

JURISDICTIONAL BASICS GOVERNING THE COMMERCIAL ARBITRATION IN IRAN

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Abstract

With the birth and growth of the arbitration phenomena in recent decades, establishment of Court of Arbitration in the form of International Commercial Arbitration Law, international treaties and domestic independent and particular laws by countries, the increasing tendency of traders and businesses to resolve problems through this body gradually leads to excellence of the position of this body and typically coercion and obligation of officials and supporters of this entity to modify or supplement the former rules or ratify new and progressive legislation with broader discretionary limits for arbitrators, so that the establishment and ratification of regulations in form of conventions with membership of many countries has been the result of meeting will of politicians with fortune and tendency of businessmen, merchants and etc. If there is alleged invalidity of the contract, Limits and scope of arbitration referee. This issue calls "competence-competence" principle and we seek to investigate whether the possibility of accepting the competence to judge. It means making decision about competence of referee. Competency of arbitration board is inherent and it is created by law and it is separate from competency of public arbitration. Arbitration ritual theory is differences as a separate method of dispute resolution in international commercial transactions. However, Consistent with the dominance of the national authority on private equity, the entity is located at the foot of the rights of nature into the public law; although, private perspective is dominance.

Keywords: Arbitration, Independent Arbitration Clause, Civil Procedure

1. INTRODUCTION

International Commercial Arbitration tries to resolve international trade disputes (Regulation form) and The Arbitrator must decide according to the rules, principles, and practices of international law governing international trade (substantive provisions). Sixteen years of experience, in the field of participation contracts in Iran to attract foreign investment, and inserting an arbitration clause in most contracts, of course, it makes study and research in relation to international arbitration. In this article is mentioned to Arbitration, in some issues related to international commercial arbitration.

Obviously, in the current era requirement of arbitration court and the court to each other, or in other words, arbitration and judicial systems (specifically) is undeniable and inevitable, because on one hand, Arbitration Institute reduced the number of patrons to the Court, and with rapid and professional, yet affordable management has provided the greatest possible service to the judicial system, sometimes it resolves the unsettled international problems and conflicts, and often in addition to the satisfaction of both parties, at best, it may dismiss the cases and proceedings, on the other hand, the courts, according to the entity's lack of enforcement tools (Jaffarian, 1994), by identification and enforcement of ideas at the right time will change into an ultimate force of arbitration and

diminishes any concern caused by the present executive weaknesses. But regardless of the above, what causes concern is that in most legal systems, especially the traditional legal systems (such as Iran), the traditional thinking based on settlement of disputes in courts and its permanent observation as a principle, has provided the court intervention either with law ratification or at the time of law enforcement and interpreting it under various pretexts, although in some cases, the intervention of the courts either before establishment of arbitration court or during examination, especially after judgment and its enforcement is totally in compliance with arbitration law and it is required and necessary in terms of general governing most of legal system, but various reasons, including lack of proper configuration of developed countries' law, and weakness in codification, lack of proficiency and awareness of community members and sometimes judges with Arbitration Act and mentioned entities cause occasional intervention and without causing of the courts as a result of illegal and unjustified protest of parties. A comprehensive law is required to prevent or reduce the interference of courts in arbitration. The first international commercial arbitration law in Iran was adopted by the Legislative in 1997. Prior to the enactment of this Act, the international commercial arbitration was subject to the arbitration general rules reflected in the Civil Procedure Code. (Katozian, 1997) International Commercial Arbitration Law attempts to restrict the intervention of Iranian courts in arbitration

provisions and enhance the role of arbitration in international commercial disputes. To benefit from the advantages of this Act, parties to a contract should regulate their arbitration contract in accordance with this law. Moreover about the handling in Civil Procedure Code, there are cases which need to be investigated, however, these rules do not satisfy the arbitration, and its independence in the courts and it requires completed laws and proper explanation and interpretation of existing laws. (Skin, 2008) On the other hand, after the referee mastered the principles of arbitration, for each referee is very important to ensure that the role and the fact that his official position is clear and infallible. Therefore, before the judge; referee should be able to convince him that it is possible to perform this task both professionally and competency. Thus, the most important components of referee are competency for referee. Concentration on this issue can convenience referee for avoiding interferes in this issue. As an example, referee if has private relationship with one party, he could not interfere in the issue. In other issue, may referee whether or not the authority to perform the task and he should hesitate and contemplation as well as assess their overall status. This issue call competency of referee. One major innovation in international commercial arbitration law enacted in 1997 of Iran and accepts of this issue. Admission to the previous laws of British rule which was not recognized, but it is now recognized in Article 39 of the Arbitration Law of 1996. There are three theories about the meaning of the rule of jurisdiction of the competent. There is three perspectives about competency law. First, Judges have limited his comments about his decision-making power is expressed, without limiting the jurisdiction of the court too. In fact, the court's make decision under national law. Second, court of any involvement in the issues of competence will stay away until a decision. Second, court will stay away of any involvement in the issues of competence until make decision. In this regard, the judges will first talk about the competence. The third meaning of this rule, the court of jurisdiction jury will have no right to interfere. Furthermore, judges as the first letter give the last word to express. Therefore, it can be concluded that, judges first determine the parties and then make decision about making decision. Thus, this research tries to investigate whether referees are competence or not? In this article, at first, we study the principles governing the arbitration and the other part deals with the legal analysis of the position of judge in the Iranian legal system.

The paper is organized as follows: Principles governing the commercial arbitration in Iranian law are discussed in the next section and final Section is related to the Competency of arbitration board.

2. GOVERNING THE COMMERCIAL ARBITRATION IN IRANIAN LAW

2.1. Particular rules governing the arbitration agreement

There are two cases in this regard: first case is when the parties decide about the arbitration rules and

second is a condition that partier's main silent about the arbitration agreement.

2.2. The principle of will rule

One of the legal principles accepted by jurists is that the arbitration contract in principle is subject to the law selected by the parties. The principle of sovereignty of will on contracts that was first accepted in the civil laws of most countries has turned out as is one of the general principles of private international law and as a generally accepted rule in conflict resolution with the emergence of conflict theory. It is obvious that the arbitration rights that have its foundation in the will of the parties should be particularly respectful to this principle, so if the will of parties is expressed about the governing law, this shall be binding. Terms of the validity of the arbitration contract will be determined based on will governing rule and in other terms, parties elected law. This discussion is almost among axioms of law and no debate is required. (Amir Mazi, 2009)

2.3. Parties' silence

In question that in the event of parties' silences, what the governing law on arbitration contract validity is, and the answer is that there is a belief in international commercial arbitration procedure and it is the arbitrator freedom in choosing applicable law in arbitration contracts. In this regard, other theories like theory of international law govern on arbitration contract was raised that was seriously criticized and excluded. Regarding the governing law on the arbitration agreement, it should be noted that this is only introduced about the international trade relationship and in domestic trade relationship and other domestic legal relations, generalities and legal principles governing the arbitration agreement does necessarily have to be in the area of domestic law. (Bagheri, 2011) The nature of commercial arbitration agreements is like nature of the contract in domestic law, and only in the case of conditions, the validity of arbitration agreement is subject to the general conditions of validity of the contract like all contracts. Arbitration agreements must be adjusted the framework of a regulation that is valid enough for referring dispute to arbitration. Establishing and authenticating arbitration agreement is as substantive matter, and ultimately is subject to the principles governing contracts development and validation. Using as much of the arbitration institution in the country is fruitful due to its benefits expected for arbitration and ultimately decreases the working volume of the judicial system. Arbitration in situation (Hedayat Nia, 2008) in Iran has been accepted whether domestic call or internationally, though these regulations are not flawless, but overall appropriate ways are provided. Even though arbitration has similarities with concepts like reconciliation, mediation, judgment and expertise, but the differences between them should not neglected. First because arbitrator judgment is binding and their following agreement is not required, so it cannot be intermediary, secondly, as arbitrator has his authority from the parties, and he is not a public official and responsible, so his work is different from judgment in the Court of Justice and ultimately since his idea

is to dispute, so it is not expertise. It seems that the most important motivation to refer to arbitration in Iranian legislator opinion is speed in proceedings and mutual trust, as the generalities of the Civil Procedure Code indicates the speed of the proceedings. (Jalali, 2007) In the context of law governing the validity of the arbitration contract, arbitration was not debatable and approved before the adoption of the law of international commercial arbitration and various theories exist in this regard that from among these various theories and with arguments we concluded that in the stage of contract development, if the contract is set by the inhabitants of Iran, even there is legal vacuum, thus should consider the contract certain conventions with a careful examination, and determine the governing law and on the obligations caused by will rule principle contract about the external parties is accepted and in the event of silence, law considers the place of signing contract as impressive, but in the fact that at least one of the parties is Iranian, the acceptance of above principle is questioned and various theories have been presented that taken our opinion and with the arguments taken place, the principle of will rule in all forms will be accepted in obligations arising from a contract. (Safai, 2008) On the International Commercial Arbitration Act, on the law governing the validity of an arbitration agreement in Iranian law, a huge transformation has been done, yet new law came into existence with new proceedings. Ultimately, reviewing the new law we conclude that firstly parties are free in determining governing law with no ambiguity and in the event of parties' silence; arbitrator is free to determine the law, provided that the selected law is not in contrary to the law of Iran. In other words, the law arbitrator chooses should not be in contrary to Iranian law logic in international arbitration in terms of substantive. By accepting the theory and the independence of the arbitration condition, arbitration agreement is generally subject to Article 190 of the Civil Code and also other special circumstances such as the referee names in contracts which subject is arbitration in future dispute, we knew determining the subject of dispute and it's being written with justification made as mandatory. (Shiro, 2006) On the parties to the arbitration agreement we conclude that people just can originally sign the arbitration agreement, and their legal representatives are entitled to refer the dispute to the arbitration in case that such permit is established for them according to law. On the conditions of dispute referable to arbitration initially we came to the fact that there is no need for dispute subject to the arbitration to be contractual and some subjects regardless of being contractual or not, cannot be fundamentally referred to the arbitrator. For instance, claims about marriage, divorce, annulment of marriage and descent, bankruptcy claims and disputes with criminal aspects and some are referrals on a conditional basis, including claims relating to public property. In the field of international arbitration in Iran, determining the law governing the procedure in compliance with the imperative law of international commercial arbitration law is at the disposal of parties and in the case of parties' silence, the arbitrator somehow administrate arbitration appropriately that ultimately we determine that although Iran law appearance indicates absolute freedom of arbitrator,

but he is also bound to observe the imperative laws of international commercial arbitration rule such as the principle of arbitrator neutrality, the method of notification and right to defend.

3. JURISDICTIONAL BASICS

Reflecting the ambiguity in the text, judicial approaches to the standard of review required by Article 8(1) Model Law have varied, so that arbitral authority has been given greater deference in some Model Law jurisdictions as compared to others. Negative effect has been endorsed by courts in some Model Law jurisdictions,⁷⁸ and has received particular support in Canada, although practice between different jurisdictions within Canada itself is inconsistent.⁷⁹ Two Canadian cases illustrate how courts dealing with applications under Article 8(1) of the Model Law can prioritise the tribunal's competence. (Joneidi, 1999) In the first case, *Rio Algom Ltd v Sammi Steel Co Ltd*,⁸⁰ the Ontario Court of Justice confined the Court's review to determining the validity of the arbitration agreement in terms of the grounds in Article 8(1). Questions relating to construction of the agreement were held not to fall within these grounds, and were instead matters for the tribunal to determine in the first instance, subject to later recourse to the court. On the facts, the question whether disputes between the parties over a closing balance sheet were within the scope of the arbitration clause was therefore referred to arbitration. In reaching its decision, the Ontario Court was influenced by the Model Law's emphasis in favour of arbitration. (Razavi Toosi, 2011) There are also Model Law jurisdictions whose courts have approached Article 8(1) applications by undertaking a full and final review of arbitration agreements.⁸⁴ This has been the practice in New Zealand, where courts have not hesitated to finally determine questions relating to the validity and/or scope of arbitration clauses.⁸⁵ In several cases, the courts themselves have noted the length of time spent hearing argument and dealing with large amounts of material before them for the purpose of deciding whether to send the parties to arbitration.⁸⁶ The level of review issue was raised, briefly, in *The Property People Ltd v Housing New Zealand Ltd*.⁸⁷ The plaintiff initially sought an interim injunction to restrain the defendant from terminating the contract between them. The injunction was refused. The plaintiff then commenced proceedings in the High Court, pleading various causes of action against the defendant. Relying on the arbitration clause in the contract, the defendant sought a stay under Article 8(1). The two questions that arose for determination were (a) whether the stay application was filed within the time limit prescribed by Article 8(1), and (b) whether the disputes were within the scope of the arbitration clause. (Solh chi, 2010) The Court held that the application was submitted out of time and disposed of the application on this ground. In the course of its argument, counsel for the defendant referred the Court to *Gulf Canada*, including the passage quoted above in which the British Columbia Court of Appeal established the "arguable" standard for the purpose of deciding whether or not to grant a stay. Salmon J responded that the main issue was one of interpreting the time limit in Article 8(1), and that the role of the Court was to determine the meaning of the words used ("not later than when submitting

the party's first statement on the substance of the dispute"), so that on that issue, once the determination is made the issue will no longer be "arguable". (Yousef Zadeh, 2003) From this response, if the time limit had been met, it is unclear whether the Court would have decided to rule on the scope question, or whether it would have applied an "arguable" or prima facie review test. There is no mention of the tribunal's power to rule on scope questions in the judgment. Whether reasons in favour of a prima facie approach to stay applications are outweighed by the risk of duplication is not addressed in *The Property People*, and it has not been directly addressed in other New Zealand cases under Article 8(1) either. (Mohebi, 2010)

3.1. The Nature of Arbitral Authority

In commercial disputes, several terms get pressed into service almost interchangeably to address which (if any) aspects of the controversy should be decided by arbitrators rather than courts. The labels include 'jurisdiction', "authority", "power", "mission" and "arbitrarily". Each might be applied, for example, to describe the nature of disagreements over a parent company's duty to arbitrate pursuant to a clause signed by its subsidiary, or an arbitrator's power to decide tort claims and to award punitive damages. To reduce the risk of simply presuming one's own conclusions about what is or is not jurisdictional, it might be helpful to suggest three common categories of defects in arbitral authority related to: (i) the existence and validity of an arbitration agreement; (ii) the scope of authority (substantive and procedural); and (iii) public policy. There is no magic in this classification, which commends itself only as a starting point for analysis. The first two flaws relate to the contours of the parties' contract. The third has an effect regardless of what the contract might say.

3.2. The "competence-competence" principle

It is supported by the reparability principle, also found in Article 16(1), which treats an arbitration clause in an underlying contract as distinct from the contract, allowing the clause and therefore jurisdiction, to survive invalidity or termination of the contract. Although they serve different functions, these principles are together intended to give primary responsibility to the tribunal with respect to determining whether it has jurisdiction. (Abedi, 2006) Courts are not excluded however, and for tactical or genuine reasons parties often challenge the validity and scope of arbitration agreements in judicial proceedings. Intervention by the court on jurisdiction questions is necessary to protect the parties against participation in an arbitration which is founded upon a defective arbitration agreement. Nonetheless, the extent of the court's intervention can have important consequences on the efficiency of arbitration.

3.3. The "negative effect" of competence-competence

Who decides first question can be analyzed in terms of the so-called "negative effect" of competence-competence, which advances the third option above.

The positive effect of competence-competence refers to the tribunal's power to rule on its jurisdiction, which has already been described. The negative effect, more controversially, takes the competence-competence principle a step further than its positive effect by establishing a presumption of chronological priority for the tribunal with respect to resolving jurisdiction questions. It has a negative or restraining effect on the court, whose role is generally deferred to subsequent review of the tribunal's decision. When applied to stay applications, negative effect obliges the court to conduct a provisional and high level review of the arbitration agreement, and refer the parties to arbitration if satisfied of the agreement's prima facie effectiveness. Applying negative effect, in most cases, the tribunal will have the first opportunity to hear full substantive argument as to its jurisdiction. At first, negative effect might seem excessive, or too zealous, in its pro-arbitration inclination. However, the reasons for negative effect are largely driven by efficiency considerations, and the commercial imperative for an efficient dispute settlement mechanism is highly relevant to shaping arbitration law. Rules and procedures should minimize, as much as possible, the extent to which time and energy is consumed with jurisdiction questions. (Seifi, 2004) The leading proponent of negative effect, Emmanuel Gaillard, has focused on the prevention of obstruction as justification for embracing the concept. His argument recognizes that it is well known that litigating parties seek tactical advantages, and that challenging jurisdiction is an effective way to delay arbitration for tactical reasons. Once a dispute has arisen, a party who is bound by an arbitration agreement will often contest the tribunal's jurisdiction because it now finds arbitration inconvenient for some reason, or because it simply wants to interfere with the progress of the proceedings. If the party objecting to jurisdiction is able to fully argue the matter in court, and the court rules in favor of jurisdiction, the arbitration may well be delayed for months or even longer. The Court's Powers the "who decides" question asks whether a court or tribunal should decide if arbitral jurisdiction is established or not. Under the Act, if a court is seized of a dispute, a party may seek a stay of the litigation under Article 8(1) on the ground that the parties agreed to arbitrate, and the court must decide whether to send them to arbitration. A tribunal, for its part, may respond to a jurisdiction challenge in a preliminary ruling, or in its final award (Article 16(3)). Both preliminary rulings and awards are reviewable by the court. Since both the courts and tribunals have roles to play under the Act's regime, the short answer to the "who decides" question is both courts and tribunals, with the courts having the last word to satisfy the requirements of logic and justice. Beyond this remain important unresolved issues, such as who should decide first, and how much deference should be given by a court to a ruling on jurisdiction made by a tribunal. This article deals with these two specific issues in turn, focusing on the first in Part II, and on the second in Part III. There is now a strong policy internationally to encourage and facilitate arbitration as an autonomous dispute settlement mechanism. There is also a strong policy in favor of retaining the residual supportive role of the courts in the arbitration process. These policies can easily

come into conflict - an expansive judicial sphere of influence in arbitrations will typically have unhelpful practical consequences on the cost, duration and privacy of dispute resolution, and on party autonomy, while a confined one risks a loss of confidence in arbitration and the court system. Lord Mustill once described the relationship between national courts and arbitral tribunals as being mutually supportive, as giving rise to a "relay race" in which one passes the baton to the other according to the nature of the task. He also conceded however, that in practice, "The position is not so clear-cut."

3.4. Challenges to Arbitral Jurisdiction

A challenge to jurisdiction may arise over the validity of an arbitration agreement and attack the whole basis on which the tribunal purports to act. For example, a challenge may question the legality or proper execution of the agreement, or assert a waiver of the right to arbitrate or failure to observe requirements in the underlying contract with respect to assignment or time limits (Bordbar, 2005) Or, a challenge may only concern the tribunal's jurisdiction over certain subject matter, and question whether some of the claims before the tribunal are included within the scope of the arbitration agreement, or whether the tribunal has gone beyond the particular questions submitted to it for resolution. (Saffaei, 1998) At a much applied level, resolution of doubt over arbitral jurisdiction is important, because it determines whether or not the arbitration can go ahead. The legal question can be simply put, "is there an agreement to arbitrate this dispute", but answering the question in any given case may consume as much time and energy as resolution of the underlying dispute. An arbitration agreement usually takes the form of a clause in an underlying contract between the disputing parties, or less frequently, a separate submission entered into after a dispute has arisen. Limited forms of statutory arbitration aside (Habibi, 2011), without an arbitration agreement, there can be no valid arbitration; neither the parties nor the courts can be expected to defer to a tribunal in respect of matters that were never submitted to it. Conversely, a valid agreement establishes the exclusive jurisdictional basis for the tribunal to give its ruling in a legally.

3.5. Scope of Authority

By contrast, the arbitrator's power to address the scope of his or her authority might often be addressed in the initial arbitration clause itself. At the time of concluding their transaction, foresighted parties could give arbitrators explicit power to adjudicate, in a final way, challenges related to the range of matters covered by the arbitration clause. Frequently invoked questions of scope relate to the arbitral jurisdiction over tort claims and statutory causes of action. An arbitrator might be asked to decide questions that one side asserts were never submitted to arbitration. Or it might be asserted that certain remedies (such as attorneys' fees or punitive damages) fall outside the arbitrator's mission. Procedural powers constitute a particularly fertile ground for jurisdictional conflict, including the arbitrator's right to consolidate proceedings, to punish non-production of documents, or to award compound interest.

3.6. English Tribunal's Powers

Two principles provide a platform for the tribunal to deal with disputes over arbitral jurisdiction. The first is "competence-competence", which confers on the tribunal jurisdiction to rule on its jurisdiction when the validity or scope of the agreement to arbitrate is in doubt. The power is necessarily derived from the applicable national law, rather than the disputed arbitration agreement, as it provides a basis for the tribunal to rule the agreement is invalid without contradicting itself. Competence-competence is widely codified into national arbitration laws (Mafi, 2008) and institutional rules, although, as discussed below, the extent of its application under different laws varies. As a consequence of the tribunal having power to rule on its jurisdiction, neither the parties nor the tribunal is required to ask a court to resolve jurisdiction questions. The second principle is reparability, which treats the arbitration clause as an autonomous agreement that survives the invalidity or termination of the main underlying contract, and requires argument in jurisdiction challenges to be addressed to facts and law relevant only to the validity of the clause. The independent existence of the arbitration agreement maintains the tribunal's jurisdiction to render a valid award even if that award finds the underlying contract to be invalid for some reason. Reparability is also widely adopted, in some form, in national arbitration laws and institutional rules. It has its common law origins in *Hayman v Darwins Ltd*, in which Lord MacMillan accepted that repudiation of a contract would not affect the effectiveness of the arbitration clause contained within it. The prevailing view after *Hayman* was that reparability did not empower arbitrators to decide whether a contract was void, since nothing could come from nothing. However, such logic gave way to pragmatism in *Harbour Assurance Co (UK) Ltd v Kansa General International Insurance Co Ltd*, in which the English Court of Appeal held that reparability does enable a tribunal to decide whether a contract is void ab initio for reasons including initial illegality. The reparability principle is now codified in England of the Arbitration Act 1996, and was recently considered by the House of Lords in *Fiona Trust & Holding Corp v Privalov*. According to Lord Hoffmann, section "shows a recognition by Parliament that, ... businessmen frequently do want the question of whether their contract was valid, or came into existence, or has become ineffective, submitted to arbitration and that the law should not place conceptual obstacles in their way". It is unlikely that commercial expectations of arbitration have changed that much over recent decades, but the law now recognizes the need to give greater deference to those expectations, to further the prevailing policy objectives in favor of promoting arbitration. Thus litigation on jurisdictional grounds is discouraged, by the strong endorsement of reparability, to further those objectives. The culmination of *Harbour v Kansa* and *Fiona Trust* is that an arbitration clause can be void or voidable only on grounds that relate directly to the clause. There may be instances where the ground on which the contract is invalid also extends to directly impeach the arbitration clause, but these seem to be limited to grounds that deny

the contract's initial existence for total absence of any "meeting of the minds", such as forgery, or non est. factum. In the New Zealand Arbitration Act, the reparability principle appears in Article 16(1) of Schedule, to support the exercise of the tribunal's power to rule on its jurisdiction (also contained in Article 16(1)). As codified in the Act, the device is available to the tribunal and not the court. Despite this apparent limitation, the only sensible approach to reparability must be that it applies to the validity of an arbitration clause regardless whether a court or tribunal is asked to rule on jurisdiction. The location of the principle in Article 16 does however support the general contention developed below that the tribunal should ordinarily have primary responsibility to respond to jurisdiction challenge. (Mohebi, 2004)

4. CONCLUSIONS

In the field of domestic arbitration, free will of the parties is absolutely accepted and in the event of parties' silence, the arbitrator will not be subject to the governing principles. But since this generalization is in contrast with laws causing procedure (such as the arbitrator neutrality, and upholding the right of defense) would be helpful. Regarding how to determine the governing law on the nature of conflict, international procedure has a tendency to grant freedom to the parties to select and in the case of not determining explicitly and implicitly, the arbitrator has the freedom of choice, of course with compliance with JUS COGENS of countries that have an effective relationship in judgment, such as the country of enforcement of judgment. Regarding the international lawsuits that are mainly commercial, Iranian Arbitration Law has accepted the principle of party autonomy in the choice of governing law but in case of parties' silence (Despite opposite view), by virtue of existing laws, we determined that the arbitrator shall act in accordance with law that he recognizes proper in this regard by abiding Iranian rules of conflict. Observing the commercial custom regarding the subject, the arbitrator can comply with international procedures regarding the rule governing the conflict in terms of nature. Iranian rules of conflict resolution regarding the governing laws on the nature of the dispute, if the dispute is about contracts or about obligations arising from the contract, Law considers the place of signing the contract as ruling but in the case of contractual dispute relating to the creation of contracts and also non-contractual disputes there is no explicit law and in this regard, there is also disagreement among jurists, but studying all opinions, we conclude that conflict resolution principle relating to the same dispute should be found by exact determining the type of dispute and based on it, we refer to the referred Substantive Law.

Competency of arbitration board is inherent and it is created by law and it is separate from competency of public arbitration. Arbitration ritual theory is differences as a separate method of dispute resolution in international commercial transactions. However, Consistent with the dominance of the national authority on private equity, the entity is located at the foot of the rights of nature into the public law; although, private perspective is dominance. Along with national

judicial system should be recognized as independent identity arbitration and it used as strong tool in order to make private justice without any condition. Repair defects in the existing provisions in arbitration are one of important duty of policy making.

The approval authority of the arbitral tribunal to determine, the validity of the arbitration agreement is vital and it has terminated the claims of judges for accept or reject arbitration agreement.

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