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The Nature of Arbitration Agreement

Mohammad Nevisandeh*

PhD Student of Private Law, Islamic Azad University, Rasht

Abstract

The base and the root cause of the institution of arbitration in the international and domestic arenas stemmed from the existence of vacuum in the normal and public procedure in the formal existence that led to slow investigation and spending of costs for the state and the two sides of the argument. Thus, in most countries in the world, detailed regulations were approved regarding various types of arbitration and its conditions and effects.

In the domestic arena, arbitration rules with a focus on civil law are considered to be among non-formal contracts and in the international arena, Iranian Law, in line with International Arbitration Law, has considered the arbitration contract to be among formal contracts and emphasizes the necessity of the written arbitration contract; furthermore, in domestic regulations, arbitration agreement is considered as subject to the main contract and in Iranian Law on International Arbitration, autonomy of the arbitration contract from the main contract has been recognized

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1. Introduction

Today, many of the disputes resulting from international trade relations are settled by referring to arbitration. The major reasons for international commercial activists' welcoming of referring to this method of dispute settlement, include: low cost, hiding of the investigation into the disputed issue from the public view and therefore keeping of the commercial secrets of both sides, absence of red tape in the procedure and particularly distrust of each of the sides in the neutrality of a court that belongs to the home country of the other side. In fact, in order to circumvent such problems, both sides of an international trade contract agree to settle their dispute through arbitration which is a

* Corresponding author. Tel.: +989128227002

E-mail address: nevisande.atty@gmail.com

private judgement and is accepted worldwide. Arbitration contract seems to have its own specific nature. Also, this agreement has most effects of binding contracts and is not revocable based on originality of necessity and Article 10 of Civil Law. In case of termination or rescission of arbitration contract, the arbiters will seemingly no longer be qualified for the subject and it will be hence taken on by judicial authorities. In case the arbitration agreement is conducted as an autonomous contract separate from the arbitration subject contract and the dispute, it is as a certain contract and has its own specific effects and the general conditions of the validity of the contract are also binding in this contract; and in case of conditions terms of contract, it will be subject to the main contract and in case of invalidation or cancellation of the main contract, the arbitration contract will also be automatically annulled and won't be able to survive autonomously; and also with regard to the consensual and solemn/formal nature of the contract, domestic arbitration (national) and international arbitration must be differentiated so that the very offer and acceptance suffices for making the national arbitration contract but it must be solemn/formal and written in the international arbitration.

2. Definition of Arbitration Agreement

Arbitration agreement is a contract according to which some persons commit to relegate their actual or possible dispute and argument to the investigation and comments of a person or persons other than official judicial authorities. In arbitration agreement the arbiter or arbiters might have been appointed and it might have been only stated that they refer their dispute to the arbitration of one or several persons. (Madani, 1996, P. 676). The law has not predicted a special form for arbitration agreement; thus, it might be as an official document or might be regulated as a normal document and also it does not greatly differ if it is fulfilled in the statement of the court or outside the court and in the main deal (Ibid).

3. Types of Arbitration Agreement

Arbitration is a code based on the agreement of both sides of the contract and this agreement is expressed in the arbitration contract. Arbitration contract refers either to **arbitration contract or arbitration clause** since clause is also considered as a kind of contract which is based on the agreement of both sides and is listed in another contract only at the will of both sides (Katouzian, 2004, P. 167; Jafari Langaroudi, 2001, P. 268). Arbitration clause is mostly used when no dispute has arisen yet and even when no dispute might occur. Article 1442 of French Civil Procedure Code considers the arbitration clause as an agreement according to which both sides commit to settle the disputes resulting from that contract through arbitration. If, after the occurrence of dispute, both sides make an autonomous agreement in the presence of the arbiter so as to settle their dispute, the agreement will be called "arbitration contract". In French law, this contract is an agreement that is made after the occurrence of dispute and the subject of dispute is evident there (Karimi & Parto, 2012, P. 105). However, it seems that this type of distinction between arbitration clause and contract has not been strongly considered by the legislator since the sides can, by signing a separate contract before the occurrence of dispute, also agree by arbitration; as this issue can be inferred from Paragraph "C" of Article 1 of International Commercial Arbitration Law and Paragraph "kh" of Article 1 of the Code for Service Provision of the Arbitration Center of the Iran Chamber (ACIC).

4. Specific Conditions of Arbitration Agreement

Arbitration agreement, either as arbitration contract or conditions terms of contract, must have several specific conditions which include:

4.1. Specification of the Subject of Arbitration

Based on Article 458 q.a.d.m., if the arbiter is determined after the dispute, the subject of dispute which is referred to arbitration must be clarified and the details must be notified to the arbiters.

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