration and as well can competently compliments arbitration agreement issues not provided for in their arbitration agreement.

The consequences of lack of universally agreed uniform commercial agency contract have negatively underpinned parties' autonomy in international commercial agency arbitration. The most obvious negative effect is that jurisdictions make laws and regulations regulating commercial agency contracts and subjecting parties therein to their national laws and courts system. These inconsistencies in different jurisdictional laws and regulations tend to scuttle international agency contract from choosing arbitration as a means of settling dispute arising out of and/or in relation to their contract. The practice has factually become constraint to parties that enter into a private arrangement choosing arbitration as a means of settling their dispute thereby creating their own private system of justice. The common practice of jurisdictions protecting and subjecting commercial agency contract to their regulation for the umpteenth limits freedom of individuals to enter into private contract and in turn tend to make arbitration agreement



therein inoperative. It even has reciprocal effects where a party in such jurisdiction proceeds to arbitration in compliance to the terms of his arbitration agreement because it significantly presents dicey challenges in the enforcement of an award made in such arbitration.

Without autonomy of parties, arbitration would have ceased to be the preferred choice of dispute resolution in international commercial agency contract. To guarantee preferred interest of the parties to an international commercial agency contract, the arbitration agreement of the parties would at the onset articulate the fears and plights of the parties and by so doing reverence parties choice of arbitration. Thus, the mandatory or swift regulation of international commercial agency contract by governments across jurisdiction, which is a private arrangement, will be ipso facto eliminated. It has been demonstrated from the foregoing that the parties' choice of the UNCITRAL Arbitration Rules in their arbitration agreement will guarantee parties autonomy, preserve issues agreed on by the parties in their agreement and compliment their agreement as well as fair hearing among the parties.

Hence the primary objective should be to advance the adoption of UNCITRAL Arbitration Rules in international commercial agency arbitration agreements as a choice of arbitration rules in settling international commercial agency contract disputes against the backdrop that jurisdictional laws and regulations are in recent times underpinning the use of arbitration as a means of settling international commercial agency contract disputes. Such challenges are not only that a party in an international commercial agency arbitration agreement who envisages lacunas in their adopted arbitration rules use jurisdictional laws or regulations as a shield in breach of the performance of the contract and/or unjustly enrich himself and cause hardship on the other party, but also that parties to international commercial agency arbitration agreement are now compelled to resort to national courts to assert their rights and as well as incidences of conflicting jurisdictions courts judgments in the arena of international commercial agency contract, which in turn makes such judgments extremely difficult to enforce in a different jurisdiction. It then results in practice to objections on the validity of such jurisdictional laws or regulations and thus makes such judgment unenforceable with the effect of academic exercise to the detriment of judgment creditor. The UNCITRAL Arbitration Rules addresses those legal issues and challenges that may arise in international commercial agency contracts subject to arbitration agreement.

In a nutshell, there is need to:

1. Make arbitration the choice of settling commercial agency contract dispute;
2. Adoption of UNCITRAL Arbitration Rules by parties to an international commercial agency contract subject to arbitration; and
3. Parties to explicitly and adequately articulate their fears, rights and liabilities in their agreement.

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