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Research Paper

Review and legal analysis of arbitration in international trade law

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Abstract

With the development of international trade and the globalization of the economy, arbitration as a method for resolving international trade disputes has grown rapidly, so that today it is a common method in resolving international disputes. It is less common for an investment contract not to include investment, technology transfer, large factory construction, cross-selling, industrial and commercial cooperation, and the like. Arbitration is a private trial approved by law that allows one or more independent individuals to hear a lawsuit and decide on a dispute. Disputes over arbitration, unlike in court, require the agreement of the parties, which may take place before or after the dispute.

Keywords: Arbitration, International Trade, Dispute Resolution, Court, Agreement of the Parties.

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Introduction

Although arbitration is not without its flaws and has been criticized from time to time, its concessions to the trial in the Ba'athist court have been widely accepted in international trade. Because there is no international tribunal to resolve international commercial disputes through which traders and merchants can settle their disputes, they have to sue one of the national tribunals. National courts have been established primarily to settle domestic disputes and are heavily dependent on national legal traditions and systems. National courts usually have strict and inflexible rules on jurisdiction, according to which it is possible to sue in that court. National tribunals may not consider themselves competent to hear international litigation in which the parties reside in different countries. Governments have judicial immunity, and no national court can rule against another independent state. Arbitration is not rooted in a national legal system, and its jurisdiction is subject to the agreement of the parties and has no such limitations. The jurisdiction of the national courts is usually enforceable within the territory of that country and is severely restricted in other countries. Due to the lack of a comprehensive agreement on the implementation of other judicial decisions, depending on the internal regulations of the country, the place of execution of the vote countries usually have strict regulations on the enforcement of judicial decisions in other countries. Therefore, filing a lawsuit in a national court is basically appropriate when the defendant has the property and assets in the seat of the court that can execute the court's decision (Shirvari, 2009, p. 189). It has a lot of acceptance. According to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention of 1958), which has been joined by 146 countries so far, The arbitral tribunal issued in each of these countries shall apply to other Member States, and only in such cases may the Convention of the Member States of the National Court of Justice of the Member States provide for arbitral awards worldwide. As a result of this convention, litigants can ensure that arbitration is enforceable in other Member States, regardless of which Member State it is.

In addition, the hearings in the courts are subject to a relatively inflexible procedure set by the legislature, in addition to which the legislature has determined the acceptance of the assessment and the probative value of the evidence. Conversely, in a trial, the trial procedure has the necessary

flexibility, and the parties can determine the trial procedure according to their needs. Even arbitration and international organizations that have established regulations on arbitration have authorized the parties to amend or modify these regulations as required. Acceptance, evaluation and positive value of the reasons given in arbitration are also flexible and the parties can, in their opinion, determine the acceptable reasons and their positive value (Shirviei, 2009, p. 189).

In most countries, court hearings are held in public and only in special cases is the court allowed to hold hearings in private. Although public hearings are conducted in accordance with internationally accepted principles and standards, public hearings on international commercial disputes, firstly, cause discrepancies and sometimes draw them to the media, and secondly, reveal the details of the disputed contract.

Merchants are reluctant to be recognized as individuals who regularly disagree with their business partners, as this damages their credibility. Traders are also reluctant to let their other trading partners know about their contractual terms and conditions with the party to the dispute. Because arbitration is a private matter, meetings are held in private, and arbitrators are prohibited from disclosing disputes and the terms of the contract. Traders consider it more appropriate to refer to arbitration to maintain their credibility with the public and other customers and feel more comfortable with it (Akhlaqi et al., 1999).

The most important point of arbitration in comparison with the trial is the role of the parties in the selection of arbitrators and the choice of attorney. The selection of judges based on public authority is made by government and judicial authorities who may not have the necessary authority to handle a particular case. On the other hand, in the courts, in principle, not everyone can accept the power of attorney of the litigant and must have the necessary permission to do so in accordance with the rules of the court. Choose other experts who are knowledgeable about the differences. In many complex contracts, technical, legal, and financial issues are so intertwined that one cannot trust a person who is merely a lawyer, and one must look for people who are involved in all of these areas. Secondly, in arbitration, it is not necessary for the attorneys of the parties to have an official power of attorney and they can select any person who they deem appropriate to file a lawsuit and defend it for this purpose. In short, the reason for the growth of arbitration as a method of resolving disputes is the appropriateness of this method to the conditions of business and commerce, and it causes less damage to the parties to the dispute.

Arbitration contract

The arbitration agreement is the main focus of the arbitration proceedings. The contract also specifies the limited jurisdiction of the arbitrators. This contract may be agreed upon by the parties as an independent contract or condition during the contract (Shiroodi, 1999, p. 65). Each arbitration agreement must include at least the agreement of the parties to refer the dispute to the arbitrator. As soon as the parties agree to settle the dispute by referring to arbitration, the arbitration process may begin. Details of the arbitration shall be determined in accordance with the law governing arbitration. However, in many cases, in addition to the principle of arbitration, the parties agree on other important details, such as the number of arbitrators, the arbitral tribunal, and the arbitral regulations governing arbitration. Approved in 1997, the cases to be considered in the arbitration agreement are stated. These cases include the necessary conditions before concluding the arbitration contract, the form, and format of the arbitration contract, and the contents of the arbitration contract (Shiroodi, 1999, p. 65).

Prerequisites before arranging an arbitration agreement

In order for an arbitration agreement to be valid in Iran, the parties to the contract must have jurisdiction over the arbitration. Clause 2 of Article 2 of the International Commercial Arbitration Law stipulates: All persons who have the capacity to file a lawsuit may arbitrate their international commercial disputes, whether or not they have been filed with the judicial authorities, and if they are present at any stage, Refer to arbitration under the provisions of law. If it is later determined that one of the parties to the arbitration agreement has no jurisdiction, the arbitration agreement shall be annulled by a court (paragraph 1a) of Article 33 of the International Commercial Arbitration Law). The arbitrator of the dispute must have the necessary position for this purpose. Another point that must be considered before drafting the arbitration agreement is that the issues that may be referred to arbitration can be resolved through arbitration according to Iranian regulations. Clause 1 of Article 34 of the International Commercial Arbitration Law regarding the arbitrator's decision is essentially invalid. 1) If Iran stipulates that the main subject of the dispute cannot be settled by arbitration in accordance with Iranian law[1]. According to Article 675 of the Code of Civil

[1]. Paragraph 2 (b) of Article 5 of the 1958 Convention on the Identification and Enforcement of External Arbitration Rules allows a country requesting the recognition and enforcement of an arbitral award to refuse to be recognized and enforced if the subject matter of the dispute cannot be referred to arbitration.

Procedure, bankruptcy lawsuits and lawsuits concerning the principle of marriage, divorce, termination of marriage and lineage cannot be referred to arbitration. They are referee references (Shiroodi, 1999, p. 69).There is another problem in Iran that concerns the government and state-owned companies and organizations that are limited in referring their disputes to arbitration. Article 139 of the Constitution of the Islamic Republic of Iran imposes restrictions on the referral of state lawsuits by public organizations and state-owned companies article 139 of the Peace Claims on Public and State Property or its Referral to Arbitration in Any Case: in cases where the party is a foreign litigant and in important domestic cases it must be approved by the parliament.

The form and format of the arbitration agreement

The arbitration agreement must be in accordance with Article 7 of the International Commercial Arbitration Law. Claim and the other party practically accept it. This article is a not-so-complete translation of paragraph 2 of Article 7 of the UNCITRAL Model Law on international commercial Arbitration as amended in 2006. Like Telex, Telegram, etc.,[1] although Article 7 of the Iranian International Commercial Code does not specify the written nature of an arbitration agreement, it seems that one of the conditions for the validity of an arbitration agreement can be recorded and an oral or contractual arbitration agreement. It is not enough to be on the phone (Shiroodi, 1999, p. 66). The agreement on arbitration is usually concluded as a condition during the contract or in an independent contract. In the first case, the parties, in addition to the main contract, regulate the referral to arbitration as one of the conditions in the contract in order to refer all their disputes to arbitration. In this case, the agreement on arbitration constitutes part of the main contract and, like the rest of the terms of the contract, its observance will be mandatory. Today, most international commercial contracts contain references to arbitration, which constitute one of the clauses of the original contract. In the latter case, the arbitration agreement is not regulated independently of the original contract but independently, usually in a place where the parties have not entered into an arbitration agreement in dispute, or have not specified its details, or want another order. Take anything other than what has already been agreed. Arbitration between Iran and the United States of America are such independent arbitration agreements (Junidi, 2013, p. 99). With regard to arbitration agreements of the first type, which are stipulated in the main contract, there is a problem that if the main contract is invalid or claimed by one of the parties, its validity, what is the ruling on the arbitration, which is part of the main contract? Can arbitrators resolve disputes in these cases? According to a theory that relies more on logical analysis. The legitimacy of the arbitration agreement stems from the original contract, and if the original contract is invalid for some reason, there will be no arbitration. The second theory which pays more attention to practical issues and business needs he believes that an agreement on arbitration is considered independent of the original contract, even if it is stated in a contract. Thus, according to this theory, arbitrators can declare the original contract invalid without considering their jurisdiction and legitimacy (1994, p. 626, Jacobs).

The International Commercial Arbitration Law of Iran, in accordance with the UNCITRAL Model Law, has put an end to this theoretical debate, and the second theory that the condition of arbitration of the main contract can be analyzed can be explicitly accepted. Clause 1 of Article 16 of the International Commercial Arbitration Law of Iran stipulates that the arbitrator (may decide on his / her competence as well as on the existence or validity of the arbitration agreement) and the arbitration clause which is part of a contract in terms of implementation of this law. It is considered an independent agreement. The decision (arbitrator) regarding the invalidity and revocation of the effect of the contract per se shall not constitute invalidity of the arbitration clause stated in the contract. As stated in paragraph C of Article 1 of the International Commercial Arbitration Law of Iran: The arbitration agreement may be a condition of arbitration in the contract or as a separate contract. The problem of the termination of the original contract on the condition of arbitration is also eliminate by giving independence on the condition of arbitration, and the arbitrators can declare the contract void, without interfering with the arbitration agreement. Therefore, the parties may, without any distinction, accept the condition of the contract or referral in a separate contract as a condition. The only thing that should be considered in independent contracts is that the relationship between the arbitration contract and the main disputes and contracts should be clearly stated in the arbitration agreement otherwise there is a risk that the arbitration agreement will be related to litigation. It is not certain. For example, in the arbitration agreement between Iran and the United States, there has always been a debate as to whether such a lawsuit has been subject to the arbitration agreement.

[1]. the arbitration agreement shall be in writing

Content of the arbitration agreement

The first important issue to be addressed in an arbitration agreement is the issue of arbitration. The disputes and claims arising from a contract may be multiple. Whether all of these disputes and lawsuits or part of them are the subject of arbitration, depends on the terms and terms used in the arbitration agreement. The arbitration agreement may cover all disputes and claims arising out of the contract or refer a particular case to arbitration. Pursuant to paragraph (h) of Article 33 of the International Commercial Arbitration Law, if arbitrators vote outside the jurisdiction or outside the jurisdiction of the arbitral tribunal, the judgment rendered can be annulled. It's a matter of judgment for example, if a party to a contract agrees that any dispute arising out of the contract be referred to arbitration, the Iranian court may not, by a narrow interpretation of the arbitration clause, consider the dispute to be the cause of the contract or the validity of the contract and the arbitrator's decision. Consider these cases outside the subject of arbitration (Shiroodi, 1999, p. 69)

However, if the contract stipulates that all disputes related to the contract will be referred to arbitration, this interpretation will be broader. People order to include their contract the second point in the arbitration agreement is to determine the arbitrators and the rules of procedure. After determining the issue of arbitration, another issue that needs to be decided is whether the parties want to create a "case arbitration" or use "organizational arbitration". In case-by-case arbitration, the parties must anticipate many details of arbitration and arbitration, or use predetermined rules such as UNCITRAL[1] arbitration. The use of organizational arbitration is usually preferable to a case-by-case because the parties do not need to negotiate and agree on the details of the arbitration[2]. In a case-by-case judgment, agreeing on the details always carries the risk that the parties will misinterpret the material, or that the provisions will be ambiguous, or that important material will be forgotten. In organizational arbitration, all the details have already been regulated by professional or international organizations with the presence of prominent experts and lawyers, and it is mostly in the interests of both parties (Shiroodi, 1999, p. 68). Iran's International Commercial Arbitration Law, in principle, gives the parties the right to determine the type of arbitration and the procedure for reviewing the law governing arbitration, the number of arbitrators, the place of arbitration, the language of arbitration, the settlement of lawsuits based on justice and fairness, and so on. Make a decision. The only difference between case arbitration and organizational arbitration is related to the details of the proceedings, which are already provided for in organizational arbitration and in case arbitration must be discussed and agreed upon by the parties to the case. Despite the powers given to the parties by the International Commercial Arbitration Law regarding the appointment of arbitrators and the manner of consideration, it has also imposed restrictions in some cases, the observance of which is in any case necessary for the arbitration agreement to notify the securities and warnings. It is another matter that may be provided for in the arbitration agreement. If the parties can benefit from the privileges of the International Commercial Arbitration Law regarding the way of arbitration, both cases and organization, the following points should be observed in the preparation of the arbitration agreement:

According to paragraph 1 of Article 11 of the International Commercial Arbitration Law, if one party is an Iranian contract and the parties wish to refer future claims to arbitration, the Iranian party has no right to select an arbitrator or arbitrators whose nationality is the same as that of the other party or entity. If the parties are determined to appoint certain people as arbitrators in the arbitration agreement, they should consider the possibility that the arbitrators will not or will not be able to resolve the dispute. According to paragraph 5 of the International Commercial Arbitration Law, if the parties choose certain persons for arbitration and the arbitrators do not want or cannot act as arbitrators, the arbitration agreement will be revoked unless the parties agree to appoint new arbitrators. Therefore, in order to avoid this unpleasant result, an arbitration agreement can be established without a clear determination of the arbitrators or a mechanism for appointing new arbitrators if the arbitrators do not want to or cannot resolve the dispute (Shiroodi, 1999, p. 69). If the parties have not agreed on the composition of the jury, how to select them and the procedure, the arbitration agreement is valid, but the arbitration process must be conducted in accordance with the provisions of the International Commercial Arbitration Law. Article 19 of the International Commercial Arbitration Law provides:

1) The parties can agree on the procedure of consideration provided that the provisions of this law are observed.
2) In the absence of such an agreement, the arbitrator shall, in accordance with the provisions of this law, administer and administer the arbitration in an appropriate manner.

[1]. UNCITRAL Arbitration rules 2010

[2]. ICC Arbitration Rules 2012

How papers and notices are communicated is another matter that may be provided for in an arbitration agreement. If the parties have not agreed on the manner and authority of the arbitral tribunal, the arbitral tribunal shall be an arbitral tribunal in accordance with the provisions of that arbitral tribunal. The arbitrator must send the request for referral by registered mail to the Telegram video messaging app, and so on. The video request for telex and telegram and the like is sent to the other party. This request is considered when the notification is received to the addressee, the addressee has acted according to the provisions of the request, or the addressee has refused or proved appropriate (paragraph c). Article 3 of the International Commercial Arbitration Law: This notification may cause many problems for one of the parties in practice because according to the International Commercial Arbitration Law, the commencement of arbitration is subject to the fulfillment of a notification limited to the fulfillment of one of the above one side may Change your address or place of residence and do not show any reaction to the arbitration request so that the arbitration is not initiated. Therefore, if the parties do not consider this method of communication to be appropriate, they must agree otherwise in their contract.

If the parties do not have a special agreement, the arbitration shall begin when the request for arbitration has been notified to the other party in accordance with the above paragraph. The arbitration shall be silent. The claim and its condition and the condition of how to select them, the expression of agreements and contracts that have caused a dispute is optional in the arbitration application (paragraph B of Article 4 of the International Commercial Arbitration Law).

The International Commercial Arbitration Law of Iran does not specify the number of arbitrators and their individuality, but if the parties do not agree on the number of terms, the jury will consist of three people. How judges determine depends on the agreement of the parties. What is silent about the appointment of the arbitrators of the contract, according to Article 2 of Article 11, each of the parties chooses one arbitrator and these two arbitrators determine the head of the arbitrator. If within thirty days one of the parties fails to or does not want to introduce its arbitrator or the selected arbitrators cannot elect the arbitrator within the said period, the competent public court shall determine the arbitrator (Shiroodi, 1999, P. 70). If the injury is not accepted by the arbitrator, the beneficiary may request the competent court to hear the injury (Article 13 of the International Commercial Arbitration Law).

In matters that require immediate assignment, the parties may make certain arrangements in the arbitration agreement. What the parties have agreed otherwise, the arbitrators may issue an interim injunction at the request of either party in matters requiring the immediate imposition of an urgent obligation (Article 17 of the International Commercial Arbitration Law). The parties may, by agreement, determine the place of arbitration in a particular country. The location of the arbitration is important because it determines the location of the verdict. If the parties do not specify a specific place for arbitration and cannot agree on the place, the place of arbitration shall be determined by the arbitrators according to the circumstances of the lawsuit and the ease of access of the parties (Article 20 of the International Commercial Arbitration Law). Arbitration language is usually agreed upon for consideration and the exchange of bills. If the parties have agreed on the damages or losses used in the arbitration, this shall be determined by the arbitrators (20 International Commercial Arbitration Laws). The amount of damages and the reasons for it must be stated within the time limit set by the arbitrators.

The same defense must be sent within the set deadline. Therefore, the parties may need to know in advance that they have a specific time frame for the petition or defense | That which amends or complements the petition or defense during the arbitration agreement | What is not stipulated in the other arrangement in the contract is the determination of the necessity of convening a meeting to provide evidence and other explanations to the "arbitrator". However, one of the parties requests such a meeting at the appropriate time, it will be necessary to convene it. What the parties are dissatisfied within this way should be chosen in the arbitration agreement (Shirudi, 1999, p. 71). Judges shall decide in accordance with the legal rules chosen by the parties in the nature of the dispute. If the parties have chosen the rule of law, the arbitrators shall apply the appropriate law in accordance with the rules of conflict resolution. Judges have no right to make decisions on the basis of justice and fairness or in the form of a "God-given code" unless the parties have explicitly authorized the arbitrators. Therefore, if the parties wish to settle their dispute on the basis of justice and fairness or through a secret code, it must be stated in the contract or the parties must agree on it later (paragraph 3 of Article 27 of the International Commercial Arbitration Law). The jury decides on a majority basis. The parties are dissatisfied with this method or want to veto an arbitrator's agreement with Wade in the arbitration agreement. The absence of such an agreement constitutes acceptance of the decision, based on the opinion of the majority

(Article 29 of the International Commercial Arbitration Law).

Identification and execution of judges' votes

Since the arbitral award itself is not enforceable, it must be referred to a national tribunal for enforcement. The court must order the execution of the judgment while identifying the arbitral award. If the court refuses to recognize and enforce the arbitral award, the value of the arbitration shall be reduced to the extent that the parties are willing to act voluntarily. Strengthening the arbitral tribunal in resolving international commercial disputes requires recognition and order of an arbitral tribunal in national courts. Because the courts may, for various reasons, refrain from enforcing the judgment, or violating it, or otherwise reviewing it, much effort has been made at the national and international levels to prevent such interference and obstruction. Minimize. At the national level, the adoption of international commercial arbitration laws or the amendment of existing laws, and at the international level, the ratification and accession of various countries to the Convention on the Identification and Implementation of Arbitral Awards have strengthened the position of arbitrators. In this section, first, the implementation of arbitration awards issued in Iran and then the implementation of foreign arbitration awards in Iran or any other country that is a member of the New York Convention will be examined (Junidi, 2013, p. 102).

Execution of Iranian arbitration awards

The procedure for enforcing arbitration awards issued under the International Commercial Arbitration Law in Iran is set out in Article 35 of that law. Pursuant to Article 35, with the exception of the cases referred to in Articles 33 and 34, the arbitral awards issued in accordance with the provisions of this law shall be final and binding upon the issuance of the judgment. Articles 33 and 34 raise the issue that the arbitral award is null and void. Of course, in the International Commercial Arbitration Law, there is confusion between the request for annulment of a verdict and the request for identification or execution of the verdict. Voting in Iran can be annulled in the territory of Iran and under the International Commercial Arbitration Law. There is a specific time limit in the law for the annulment of the verdict, and what the beneficiary does not object to the verdict at that time, the other verdict cannot be annulled, while identification and execution may be done long afterward (Shirvari, 2009, p. 194). Articles 33 and 34 allow the court to refrain from enforcing an arbitral award or even to annul it. Article 34 introduces cases in which the arbitral award is invalid and unenforceable. From the appearance of this article, China concludes that even if the convict does not cite it, the court can directly invalidate the arbitral award. This article has clearly deviated from the principles and standard related to arbitration and has ordered the intervention of the court even if one of the parties does not object. Article 34 declares the verdict of arbitration in 3 paragraphs to be invalid, which are in fact 6 cases. The first case is where the main issue of the dispute cannot be resolved by reminder under Iranian law. For example, bankruptcy lawsuits cannot be referred to an arbitrator; therefore, if the arbitral award is about bankruptcy, the court can directly refrain from enforcing the judgment and order the annulment of the award. If the provisions of the verdict are contrary to public order or good morals of the country or the statutory rules of Iran's International Commercial Arbitration Law, the verdict is invalid. Although most of the provisions of the International Commercial Arbitration Law are complementary, some of its provisions are similar, such as paragraph 1 of Article 11 of the Law, which prohibits the selection of an arbitrator who has a joint claim with another party before a dispute arises. This paragraph includes three items: opposition to public order, good morals, and the rules of arbitration. The last case is where the arbitral award is issued in respect of immovable property located in Iran and this decision is in conflict with the statutory laws of the Islamic Republic of Iran or with the provisions of valid official documents unless in the latter case the arbitrator has the right to compromise. This clause also practically includes two things, namely, opposition to the existing Iranian laws and the provisions of official documents.

Article 33 of the Commercial Arbitration Law of Iran refers to several cases in which one of the parties can request the court to annul the arbitral award. In that article, it is possible for both parties to object to the arbitral award, while it was logical that the possibility of objection was provided only for the party against whom the request for execution of the sentence has been made. If one of the parties to the arbitration agreement lacks competence, the court may, at the request of either party, invalidate the arbitral award. Since eligibility is a personal condition, eligibility is determined by a person's own law (Articles 6 and 7 of the Civil Code).

In order to determine whether the arbitration agreement is valid or not, it is first necessary to refer to a law that has ruled on the arbitration agreement by the parties. If the parties have been silent on the rule of law, the contract should not be in direct conflict with Iranian law. This view is consistent with Article 10 of the Civil Code, which

considers private contracts to be effective if they are not expressly contrary to the law. On the other hand, it allows for the annulment of the verdict. This paragraph seeks to guarantee the convict's right to choose the arbitrator, to provide evidence and to be present at the hearings. Failure to pay attention to the agreement of the parties regarding the appointment of an arbitrator, the presentation of reasons and attendance at hearings failure to pay attention to the agreement of the parties regarding the appointment of an arbitrator or a request for arbitration is another matter that has provided for the convict against the possibility of protest (Shiroodi, 1999, p. 78). In this paragraph, it would have been better if it had been similar to the paragraph "and it was stated that the notification of the notices is the appointment of an arbitrator or arbitrators". It is worth mentioning that in paragraph (f) of this article, it is stipulated that the arbitral tribunal has been formed contrary to the arbitration agreement and in case of silence of the contract contrary to the law. In this case, the court may request the annulment of the arbitral award. Paragraph (d) of Article 33 refers to an entry in which the applicant for revocation for reasons beyond his control has been able to provide evidence and evidence. Given that the legislature listed the non-disclosure of the notice in the previous paragraph as a request for annulment, the provision of this general paragraph could damage the stability of the arbitral award. For example, the loss or theft of evidence and the like cannot really be a license to invalidate an arbitral award. The same problems exist in paragraph 1 of this law. According to this paragraph, if, after the issuance of the arbitral award, evidence is found that is the reason for the alleged legitimacy and it is proved that the parties have a secret address or conceal them, the other party may request the annulment of the arbitral award. This case also seriously damages the validity and stability of the arbitral award and introduces the court as a source reconsideration of the arbitral tribunals, which is incompatible with the philosophy of this institution, which is a kind of private trial. The clause of this article refers to a case in which the verdict of the arbitral tribunal was documented, the falsity of which was proved by the final verdict (Shiroodi, 1999, p. 79). The next case is provided in paragraph 33 of the article. According to this article, if the arbitral tribunal has voted outside the limits of its authority, the said verdict may be null and void and the subject matter of the reference to arbitration may be separable. Also, if the arbitral tribunal contains a conclusive and effective opinion of the arbitral tribunal where the injury has been accepted by the court, then the arbitral tribunal may be annulled. It has developed and distorted the credibility and stability of the arbitral award, and in order to strengthen arbitration, it has provided for formal provisions on the duration of the appeal and the granting of security. First of all, according to paragraph 3 of Article 33, the request for annulment of the verdict subject to Article 33 must be submitted to the competent court within three months from the date of notification of the arbitral award otherwise, it will not be heard. Second, according to paragraph 2 of Article 35, if one of the parties has applied to the competent court to annul the arbitral award and the other party has requested its identification or enforcement, the court may, if requested by the applicant, identify or enforce the decision. The applicant has to cancel the appropriate security (Shirudi, 1999, p. 80)

Execution of foreign arbitration awards

If an arbitral award has been issued outside of Iran and an application has been made to the Iranian court, the court shall, in accordance with the Convention on the Recognition and Enforcement of Arbitral Terms and Conditions of Foreign Affairs of New York, 1958, take action to enforce the arbitral award. The Convention was adopted by the United Nations Economic and Social Council on May 3, 1956. Currently, 146 countries are members of this convention. The Convention was approved by the Islamic Consultative Assembly in a public session on Tuesday, 1/21/1380, and was reached on 1/29/1380 by the Guardian. Enforcement of such arbitral awards is subject to the New York Convention, which is considered international, whether domestic or foreign. However, States may, at the time of ratification or accession, stipulate that the Convention shall apply only to international arbitral awards that have been issued abroad in another Contracting State in accordance with paragraph 3 of Article 36. In the Convention, the right to protest is provided only for the party whose application has been sought. Restrictions on Iranian courts interfering in foreign arbitration proceedings have effectively strengthened those arbitral awards issued abroad, and in equal circumstances, the verdict issued in Iran has less credibility and stability than foreign arbitration awards. The provisions of Article 5 of the New York Convention that the Court refuse to recognize and enforce an external arbitral award shall be set forth in Article 5 of the Convention. Paragraph A of this article consists of two cases on the basis of which it is possible to request the court to refrain from enforcing the arbitral award. The first case is the incompetence of the parties under the law governing them. The Convention does not specify which law governs them, in which case the law on the place where the arbitral tribunal is to be administered must determine, and on the basis of which law the qualifications of individuals will be

determined. For example, if the Iranian court is asked to rule, the Iranian court will determine whether they have jurisdiction by referring to their respective laws. The second case mentioned in paragraph A of Article 5 is the invalidity of the arbitration agreement. To determine the validity of a contract, the rules apply to the arbitration agreement entered into by the parties subject to that law. If there is no reading in the arbitration agreement regarding the selection of the governing law, then the validity of the arbitration agreement shall be determined by the court law of the place where the execution of the decision takes place. The third case, which is stated in paragraph B of Article 5 of the Convention, relates to the failure to properly notify the arbitrator of the appointment of an arbitrator or the course of the arbitral proceedings. According to this paragraph, if the party against whom the judgment has been ordered has not been properly warned about the appointment of an arbitrator or the arbitral tribunal or otherwise has not been able to file a case, then the court may decide to enforce the arbitral award. Avoid foreign. The fourth case is provided for in paragraph B of the Convention, and that is when the arbitral award prescribes outside the scope of the arbitration agreement or the conditions of reference to the said arbitral tribunal. Or involves a decision on issues beyond the scope of reference to arbitration, Provided that if the decisions on matters referred to arbitration are separable from those referred to therein, that part of the judgment which includes decisions concerning matters referred to arbitration shall be identifiable and enforceable. The fifth case is non-compliance with the composition of the jury or non-compliance with arbitration procedures. Paragraph 5 of the Convention stipulates that the composition of the arbitral tribunal or arbitral tribunal shall not be in accordance with the agreement of the parties or, in the absence such agreement, in accordance with the law of the country in which the arbitration took place. The last case concerns votes that have not yet been finalized or violated by another authority. Paragraph C of Article 5 of the Convention stipulates that the judgment has not yet been enforced by the parties or has been violated or suspended by the competent authority or by the law of the country in which the judgment was rendered.

Conclusion

With the development of international trade and the globalization of the economy, arbitration as a method for resolving international trade disputes has grown rapidly, so that today it is a common method in resolving international disputes. Although arbitration is not without its flaws and has been criticized from time to time, its concessions to the trial in the Ba'athist court have been widely accepted in international trade. National courts have been established primarily to settle domestic disputes and are heavily dependent on national legal traditions and systems. In addition, one party to the lawsuit may be the state, in which case, under an accepted principle of international law, states have judicial immunity and no national court can rule against another independent state. Arbitration is not rooted in a national legal system, and its jurisdiction depends on the agreement of the parties and has no such limitations, and it deal with international commercial litigation, whether it is a way of government or a private party. Merchants are reluctant to be recognized as individuals who regularly disagree with their business partners, as this damages their credibility. Traders are also reluctant to let their other trading partners know about their contractual terms and conditions with the party to the dispute. Arbitration is a private trial, meetings are held in private, and the most important point of arbitration compared to trial by the court is the role of the parties in selecting arbitrators and choosing a lawyer. In many complex contracts, technical, legal, and financial issues are so intertwined that one cannot trust a person who is merely a lawyer, and one must look for people who are involved in all of these areas. The arbitration agreement is the main focus of the arbitration proceedings. The contract also specifies the limited jurisdiction of the arbitrators. This contract may be agreed upon by the parties as an independent contract or condition during the contract. As soon as the parties agree to settle the dispute by referring to arbitration, the arbitration process may begin. Details of the arbitration shall be determined in accordance with the law governing arbitration. In many cases, in addition to the principle of arbitration, the parties agree on other important details, such as the number of arbitrators, the place of arbitration, and the arbitrary rules governing arbitration. All persons who have the capacity to file a lawsuit may arbitrate their international commercial disputes, whether or not they have been filed with the judicial authorities and, if so, at any stage. The arbitration agreement must be in writing. According to the arbitration agreement, it must be signed by the parties in a document. Claim it and the other party practically accepts it. One of the conditions for the validity of an arbitration agreement is that it can be registered and confiscated. If the arbitrators vote outside the bounds of authority or outside the scope of the arbitration, the judgment rendered may be revoked. In a case-by-case judgment, the parties must anticipate many details of the arbitration and

the method of consideration or use pre-determined rules. The use of organizational arbitration is usually preferable to a case-by-case drug because the parties do not need to negotiate and agree on the details of the arbitration. In a case-by-case judgment, there is always the risk that the parties will misinterpret the material, or that the provisions will be ambiguous, or that important material will be forgotten. If the parties choose certain persons for arbitration and the arbitrators do not want or cannot act as arbitrators, the arbitration agreement will be void. If the parties have not agreed on the composition of the jury, how to select them and the procedure, the arbitration agreement are valid, but the arbitration process must be carried out in accordance with the provisions of the International Commercial Arbitration Law. How papers and notices are communicated is another matter that may be provided for in an arbitration agreement. The parties may, by agreement, determine the place of arbitration in a particular country. Arbitration language is usually agreed upon for consideration and the exchange of bills. The arbitral award itself is not enforceable, so it must be referred to a national tribunal for enforcement.

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