



Assignment of Arbitrator in Domestic Arbitration

Eissa Amini^{1*} and Parvin Davoudi²

¹Department of Law, Central Tehran Branch, Islamic Azad University, Tehran, Iran

²Department of Law, Electronic Branch, Islamic Azad University, Tehran, Iran

*Corresponding author: Eissa Amini

ABSTRACT

Arbitration is one of the common dispute settlement methods in which the arbitrator is considered the key element. In the Iranian law, besides the arbitrary official of appointing arbitrator, there have been envisaged other legal officials in Civil Procedure Code 2000 and some other special laws. Except for the conditions particular to the parties to a dispute and the arbitrator appointment office, the person appointed as an arbitrator is required to have some positively-or-negatively-defined specifications including not being beneficiary. Following the conclusion of the arbitration contract and the appointment of an arbitrator, conforming to the Contracts' Necessity Principal, the provisions of such contract will be binding and irrevocable and the other parties to a dispute will not be able to loge unilaterally an appeal before the courts of justice, unless by mutual consent, the arbitration contract is annulled or cancelled through a legal manner; meanwhile, the parties to the dispute shall attract the acceptance of their appointed arbitrator(s) and finally the arbitrator's appointment imposes some effects and obligations to the parties to arbitration and the arbitrator themselves, which the both are obliged to observe, otherwise it causes their mutual responsibility.

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Introduction

The fact that courts have the power, knowledge and experience necessary to address and resolve disputes and lawsuits are complex and specialized and other body which is enough power to resolve disputes arising from the claims that may be alternative traditional justice system, many years ago discussed in legal circles so that today's world and understand the need for alternative methods of access to the courts in recent years with the popularity of different ways including the arbitration settlement and subsequently developed multiple centers across arbitration trying to develop and update it, including the benefits for the parties to the arbitration therefore refer considered a person of knowledge and experience is capable enough to resolve their differences. The last person in the arbitration, such as the principles governing a fair trial judge must comply. The arbitrator determined that seemingly simple and easy to make the most esteemed stage or the arbitration process. So that the lack of precision at this point and harmful impact on the future of the parties or both units will follow, dependent and impartial arbitrator or arbitrator determined Needless poor time all the benefits of arbitration under question. That In the arbitrator's arbitration institution or person or persons And in what manner arbitrator or arbitrators and quality are determined or what criteria should be considered his choice and the contractual nature of arbitration according to the characteristics of the arbitrator assignment is supported by Legislator whether and Questions like these are issues that are necessary and worthy of attention and

scrutiny, researchers and legislators and persuade it not that of his poor little paper to the allocated.

Reference First Chapter: Arbitrator Determination

Arbitrator to determine important issues and legislative arbitration arbitrator chosen from three, respectively, by the court, by the parties and by third party forecasts. Of course it is possible that the arbitration agreement is not only determined but also to third-party arbitrator is not specified or not the court can choose the arbitrator and the parties agree.

First discussion: Legal Reference

In some cases, the parties set arbitration As a method of conflict resolution and conflict have already agreed on this method as a way to resolve conflicts, but to determine arbitrator Shapes and court intervention is necessary to fix it. The issue of interference in the determination of the court arbitrator 79 and the special rules mentioned in Takes.

First discussion: Rule of Civil Procedure 79

The arbitration provisions in the Code of Civil Procedure parties agreed to refer their dispute to arbitration. The involvement of the court in determining the arbitrator in various materials 79 mentioned the details of which are given below.

First paragraph: explicit assignment parties

Under Article 455 in all cases refer to the arbitrator, the parties choose the arbitrator or arbitrators may apply to the court. The court rules on the prohibition of arbitration arbitrator are obliged to comply. In cases where the party, the court has to determine the arbitrator

* Ali Rafiei, the overall judgment on the rights of Iran, China Publications Fekrsazan, 2013, p. 36.

explicitly, the spirit of the agreement means that the arbitrator or arbitrators' arbitration provisions of elected persons accepted their parties.

Section II: non-consensual arbitrator in determining

If the arbitrator or arbitrators, but the parties are committed to introducing arbitrator was appointed to resolve a dispute has not specified or referred to one arbitrator and in case of a dispute, will not or can not explicitly agree on the arbitrator, it is possible that the audience declaration, in each case, arbitrator or arbitrator to determine the third presented by the same arbitrator agreed. Usually such consent can not be obtained. In this case, the beneficiaries could lapse of ten days from the date of notification of the declaration, as the case for the other side specific arbitrator, arbitrator, or arbitrator third common to the court. Third paragraph: lack of mutually agreed arbitrator in determining the successor of the deceased, incapacitated or resigned

If the parties commit to arbitration specific person or persons and of deceased, incapacitated or resigned have been destroyed and arbitration proceedings in the competent court. Unless the other person agree to arbitration. In accordance with Article 460 else about the (arbitration certain person), died, stone, or resignation of arbitrator, and therefore should not cause deterioration arbitration arbitrator (arbitrators) are arbitrator other than the deceased, incapacitated or resigned determination. (Article 459 AH.)[†]

Fourth paragraph: replace neutral arbitrator

If the matter is referred by the court to arbitration, if one of the arbitrators resigns or does not attend two consecutive sessions of arbitration or refrain from voting on the vote difference between the two other arbitrator is made, the court Instead arbitrator shall, within ten days, arbitrator chosen by lot to the other, except that before the election, due to the parties, arbitrator will be introduced. Article 474 AH.[‡]

Second speech: specific rules

In some cases it is seen that the legislator designated arbitrator, to decide strategy has to say about it predicts laws like arbitration in family disputes (divorce cases), the establishment of the Stock Exchange act, arbitration in maritime law, arbitration in intellectual property rights, article 20 pre-sale building act 2010, article 20 of the third economic, social and cultural Islamic republic act 2000, article 23 of the petroleum act 1974, article 14 of the bill related to exploration focus and throughout the country and offshore oil extraction act 1957, futures, general conditions of the treaty, article 4 of the law on consumer protection vehicle act 2007, Article 17 of the Regulations determine the price of the sale, lease and transfer of buildings and land conditions in excess of the ministry of education requires schools to the founders of the NGO Act 2010, article 4 of the Law on consumer protection vehicle act, 2007, clause 2 of Article 3 of the bill approved by the civil court

23/09/1978, note paragraph C of article 5 of the biosafety Islamic Republic of Iran 2009, Article 5 of the development of new financial instruments and institutions to facilitate the implementation of the general policies of Principle 2009 constitution, article 36 of the securities market act adopted in 2005, referring the matter to arbitration in cases of divorce (certificate of non-adaptation), which for example in maritime law, in some cases referred to arbitration to determine which one of them for the time specified in the lease agreement (contract period) T/C is the principal provisions of the lease agreement for the time specified in paragraph 14 that the matter has been referred to arbitration. This article provides that: "any dispute arising from this contract to arbitration in London or elsewhere in the referred agreement consists of two people, one of the arbitrators and the other owners of the tenants are determined. If the arbitrators can decide a determination by the arbitrator to decide, the decision of the arbitrator or arbitrators is final and binding for the parties. It may be noted in the lease contract for a specified period if the defendant does not nominate its arbitrator mean absolute deviation regardless of the case considered. If a court finds that given the circumstances of the case in the absence of direction caused renewed involvement arbitration has the option to extend that period."[§]

The second topic: the reference contract

Basically, the dispute to arbitration should be by mutual consent. This means that the parties to the arbitration agreement, whether in the form of stipulation Main (Bet arbitration) or in the form of a separate agreement is signed have agreed that the dispute be resolved through arbitration. The principle of arbitration, and arbitration is voluntary and can not be started without the agreement of the parties. The parties can agree, the dispute whether your current or future dispute in court or not present, or if at any stage plan that refer to arbitration. As of right to arbitration after the conclusion of the agreement, even after the initiation of arbitration proceedings with the arbitration agreement, contract and ignore the court rather than arbitration body to consider the settlement.

The first speech: Litigants

The principle of autonomy of the parties will play a major role in the installation and determine its arbitrator and many arbitration rules and regulations generally recognized to have the freedom. This action directly by inserting agreed in the arbitration agreement or condition occurs. If the parties are committed to introducing the arbitrators were not specified, but the arbitrators and at the time of the dispute, either Party will not or can introduce its own arbitrator and a third arbitrator to determine the compromise. The other party may appoint its own arbitrator and the official declaration to the contrary presented by the arbitrator and the arbitrator requesting party's determination to introduce and apply the compromise. In this case, it is likely that the other side also, within ten days from the date of notification of the declaration, under Article 459 introduced its own arbitrator and a third arbitrator to determine the proposed agreement.^{**}

[†] The resignation of the judge after he resigned decays in violation of it by the judgment would not return. The advice of the legal department, set advisory opinion, No. 376, dated 09.04.1977. The resignation of the judge after he resigned decays in violation of it by the judgment would not return. The advice of the legal department, set advisory opinion, No. 376, dated 09.04.1977.

[‡] Abdollah Shams, civil procedure, vol. 3, No 23, published Edrak, 2013, p. 530.

[§] Ali Rafiei, earlier, p. 96.

^{**} Abdollah Shams, earlier, p 525.

Second speech: the installer

Sometimes, the parties agree that the difference between them by arbitration, the third party chooses, be resolved. Legislative procedures and specific method for determining by a third-party arbitrator did not anticipate, so it is evident that the parties in any way they can identify the third party to request that the arbitrator, with their news. The partial ban on arbitration is people who can not be elected without compromise of the parties to arbitration.^{††} Third party may be legal or natural person.^{‡‡}

The question that arises is whether a third party should, as a court arbitrator or arbitrators at least double the number who are eligible for arbitration is required, shall be drawn? The answer is, the provisions of Article 467 AH. It has predicted that the only observer to the court and to preserve their dignity and reputation of the judiciary and respect for the judge and the third party is not obliged to comply with it. Third-party arbitrator chosen by mutual consent, the officer may refrain from determining arbitrator or arbitrator to determine the impossible of him. Like the third party referred to a real person, dies or becomes incapacitated, etc. or if the legal person is dissolved, in this case, each party may determine the person as arbitrator by return to the opposite side with and ask him his opinion about a single arbitrator within ten days after the date of notification of the declaration with. If the deadline is not action can be used to determine the interest arbitrator, the court (Article 460 AH.).

Chapter II: Conditions Appointed arbitrator

This chapter reviews and analyzes to determine the terms of reference and conditions arbitrator arbitrator within two topics will be mentioned.

First topic: the terms of reference determined by arbitrator

As previously mentioned primarily are the parties can choose arbitrators, at the same time the parties Can choose to third party arbitrator, and sometimes directly to the court arbitrator will rise. Ali litigants, court officials do not have absolute freedom installer that anyone who tend to opt for arbitration, as the parties can select a particular arbitrator or court official installer can not a fortiori arbitrator for resolution choose dispute.

The first speech: Customer litigants

This article will answer that question given that the parties to an arbitration agreement, what conditions must be in accordance with the substantive laws of valid agreements. Arbitration to resolve a dispute and conflict is meaningless without a minimum two-person. So he must have two sides. Another question that arises is whether one can vicariously originally signed arbitration agreement or arbitration refers the dispute to the arbitrator or the determination? Now, if he wants to claim their rights would seem to be the case to arbitration client capacity refer?

In response to these questions it can be stated that there is no restriction on the current law and thus should be permitted. In addition, as one can vicariously dispute originally brought the dispute to arbitration shall be the same as a referral. There are two static, meaning it is considered legal. In other words, parties to the dispute shall

be independent legal entity. However, it should be noted that the assumptions discussed issues related to the legal validity is questionable.^{§§}

According to the theory, the parties to arbitration must be both private individuals. The decree of 457 BC and article 139 prevents that the dispute be referred to arbitration is public property. This ownership is in the hands of the government and state institutions and therefore doubts that the prohibition in law, based on the principle that only private persons have the right to refer to arbitration and states can not refer to the arbitration. However, governments can also refer to arbitration and the existing prohibition only refers to the property of the state and this shows that failure to refer to arbitration, on some property of the arbitration related to the government of difference parties. We spend the laws of the State party to the dispute (including corporate, agency, institution, etc.) is not considered in itself to invalidate votes arbitrator.^{***}

Arbitration the parties must have the capacity action plan. According to Article 454: "All persons have the capacity to institute legal proceedings could compromise their dispute or conflict and in court or not and if the project is in the stage of maturity, the arbitration refers one or more persons."^{†††}

Capacity for the lawsuit is that the capacity to seize the right or is required to implement the right. So if a person does not have the capacity to capture the financial capacity and competence referring the matter to arbitration lawsuit regarding the descendants of it will be yours.^{†††} Qualification referring the matter to arbitration in legal entities increased importance. Thus, the legal person must have such qualifications.^{§§§} Arbitration the parties must, in some cases, in addition to capacity, they have the authority and direction. The ability of the legal and financial rights of any other person in possession of the said property. It should be noted, even if the power of attorney is stated that the attorney has all the powers, some of these options must be specified. These are referring to as the arbitrator (paragraph 5 of Article 35). Also raised the issue of legal persons. As principal or engage competent persons to sign the arbitration agreement must be have the necessary authority.^{****} In addition to the capacity of the parties to arbitration proceedings shall have the right plan^{††††} have also. The action plan is the right of recourse to justice so that these authorities have a duty to be addressed. The existence of this right, subordinate to meet certain requirements such as having an interest in the subject of dispute. Right plan basically fights with the right to withdraw from it as well.^{††††}

Second speech: with the installer

The conditions of the installer to install arbitrator consensual code of civil procedure are silent and only in paragraph 4 of article 11 of the Law arbitration International trade conditions that the installer must all parties to the agreement to determine

§§ Abbas Karimi and Hamidreza Paartov, Ch 3, Press Dadgostar 2014, p. 68.

*** Ibid. P. 70.

††† Ibid. P. 72.

†††† Abdollah Shams, civil procedure, vol. 1, publications Derak, 2007, p. 307.

§§§ Abbas Karimi and Hamidreza Partov, earlier, p. 73.

**** Ibid. P. 74.

††††† Right of action Laction de droit dagir

††††† Ibid. P. 74.

†† Farzaneh Sarir, regional issues topic of Civil Procedure, published Majd, 2007, p. 292.

‡‡ Abdollah Shams, earlier, p 526.

arbitrator provided they comply with the independence and impartiality arbitrator to be taken into account. In any case the head arbitrator you must select a national of a third country and arbitrator Abstentions shall not be appointed from among the nationals of the other party.

The second topic: the conditions of arbitrator

Arbitrator key role in the arbitration. The arbitrator should stand on the position and status of their good character and the fact that he was attached to the sides or separate installer, and regardless of any expectation of a he is involved. More than anything anybody's arbitration authority that particular character. Also, one must be an expert on the subject of arbitration proceedings. One of the most important issues in choosing the arbitrator, the arbitrator professional experience. Each fights with various issues in terms of expertise or the full knowledge and related experience is required.

Arbitrator is not appointed for a specific condition in tune the law in a way that apparently only counted obstacles. However, as arbitrator, by accepting the arbitration duty. And at the same time issued a verdict in the enjoyment of rights and duties of parties to the arbitration case shall have competence.^{§§§§}

The first speech: Qualification

In addition to the arbitrator or arbitrators capacity advocated least certain standards of impartiality and independence, to fight for a fair hearing have, in other words arbitrators shall comply with the principles of justice. Principles such as impartiality, the principle of independence of the arbitrator, the opportunity to defend and so on. The issue of impartiality and independence of arbitrator of the most important issues addressed in the arbitration, including the most pivotal lever is to ensure fair proceedings. Dual attributes of neutrality and independence of the arbitrator to the extent that the parties have said that even arbitrators selected on the basis of trust and understanding of each of the parties to the elected and appointed, "agent" or "attorney" is not his. But are required to address the issue during its suppliers operate completely independent of the appointed. Arbitrator shall be impartial and independent third through first.^{*****} In to this task not mention that perhaps the reason is evident. "Independence" means that the arbitrator should not have any relationship or interest with the parties. Arbitration acted as consultant or lawyer or one of the parties is not independent. That is why in paragraph 4 of Article 469 of attorney or manager of one of the parties who can not be appointed without the consent of the parties to the arbitration.^{†††††}

But neutrality has different aspects. Including the arbitrator must give both sides ample opportunity to make claims and

counter it. In fact, the principle of neutrality requires that if a party was given the opportunity to claim another opportunity to counter it. Impartiality of the arbitrator to the parties or dispute related to intellectual tendencies. The impartiality of the arbitrator in the arbitration interference frame of mind to be spoken.^{†††††} In distinguishing said that the independence and impartiality of previous or current relationship is that independence is the ability to approve or reject, but neutrality is a state of mind. So that independence is an objective standard as to the relationship between the arbitrator and the parties concerned, neutrality, while the measure of a person who is dealing with the mental attitude of a person or a situation in which only the behavior of the arbitrator will be visible. Some also argue that when the "independence" of talking to assess the possibility of "bias" is. Independence and impartiality are two ways to look at a concept one. For this reason, it is no wonder that in similar situations, the outcome of the objection to jurisdiction based on the same objective.^{§§§§§} The condition usually international instruments, arbitration, and regulatory organizations national legislation is anticipated.

The conditions in Article 469 of civil procedure regarding domestic arbitration for arbitrators expressed can be justified in order to preserve the independence and impartiality of arbitrators in this case can be used criteria in international arbitration. These are: the beneficiary is in dispute; causal relationship between the person and one of the parties or any relative, a guardian, guardian, attorney or agent of one of the parties or of one of the parties steward it is the person himself or spouse's heirs is one of the parties, between the person and one of the parties or between person, there is a criminal case or is underway.^{*****}

It should be noted that the arbitrator should dispute in which expert and powerful. Sometimes the parties to arbitration agreements referred arbitrator expertise and the ability to precisely describe what characteristics should have the arbitrator, but often there is no arbitrator completed the stipulated agreement, but in this case, the arbitrator must accept arbitration when the have the expertise and ability to resolve the dispute. As reasonably constructive condition that the arbitrator parties alleged that the head and the lead time is it!^{†††††††}

Second speech: negative conditions

Arbitrator addition to the conditions established, should also have other properties, it can be said that the negative conditions and includes the following:

In Iranian law, arbitration foreign nationals rule is not prohibited. However, pursuant to article 456 of the transactions and contracts located between Iranian and foreign nationals, until the dispute has been caused by Iran can not be committed one way or another. In case of dispute

^{†††††} Ibid, p 176.

^{§§§§§} Majid Ghamami and Hassan Mohseni, the principles of the diplomatic guaranteed a performance at the hearing and the principles and the characteristics of the civil magistrate, and of political, Tehran University Faculty of Law, No. 74 2009.

^{*****} Abdolhossein Shiravi, international commercial arbitration, no 1, Publications Office, 2012, pp. 168.

^{†††††††} Mohsen Mohebbi and Mohamamd Kakavand, a collection of essays celebrating the tenth anniversary of the Iran Chamber Arbitration Centre, publications Shahre Danesh, 1960, p. 213.

^{§§§§} Ibid. P. 95.

^{*****} Gudarz Eftekhari Jahromi, developments and achievements in the field of institutional arbitration rules of international arbitration. Journal of Law, No. 27 and 28.

^{†††††} Abbas Karimi and Hamidreza Partov, earlier, p 174.

it arbitrator or arbitrators or committees that they have the same nationality which refer to the transaction. Any transaction or contract which opposes legal restrictions on the opposition's part would be null and void. The prohibition in paragraph 1 of Article 11 of the international trade proceedings. With regard to the substance of disputes between Iranian and foreign nationals arbitrator Foreign, even the nationality of the country where the contract is dependent upon the occurrence of difference and conflict, is allowed. Bound to choose arbitrator Foreign, under the agreement that was signed before the outbreak of conflict and strife, if arbitrator Foreign nationals are not the same country that is party to the contract function is also allowed if the Iranian side in the dispute before the transaction or contractual obligation to arbitration The other is a foreign citizen, only in this part of the transaction or contract is null and void.††††† Other negative situations can be no minister or MP arbitrator Noted. Article first legal bill called the "Non-intervention" approved 1958 Prime Minister, vice-president, ministers, members of parliament and of the transactions or arbitration The claims by the government or the Diet (Parliament) or a municipal or related devices, etc., is prohibited, whether or not claims made under the authorities referred to the persons specified in the law to absolutely arbitration Not prohibited, but in case of arbitration Prohibited the parties, the government, municipalities and others.§§§§§ Beneficiary is not arbitrator in case the other terms of negative conditions. Article 469 people counting and identifying them by the court, without compromise prohibits the parties. They've noted in the discussion of relative qualifications. According to Article 469 of the said persons ban arbitration Is relative, meaning that not only arbitration That court intervention in selection arbitrator It may not be as arbitrator Be selected, but may, if the parties compromise by the court arbitration Elected. Therefore, a person who claims to be the beneficiary can not be considered arbitrator is selected. (Paragraph 2 of Article 469)*****

Chapter Three: Determine the effects of arbitrator

After the arbitration of material and legal scholar and arbitrator or arbitrators chosen works would be consensual. The last chapter is presented in three parts. In the first section arbitrator to determine the effects of the court in the second chapter of the parties and the arbitrator to determine the effects of the third part of the arbitrator or arbitrators' arbitration to determine the effects will be studied.

The first issue works to the arbitrator to determine the judicial authority

Whatever the independence of arbitrator and arbitration and the emerging power it is alleged, it can not be denied that the arbitrator vote only executive power, which relies on the power of government. In fact, the executive gives the court the power to vote arbitrator. The lack of government assistance means aborting an attempt to resolve a dispute that has been done through the use of private means. However it should be noted that the general

tendency tends to reduce the role of government. In any event, the purpose of judicial proceedings, the nature of the differences between the parties and the court's actions in resolving the conflict does. However, despite agreement on arbitration, state courts and the court disqualified and arbitration proceedings will be the only reference, but it seems that this principle should be noted in the legal literature and the jurisprudence have been exceptions. In fact, there are instances when the courts to monitor and support even after the start of the arbitration as well as the right to intervene in some of the finds.†††††

The first speech: stripping the Courts of Justice

Disqualification means the Court of Justice that the principle of general competence of the courts of justice to deal with all disputes with persons in accordance with Articles 454 and 455 The parties can submit claims to arbitration entities that trust them and this means that the courts of justice, except with the consent hostiles itself the right to address the differences are not, in this regard, it is worth noting not only individuals can refer to arbitration proceedings but of the courts disqualify a legislator cases in courts of justice to deal with the claims of the arbitrator or arbitrators ban and handle it the authority entrusted to them was mentioned that last season. The purpose of this section to comment on the disqualification of the courts of justice in cases of general and special cases will be discussed. In general Claims contract dispute arbitration parties, including the general jurisdiction of the Courts of Justice and the jurisdiction of arbitrators will be removed. The Court of Justice jurisdiction over the arbitration competence is essential and there is no possibility of deviating from it even if there is no objection to the claim, the court is obliged to issue an order to qualify. Thus, the arbitration agreement is that the government's jurisdiction to hear the dispute excluded. Excludes the jurisdiction of the court means absolute non-interference of courts in arbitration proceedings is not. Arbitration court can not survive without some degree of intervention. But, we should be delimited boundaries and otherwise may be a means to avoid referring the matter to arbitration become a target. For example in bankruptcy proceedings pursuant to paragraph 1 of Article 496 of the dispute be referred to arbitration is not. Despite the silence of the law looks the other related claims can also be referred to arbitration. For example derogation contract dispute leniency, the leniency contract and disputes arising from it can not be referred to arbitration. The reason for this is that the effects of these actions, in addition to the parties referred to other people.†††††

A special case is that the competent authority proceedings to resolve the dispute and the parties are obliged to arbitration their dispute through arbitration or arbitration settles overnight. In such cases the court will have jurisdiction at first and before the arbitrator intervention. It seems the government's forecast for this type of arbitration is the judicial policy. But should also be considered to deliver this

††††† Abdollah Shams, earlier, p 519.

§§§§§ Ibid, p 520.

***** Ali Rafiei, earlier, p 45.

††††††† Mahmud Bagheri, arbitration of disputes arising from economic rights: the failure of recourse to arbitration in contract disputes, competition law and stock market law, legal research, Faculty of Law and Political Science magazine martyr Beheshti University, No. 48, 2008, p. 277.

††††††† Abbas Karimi and Hamidreza Partov, earlier, p. 120.

type of arbitration. It is possible that the institution of arbitration instead of a flexible mechanism for dispute settlement between the two sides considered the means to implement the policy guidance that third parties and the entire community affected by the comes.^{§§§§§§} Anyway, in some of the cases mentioned in the previous chapter as our own rules.

Second speech: monitoring proceedings, reliability and performance for arbitration

Means issues that arise during the arbitration. Such as battery directions arbitrator, how to choose the arbitrator, conditions arbitrator, non-compliance with the principles of justice and the cases can have led to the annulment of the decision arbitrator. Invalidation for failure to comply with regulations such as the arbitrator may issue a deadline for outside arbitration or other items that come in Article 489. Agreement on referring the matter to arbitration if the person is determined to be invalid following a vote arbitrator, will be addressing the competent court if the agreement is for absolute cancellation of the vote after arbitrator, subject to the the underlying arbitrator and maturity unless, in either case, the parties agreed to take another. The question to be asked is whether the judgment for the arbitrator, it can ask the court to enforce the decision? This may prevent the practical benefits of action condemned in the request for the annulment of arbitrator (particularly wanted out of time). We observed the law in this respect can not be seen, in our view, to accept such an argument is not hindered, due to the positive impact of the discontinuation of proceedings should be allowed to permit this. Court would be the case should the validity of the arbitrator's decision unless directly or with the help of the condemned (read) discovered evidence of the invalidity of the vote.^{*****}

Q. vote on the implementation of arbitration Article 488. Kr provides: "Whenever condemned to twenty days after the notification does not apply for arbitration, court of arbitration or court proceedings in the jurisdiction in principle shall at the request of the beneficiary's claim for the arbitrator to issue an executive leaves. Enforcement is of law."

The second topic: the works arbitrator appointed to the parties

Arbitration contract like any other contract concluded with the consequences. This is due to the nature of contracts and transactions following essay arbitrator to determine the effects of the mentioned parties.

The first speech: Non refer the parties to Justice

Arbitration contract limiting the general jurisdiction court judgment ruling Justice and entrust the fate of the dispute is private. By contracting parties to accept arbitration as a dispute out of court by persons other than the judges of Justice and formal and resolved. After the conclusion of the arbitration agreement with regard to the necessary contracts in force and the provisions of the agreement between them is inviolable and must be respected and it is clear that however they will not be able to go to court and the court of

appeal public The arbitrator or arbitrators selected to give the subject of controversy and that will have jurisdiction over the arbitration agreement concluded by mutual consent, except in the case of annulment or termination of the legal ways in which case the jurisdiction of the court's again. If one of the parties in spite of the constraints referred to general courts and the petition presented in this case, the task is? Upon objection against the court because of a contract arbitration, the issue of its jurisdiction and will refrain from addressing the issue. According to Clause 2, Article 249 also 1999 that there should be parties to the arbitration on the dispute outside the jurisdiction of the courts of justice is essential, even in the absence of objections and protests from the other side, The Court must consider itself to have no jurisdiction to jurisdiction and the arbitrators' issue.

Two words: duty to take reasonable and remuneration arbitrator

Arbitration the arbitrator for the parties to make a commitment, and the commitment of the parties to the dispute arbitrator's commitment to results.^{††††††††} Mutually acceptable arbitrator or arbitrators shall receive their choice (Article 465, 468 and 473 connotation materials). In fact, with the will to accept the arbitration is acceptable arbitrator.^{††††††††}

Obtaining acceptable arbitrators is worth several works start for arbitration of them. According to Article 465: "In each case, the arbitrator or arbitrators, chosen by a party or parties, the arbitrators shall be reasonably obtained. The beginning of the day when the arbitrators accept arbitration for arbitration and dispute arbitration conditions and characteristics of the parties and the arbitrators are communicated to all of them. "Because of these, in spite of the silence of the law, the provisions of articles 459, and 460, 473 subject to obtaining acceptable arbitrators are selected. The task also arbitrators to consider and comment on the interest will be accepted.^{§§§§§§§§}

If the arbitrators may reasonably should know that obtaining agreement on referring the matter to arbitration after the dispute occurrence is carried out (contract arbitration). Agreed to refer the matter to arbitration may be appointed arbitrators have not yet received their order to be acceptable. Arbitrator, is entitled to receive fees. If the arbitrator and the parties have signed an agreement regarding the amount of fees according to the contract (Article 500) Otherwise, the fee is the arbitrator in accordance with regulations.

Remuneration in accordance with Article 498 arbitrators to the parties, unless the arbitration agreement or otherwise under a separate agreement and in accordance with Article 497 agreed. If the number of arbitrator, remuneration, split equally between them. (Article 499.)

In principle and as a rule, the arbitrators' fees shall be borne by the parties unless the arbitration agreement otherwise agreed to it (Article 497.) As for the amount of the

†††††††† The necessary contracts with the parties and the arbitration agreement is a contract, so the referee can not be arbitrary and at the discretion of the resignation itself, without the parties to accept his resignation to the validity and due to the sensitivity of the parties to the dispute in the choice of referee The referee's obligation, the obligation to know the result.

§§§§§§§§ Abbas Karimi and Hamidreza Partov, p. 87.

§§§§§§§§ Ibid. P. 88.

§§§§§§§§ Ibid. P. 127.

***** Ibid. P. 146 and 147.

fee arbitration the parties may agree to certain previously negotiated and the figure in this case under Article 500. As it will work, but if not, it is silent about the subject (Article 498.) The arbitration fees in accordance with the regulations every three years by the Minister of Justice prepared and approved by the President the Judiciary, the operation.

However, in some specific arbitration fee payment arbitrators specifically described for example in charge of carrying out the arbitration regulations adopted by the supreme council of engineering in 2006 the Council of ministers, the Supreme Council of engineering obligation to pay arbitration (Article 53 conditions general convention) is primarily responsible for. According to Article 3 of these regulations, "the responsibility for the arbitration fees. If you want to win is the result of arbitration, arbitration costs in anticipation of receiving the ruling read. "Of course, at the beginning of the arbitration arbitration costs of calls received only half of the remaining cost of arbitration after the judgment and before delivery are received.

The third topic: the works relative to the arbitrator or arbitrators appointed arbitrator

Locate and select the arbitrator or arbitrators also consequences for the arbitrator brings more that goes into it.

The first speech: what to accept or reject arbitration

Arbitrators are not bound to accept arbitration as opposed to referring the matter to the Court under Article 261 expert expert is obliged to accept, arbitrators could reject arbitration. But Article 473 is adapted as reasonable if they travel without reasonable excuse, such as illness and so is not present in the arbitration meetings or resign or refuse to vote the addition reparations to 5 years will be deprived of the right to arbitration (Article 473).

Second speech: responsibility of arbitrator

The judge arbitrator, the parties to the contract to his judicial duties entrusted to them. Your mission as arbitrator arbitration, judicial contractual dual nature, so that the task of arbitrator, but the source of the granting of judicial duty, contract. So his responsibility must be studied within the framework of this nature. On the other hand, is primarily the responsibility of the contractor arbitrator? Overall responsibility for the arbitrator will be divided into different types of civil liability and law enforcement will be discussed here.

A comparative study of different legal systems show the same response to the problem of countries civil liability or civil prosecution arbitrator not provides immunity. More laws are silent about this issue to arbitration. UNCITRAL arbitration model law prepared by the arbitrator did not anticipate is also the issue of civic responsibility. Silence rules concerning the responsibility of one side of the dual nature of the task of arbitrator (legal and contractual) returns and on the other hand, the complexity of the issue is caused by However, a comparative study shows that a different attitude towards this issue in two major legal systems of the world there, so that the common law system should be on the principle of immunity from prosecution spoke arbitrator,

while in Most civil law countries where the system of statutory layer or inspired, it should be the responsibility of the arbitrator named.

"In Iranian law, Article 171 expressly even judges are not immune from civil liability. Arbitrators also because there is no of their immunity, based on the general rule set out in Article 1 of the law of civil liability, if any person without a license Legal deliberately or as a result of negligence causing harm to life or health or property ... shall be liable to compensate the damages caused by their actions are another. At the same time, on the one hand, under Article 501. "If as a result of misrepresentation, fraud or negligence of duty arbitrators financial losses realized on one side or the parties, arbitrators of law will be liable to compensate the damages."

At the same time responsibility for the arbitrator's law can be a controversial topic because of the law of a particular organ or organization, such as court Judges, lawyers, notaries responsible for examining errors and violations arbitrator and disciplinary penalties against him not. Occupation is primarily the task of arbitrator and lawyers have left, although today, especially at the international level, professional arbitrators are observed. The study shows that different legal systems in no system for accepting arbitration task do not require a special permit from the authority or government agency, or not free. Even in some of the laws relating to arbitration, as arbitration law Marrakech registered arbitrator with the prosecutor whereabouts necessary, any law enforcement agency to investigate errors and penalties against unforeseen arbitrator. According to this article "if the arbitrator after accepting the arbitration without good reason, such as vacation or illness, and the like are not present in the arbitration meetings or resign or refuse to vote, in addition to compensation, up to 5 years of choice the arbitration will be denied. " The exclusion of arbitration offending arbitrator for 5 years, a disciplinary sanction is that the beneficiary can apply to the court of competent jurisdiction such disciplinary penalty against the offending arbitrator request.

You can also dismiss the arbitrator said the violations committed during arbitration, essentially a disciplinary sanction. The theory of institutional arbitration (L'arbitrageinstitutionnel) primarily responsible for the center or organization of such arbitration guaranteed, their more shows. However, committing some errors or delays in the performance of duties or leave it to the arbitrator would be responsible for his security, such as dismissal or to accept arbitration in the legal period. According to the opinion, for example, failure to comply with the obligation of confidentiality when dealing with arbitration and secrets could be considered cause for dismissal of the arbitrator. In practice, some of the centers of international arbitration sanction of dismissal to arbitration that the obligation to respect the confidentiality of the arbitration has not been imposed.

Conclusion

Christine Mnionjr, Mohammad Javad Mirfakhraei, civil liability of judges, comparative study with reform proposals, legal magazine, Office of International Legal Services of the Islamic Republic of Iran, Spring, Winter 1991, No. 14 and 15, page 219 onwards

Some lawyers have taken the responsibility of the police overnight.

Bahram Taghipour, earlier, p 5.

Ali Rafiei, earlier, p. 112.

Bahram Taghipour, responsibilities after the rights of Iran and some countries, Journal of Comparative Legal Studies, Issue 1, Volume Five, spring and summer 2014, p. 64.

One of the ways to speed up the settlement of legal disputes, arbitration is to create public order, rights and legal issues to reduce the burden will follow. In fact, arbitration is a private hearing, the arbitrators must only comply with the rules on arbitration. "The discussion topics arbitrator of the Republic is so far little attention has been researchers. Choice of arbitration law in three ways, by the parties before or after the arbitrator of a dispute or by a third party or by the court.

Sometimes the parties do not dispute determined by arbitration as a method of conflict resolution but the designated arbitrator shapes and court intervention is necessary to fix it. The involvement of the court in determining the arbitrator in the Civil Procedure Code 79 and certain rules such as the exchange act, oil and general conditions of contract law and will emerge.

Realization of consensual arbitration and the arbitrator works towards the court, the parties, and the arbitrator and the arbitrator will have responsibility therefore. Arbitrator to determine the jurisdiction of the Courts of Justice disqualification, monitoring compliance with deadlines for the issuance and control of the flow rate is arbitration.

By contracting parties to accept arbitration as their dispute out of court of Justice and by persons other than the official judges investigating and resolving the arbitrator or arbitrators and the other parties to accept their choice of voting. If the arbitrator and the parties have signed an agreement regarding the amount of fees according to the contract (Article 500) Otherwise, the fee is based on the arbitrator rules in arbitration case and the arbitration Chamber of Commerce and Management Planning will be different that all of the work is to determine the arbitrator to the parties. Arbitrator in case of an obligation to accept arbitration proceedings and the verdict is that the arbitrator to determine the effects of the arbitrator is.

Basically arbitrator contractual liability, general liability arbitrator to three categories of law, civil and criminal divided.

Finally, with respect to the above guidelines and suggestions for improving the judicial system to make maximum use of arbitration procedures to resolve disputes shall be expressed as follows:

The education and expertise arbitrator is not appointed as a special condition of the critical points is the Civil Procedure Act. Therefore, the law lacks the legal education and even non-academic education itself is permitted.

Acceptable arbitrator under Article 465 of the Act states: "In each case, the arbitrator or arbitrators, chosen by a party or parties, the choice of arbitrators shall obtain acceptable ..."

It is better that the substance be added to the following provision: "In all cases where the party, arbitrator dedicated to the court, he also studied have already adopted and presented to the court at the time of introduction, he also accepted the arbitrator dedicated introduces his own in the decree of incorporating The arbitrator would be impossible to determine. "

Arbitrator controls the security function is applied to the judges. This means that the judicial irregularities, is controlled by law and to prevent the possibility of recourse to protest and police and other disciplinary action is anticipated, while the arbitrator basically no way to deal

with illegal activities, thus You can fight plan losses against the offending arbitrator only effective sanction against him be considered. It seems to consider a regulatory body on the arbitrators and to avoid bias and explain the rules and regulations of civil and criminal justice and authority dedicated to this institution, from other things that need to be felt in the Civil Procedure Code and the organization of the arbitrators, including solutions that can predict the new law, the institution and international commercial arbitration reference is usually selected and organized permanent arbitration institutions such as the International Chamber of Commerce arbitration shall be transferred. Determining supervisory authority can also have a major role in the choice of arbitrator, with a good reputation and is essentially an arbitrator chosen by lottery, the odds favor the less sense.

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