

A COMPARATIVE STUDY OF SEPARABILITY OF ARBITRATION CLAUSE UNDER MAIN CONTRACT OF LICA AND THE UNCITRAL MODEL LAW

UNA COMPARACIÓN DE LA SEPARABILIDAD DE LA CLÁUSULA ARBITRAL DEL CONTRATO
LICA Y DE LA LEY MODELO CNUDMI

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Abstract: The aim of the paper was to investigate the independence of the arbitration clause from the main contract in the International Commercial Arbitration Law of Iran with a comparative study in the UNCITRAL model law. The effectiveness of this type of procedure, its coordination with the specific objectives and the special status of international traders has led to their increasing willingness to use this legal solution. We use a comparative method, quasi-experimental, to describe similarities and differences in variables in two or more existing groups in a natural setting; it resembles an experiment as it uses manipulation but lacks random assignment of individual subjects. This study begins analyzing international arbitration and the UNCITRAL model rules (Chapters I to VI), then reviewing the national arbitration (Chapter V); thus, the effects of the principle of independence of the arbitration clause can be seen (Chapter VII) and, later, the problems that arise (Chapters VIII to X). Even so, the main conclusion is that the parties usually agree to resolve their international disputes through arbitration, which is judged privately and universally accepted.

Keywords: Arbitration Clause, Arbitration Law, International Law, UNCITRAL, Independent Judgments

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Resumen: *El objetivo del artículo es investigar la independencia de la cláusula de arbitraje del contrato principal en la Ley de Arbitraje Comercial Internacional de Irán, comparándolo con la ley modelo de la CNUDMI. La efectividad de este tipo de procedimiento, su coordinación con ciertos objetivos y las circunstancias de los comerciantes internacionales han hecho que se utilice cada vez más esta solución legal. Usamos un método comparativo, cuasi experimental, para describir similitudes y diferencias entre las diversas variables que se dan en dos o más grupos existentes en un entorno natural; es decir, se asemeja a un experimento, ya que utiliza la manipulación pero carece de asignación aleatoria de individuos asignaturas. Sobre la estructura, este estudio comienza analizando el arbitraje internacional y las reglas modelo de la CNUDMI (capítulos I a VI), para luego revisar el arbitraje nacional (capítulo V); así se pueden ver los efectos del principio de independencia de la cláusula arbitral (capítulo VII) y, luego, los problemas que se suscitan (capítulos VIII a X). Aún así, la principal conclusión es que las partes generalmente acuerdan resolver sus disputas internacionales a través del arbitraje, que se juzga de manera privada y universalmente aceptada.*

Palabras clave: *Cláusula arbitral, ley sobre arbitraje, derecho internacional, CNUDMI, juicios independientes*

Summary. *I. Introduction. II. Rules of Arbitration of the International Chamber of Commerce. III. UNCITRAL Arbitration Rules. IV. International arbitration procedure. V. Internal arbitration. VI. International arbitration. VII. The effects of the principle of independence of the arbitration clause. VIII. Failure of the main contract on the condition of arbitration. IX. The issue of independence and separation. X. Conclusions. References.*

I. INTRODUCTION

The history of international trade has started with maritime transport and maritime commerce, since the old days merchants have shipped their goods by sea and ship. Initially, exchanges and rental of ships were carried out on the basis of oral agreements between traders, but due to various incidents from loading to delivery, there were at least several issues, including insurance and claims for damages from the shipping company as well as claims for damages to the buyer from the seller, it became apparent that it required the existence of a contract. Thus, the first contracts were signed in the field of maritime transport and between transport operators and

owners of goods. Subsequently, with the expansion of the volume of exchanges between traders of different countries, international contracts were established and changed over the centuries in modern forms. At first, the merchants resolved their contractual problems by negotiating and understanding, but considering the different nationalities of the merchants and the various interests and policies of the countries and the lack of understanding in all areas of conflict and inefficiency of the traditional methods of Dispute resolution, including peace and compromise, or mediation, was about to create an arbitrary way to resolve their issues by appointing an arbitrator, then, after any dispute between the parties, the parties decided to settle their differences by appointing their arbitrator and the terms of the arbitration, including the language of the arbitration, the governing law, and the place of arbitration (cfr. Emami, 195).

Today, the writing of arbitration conditions in any contract is outdated, because with the development of case judgments, arbitration courts have been created that deal with disputes in accordance with specific rules and standard arbitration clauses. The terms of the arbitration are specified in the text of the contract as an independent condition, or written in a separate agreement or referred to the arbitral tribunal in the contract. The point to keep in mind is that the right to arbitration has a different meaning with right to arbitration in the international arena and international trade, and two terms should not be confused with one another (cfr. Amir Majazi, 2009).

In international relations, at the time of signing or after the conclusion of an international agreement, a country may accept it by acceptance of that agreement in its entirety; But because it does not agree to some of the principles of the agreement with its own interests or customs, it refuses to accept all of these principles, so to prevent the collapse of the appearance of the agreement and to use some of its benefits by that country, the diplomatic function has considered the simple solution called using the “reservation right”. But the right to arbitration has been usage in international trade and in resolving trade disputes through arbitration. Today, in all important commercial contracts, especially in international commercial contracts, arbitration clauses are intended to resolve future disputes either under the contract or individually (cfr. Janeidy, 1997).

The arbitration agreement should be considered as subordinate contracts that are always concluded on the basis of a major contract (purchase, transportation of goods, insurance, etc.). This attribute of the arbitration clause has led to the question that if the original contract is invalid or canceled, what is the effect of invalidating and termination of the contract in the arbitration clause? If we consider the invalidation or termination of the original contract to be effective in the life of the arbitration agreement,

we will face with this vicious cycle that the termination of the original contract will invalidate the arbitration agreement and the arbitration, which, on the basis of the invalid arbitration clause, will invalidate the original contract, has issued the void and invalid verdict (cfr. Katouzian, 1990). Due to the resolution of such a problem, in most countries of the world, it has been accepted that the arbitration agreement is independent of the original contract and, as a result, the invalidation of the original contract does not invalidate the arbitration agreement. This decision has been envisaged by the Iranian legislator in the International Commercial Arbitration Act of 1376, but it has not been accepted by the Civil Procedure Law. The main trend in arbitration laws in most countries, as well as in the rules of arbitration of international arbitration bodies, is to consider the arbitration clause independent of the original contract. Some countries have explicitly imposed arbitrary arbitration clauses, and some search intent on the parties by interpreting the terms of the arbitration clause, and determine the terms and conditions of the contract, and the previous trade relations between the parties or the relevant custom to interpret the contract and indicate the intention of the parties to separate the arbitration clause from the original contract (cfr. Movahed, 2005).

Institutions and international arbitration bodies have also accepted the principle of independence of arbitration in their rules of arbitration, in such a way that the dispute about the existence or influence of the main contract does not affect the validity of the arbitration clause and the arbitration body and the difference in the parties to the original contract will also be considered. This is the rule that is referred to as “qualification” or “competence in qualification”. Art. 16 of the International Commercial Arbitration Law of Iran, approved in 1376, explicitly accepted this rule and entered the Iranian law system. Although the law refers to international judgments, it indicates the intention of the legislator and, with the abrogation of the property, it can and should be used to interpret and develop Iran’s arbitration rules with the abrogation of the property.

The condition of arbitration in the International Commercial Arbitration Rules of Iran and the Code of Civil Procedure The first issue: Comparing the condition of arbitration independence from the point of view of international law We know that in international law, in contrast to domestic law, which the judge judge takes his qualifications from the law, the jurisdiction of the judge derives from the agreement of the parties to the lawsuit. Before starting any arbitration, the following issues are raised:

- Is there, in principle, an agreement to refer to arbitration between the parties?
- Has the agreement been concluded in the right way?

- Is the above agreement, still assumed to be valid, assuming that it has been rigorously concluded?

On the first question, it must be said that the claimant of the agreement must prove it and its proof requires the submission of a document indicating that the agreement is an arbitration clause. Regarding the second question, the principle of authenticity is current, that is, an arbitration agreement like any other contract is predicated on veracity, and the one who claims to be wrong must prove his claim. Therefore, the claim for termination of the agreement will be due. A claim for invalidity may be based on opposition to the rule of the law and may also be challenged by the person or the identity of the person or organization that accepted the arbitration clause has been addressed or that the violation has been exceeded by the acceptance of the condition of the limits of its authority (cfr. Jafarian & Rezaeian, 1998).

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of its authority (cfr. Jafarian & Rezaeian, 1998). In the first case, the agreement on the arbitration shall be void by way of mutual cancellation, and in the latter case, the agreement shall be canceled by the law (*ibid.*). In most cases, the arbitration agreement is conditionally entered in the original contract. This means assigning one or more articles from the contract to this issue and does not need to set up an independent and separate document. In the first view, the argument is that there is no discussion of the law governing arbitration, since the appearance of the matter is that there is no separate agreement here to discuss specific law. In other words, the law governing an arbitration agreement not set out in an independent document is, in effect, the same law as the entire contract of government. But the problem that appears with the simplicity is not over.

For example, Art. 21 of the UNCITRAL Rules of the United Nations of 1976 stipulates that the referee may, if the existence or validity of the contract is disputed, separate the judgment from other materials and make it an independent and valid contract. Even if the invalidity of the original clause in the arbitration is proven, and the judge himself votes, the vote will not undermine the validity of the judgment. The text of the rule in Art. 21§2 of the UNCITRAL Arbitration Rules is as follows: The tribunal will have the discretion to decide on the existence or validity of the contract, which forms the part of the arbitration clause. In the case of Art. 21, the arbitration clause forming part of the contract and involving arbitration in accordance with these rules shall be considered as an agreement independent of the other terms of the contract.

The arbitral tribunal's decision that the contract is null and void will not result in invalidity of the arbitration clause (cfr. Van den Berg, 2007, pp. 3-31).

II. RULES OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE

The principle of the independence of the arbitration clause and the jurisdiction of the Arbitration authority to decide on jurisdiction, even in the event of a nullity of the original contract, has been accepted in Art. 6§4, of rules of International Chamber of Commerce. According to this article:

«Except in cases where the parties have agreed otherwise, the mere claim that the original contract is void or invalid, or is not essentially absent, does not suspend the jurisdiction of the authority court, provided that the arbitration authority obtains the validity of the arbitration agreement. The jurisdiction of the arbitral tribunal will be valid and enforceable to decide on the rights of the parties, as well as to investigate their claims and objections, even if the original contract has not been valid».

III. UNCITRAL ARBITRATION RULES

Article 21§2 of UNCITRAL Arbitration Rules, stipulates for the independence of the arbitration clause, the arbitral tribunal will have the discretion to decide on the existence or validity of the contract, which forms the part of the arbitration clause. In the case of Art. 21, the arbitration clause forming part of the contract and involving arbitration in accordance with these rules (UNCITRAL) shall be considered as an agreement independent of the other terms of the contract. The arbitral tribunal's decision that the contract is null and void will not result in invalidity of the arbitration clause. In addition to the rules of the arbitration above, Art. 7 of the 1961 Geneva Convention, Art. 41 of the 1965 Washington Treaty (ICC) and Art. 16 of the Code of UNCITRAL arbitration (1985) also clearly predict the independence of the arbitration clause.

IV. INTERNATIONAL ARBITRATION PROCEDURE

International arbitration procedure and law have accepted the independence of the arbitration clause and are discussed in detail in international arbitration awards about the ICC's arbitration. The issue of independence and disintegration of the arbitration clause of other contract materials in the doctrine and international arbitration has a long history. There are many international arbitration judgments that have accepted arbitration clause in international commercial contracts. As it was said before, it is strange to consider, in the first view, the separation of a piece of the contract from its body and, despite its invalidity, to regard that particular article as valid and authoritative. The problem that has arisen in such a debate is, first of all, contracts that are on the side of that government, because the government can easily change its law and block the right envisaged in the contract.

Iran's Rights in Iran's arbitration agreement Law, whether conditional in the original transaction or a separate agreement, is considered a contract and is subject to the general terms of the contracts referred to in Art. 190, as well as Art. 219 of the Civil Code. Art. 454 of the Civil Procedure Code also provides that the parties may refer their dispute to arbitration (cfr. *Krutov. vs. Vancouver Hockey Club Limited*). By prescribing Art. 455 of the Civil Procedure Code, this constitution can be in the main transaction or set up in a separate contract, and the parties must, therefore, be required to resolve it through arbitration in the event of a dispute between them. In the case of International Commercial Arbitration, a similar judgment is contained in

Art. 1 (c) of the International Commercial Arbitration Law of 1997, which provides that the Arbitration Agreement may be arbitrary in a contract or in a separate contract. Until the adoption of the International Commercial Arbitration Law in Iran, international arbitration in Iran's law was subject to the provisions of the Code of Civil Procedure, but by adopting the law, which was drafted and approved by the UNCITRAL Arbitration model law, the rules of this law have been separated.

Therefore, to answer the question, whether the condition of arbitration is independent of the original contract, we must distinguish between internal arbitration and international arbitration¹.

V. INTERNAL ARBITRATION

The provisions of the internal arbitration clause on the seventh of the Iranian Civil Procedure Law (2000) are contained in Arts. 454 to 501, but the issue of the jurisdiction of the Arbitral Tribunal in its jurisdiction and the issue of independence is not explicitly stated in the arbitration clause. As we will say, some lawyers, referring to Art. 461 of the said law, have tried to extradite a general ruling and do not regard the condition of arbitration as independent. Therefore, in order to investigate and answer the question whether in Iranian law the condition of arbitration is independent of the original contract or condition in a contract is considered, we must refer to the rules of the obligations and terms of the contract in civil law. The rules regarding the condition of the contract are stated in Arts. 233 to 246 of the Civil Code. With careful consideration in these materials of the Civil Code, it is clear that the condition of arbitration is not the same as the condition of the contract because:

Firstly, the condition of arbitration is subject to its own rules (Articles 454 to 501 of the Law, A.D.M.)

Secondly, the condition of the contract is usually the condition of the transaction itself and forms one of the elements of the transaction, such as the terms of the surrender or the characteristics of the goods or the payment that is complementary or explanatory in relation to the main subject of the contract. In civil law, the condition of contracting in accordance with Imamie jurisprudence is discussed in the form of the adjective, verb, or outcome, and the subject and duct of all three are the subject of the contract and the transaction, Although the condition of arbitration may be considered as a condition of the verb or outcome, the fact is that until the disagreement

¹ See *Fung Sang Trading Limited vs. Kai Sun Sea Products and Food Company Limited*.

between the parties is established, the condition of the judgment is not relevant and may never be referred to the arbitral tribunal². This, contrary to the certainty of the condition in the transaction, and contrary to the custom and rationale of the condition of the condition (verb or result) in the contract.

Thirdly, referral to arbitration as a condition of the transaction, which is in Art. 455 of the AED. The prescription is not a “trading condition”, but is a matter of fact, and it is a function of the intention to create a separate one. In fact, the arbitration clause, such as the arbitration agreement, is an independent contract and has an independent subject, as well as its own intentions and interests, which are valid pursuant to Art. 10 of the Civil Code and in accordance with Art. 219 of the Civil Code. Even if it is said that the condition of arbitration is in the condition of a contract, it does not mean its full compliance with the fate of the main contract, because in terms of the terms of the contract in civil rights, it can be seen that the dissolution of the main contract necessarily leads to the dissolution of the condition does not have. For example, Art. 733 of the Civil Code refers to a contract for the transfer, according to which, if the transfer is made as a condition of payment, in the event of termination or termination, the transfer is not void and invalid. This rule is also in force in other commitments. The main criterion for this article, in our opinion, is the decomposition of the condition of the main contract. Remittances are two separate trades that can be used to pay for the cash in a payoff, but because it is separable, the legislator has separated the fate of the two. The same argument applies to the breakdown of the arbitration clause from the original contract. Assuming the independence of the arbitration clause in Iran’s legal system, it is doubtful if, in the event of the claim that the contract is not formed or invalidated, the arbitrator or arbitrators have the discretion to decide on such a claim and there is no need to go to court. This view is closer to the parties’ intentions of referring to arbitration. Therefore, only the claim for invalidity of the original contract or its void is not subject to arbitration. Each other interpretation paves the way for the prosecutor to sue the arbitrator by declaring invalid or invalidating the original contract. In addition, the purpose of referring to arbitration is to resolve all disputes, including disagreement between the parties about invalidity or non-intrusion or invalidity of the main contract, and there is no reason to exclude this issue from the scope of the arbitration clause. Some, referring to Art. 461 of the Civil Procedure Code, have said that in domestic arbitration, in the event of a claim of invalidity in the main transaction, the subject is withdrawn from the jurisdiction. Because the court should consider the difference between

² See *Globe Union Industrial Corp. vs. G.A.P. Marketin Corp.*

the parties regarding the transaction principle and achieve the transaction, and after verifying the validity of the transaction, the arbitration body is formed and, therefore, the condition of arbitration is not independent of the contract. Art. 461 ad that if there is a conflict between the principle of a transaction or an arbitration agreement between the parties, the court will first consider and comment on it. In our opinion, this Art. is in fact focused on two previous articles on how to choose a judge, as it was in the Code of Civil Procedure (1328) of the same article under n° 636 and began explaining that in the case of the preceding article whenever. And he did not hesitate to say that Art. 636 was the subject of Art. 635. But advocates of non-independence consider the arbitration clause as an independent matter, which expresses an independent ruling. In our opinion, the statement in articles 459 and 460 clearly shows that in these two articles of law, the legislator is in the form of pronouncement of a ruling and assignment in cases where the parties refuse to introduce the referee or cannot agree on the selection of the referee. Then, in Art. 461, the verdict of a sub-clause also states that if in such cases, in the basis of the transaction or the contract between the parties, it is not essentially time to appoint an arbitrator and form a reference for arbitration, and therefore the court first must first or Identify the main deal and then determine the referee. Art. 461 is not a general decree, but must be interpreted in the light of the two preceding provisions. Because if the referees have already been identified beforehand or the arbitrator is chosen by another (for example, by the appointing authority), the court of reference is properly formed and ready for work and there is no need for the court intervention to resolve the dispute about the principle of the transaction³. Therefore, the aforementioned provision in Art. 461 refers to Arts. 459 and 460 only in the cases referred to in these two Articles, which the court, and not the referring court, will consider the dispute between the parties to the principle of the transaction or the contract.

Legislation in Arts. 635 and 636 of the AED Act. The former also confirms this inference.

VI. INTERNATIONAL ARBITRATION

But in the international trade judgments, the issue of independence has been explicitly accepted by the arbitration clause and has been subject to controversy. Art. 16 of the International Commercial Arbitration Rules of Iran stipulates that the arbitrator may decide on his competence, as well as

³ See *D.G. Jewelry Inc. et al. vs. Cyberdiam Canada Ltd. et al.*

on the existence or validity of an arbitration agreement. The arbitration clause, which is part of a contract, is regarded as an independent agreement for the implementation of this law. Accepting the independence of the condition of arbitration by negotiating in international judgments has paved the way for the view that it can defend the independence of arbitration in internal judgments⁴.

VII. THE EFFECTS OF THE PRINCIPLE OF INDEPENDENCE OF THE ARBITRATION CLAUSE

The principle of independence of the arbitration clause in relation to the main contract, on the one hand, leads to the inability of the party to terminate the original contract and, on the other hand, allows it to be subject to a different law from the governing law.

VIII. FAILURE OF THE MAIN CONTRACT ON THE CONDITION OF ARBITRATION

The indifference to the fate of the original contract is the first and most important result of the principle of the independence of the arbitration agreement. This indifferent immunity makes it possible for the arbitration clause to deal with a large number of deficiencies that may affect the original contract, only knowing whether the principle exists even if the existence of the agreement is disputed. *The principle of independence is the condition of arbitration in international judgments.*

IX. THE ISSUE OF INDEPENDENCE AND SEPARATION

The arbitration clause of other contractual materials has a long history in international arbitration. The problem that has arisen in this debate is primarily related to the treaties of each side of the government, which state can easily change its law and block the rights provided for in the contract. Such a dispute arose in the case of the Swiss and Los Angeles government, and although the parties had issued a peaceful resolution before the final vote was issued, a final vote was issued on the issue before the compromise. The issue was that in the case, the Yugoslav side objected to the arbitrator's jurisdiction, claiming, first, that the arbitration clause, which was part of the

⁴ See *Comandate Marine Corp. vs. Pan Australia Shipping Pty. Ltd.*

contract, was deemed to be due to the cancellation of the contract. And, on the other hand, the law of that country of 19 October 1934 stipulated that the lawsuits on the part of the government were to be heard by the administration, and that the Yugoslavia had argued that the cases were not subject to arbitration. The head of the Swiss Federal Court, who served as the Chief Justice, handed over the decision to the International Court of Justice against the second protest. But in a preliminary ruling (dated October 1935) regarding the claim that the clause was a condition for arbitration due to the cancellation of the contract, the reader said: the contract was abandoned and the termination of the contract would entail the abrogation of the arbitration clause contained in the contract, and therefore a lawsuit in arbitration not acceptable. But this argument does not look right, because if so, any contract can be canceled and it was prevented from passing a lawsuit on arbitration. Whether the cancellation of the contract was correct, Vojslavy could not reciprocate its implementation, the issue itself is controversial and is related to the interpretation of the contract.

Whatever the basis for the cancellation of the contract, the preliminary view of the parties has been that the dispute over such matters, whether it is justified or not, cannot be resolved by referring to the arbitration. Arbitration agreement is often in the main contract. Consequently, with the doctrine of separation between the main contract and the condition of arbitration, the absence or invalidation of the original contract can be used as an argument to indicate that the condition of arbitration is not absent or untrue. In the light of this issue, where the arbitral tribunal is involved in the details of the arbitration clause, claiming that there is no agreement on the content of the arbitration clause, the court shall prescribe that the condition of arbitration shall not be reviewed at the stage of the proceedings for removal (arbitration clause)⁵.

In the light of this doctrine, the courts have confirmed that invalidity of the main contract does not affect the validity of the arbitration clause. In practice, the lack of a valid arbitration agreement is often cited in a way that arbitration relies on vulnerable arbitration agreements, that is, agreements that lack the necessary clarity or conflict with other clauses in the settlement of disputes in the contract. When a conditional content agreement for the recognition of court jurisdiction is at the same time as the court of reference, the court has, in most cases, recognized that conflicting clauses have different functional areas. In general, the condition for the selection of the reference authority in these cases relates to matters that are excluded from

⁵ See case 240/2007-6/2006 of the Madrid's Court of Appeal.

the adjudication clause when the parties do not invoke the arbitration clause⁶. Clause 1 of Art. 16 of the Code of Judgment the United Nations Conference on Trade and Development (UNCITRAL) explicitly relates to the subject matter of this principle. According to this clause, the discovery of a void clause in an arbitration clause does not necessarily invalidate the arbitration clause. The jurisdiction of the arbitral tribunal shall be affected only when the defect causing the invalidation of the main contract is extended by virtue of its different nature on condition of arbitration. Several cases have shown the impact of the principle of independence between the original contract and the condition of arbitration on matters of jurisdiction. In some of these cases, the opposing party disputed in an unsuccessful manner, arguing that the original contract was invalid because the former condition was not in force on the entry into force of the contract⁷. In other cases, the principle of separation is relied upon by arbitration tribunals to rule out the protest against the jurisdiction of the referring court, a protest made on the basis of fraudulent or fraudulent concluding a contract that the contract was void due to illegitimacy. Or because the parties at the time of signing the contract have made mistakes regarding the rights and obligations involved. The third group of decisions sought to suggest that the termination of the contract would not necessarily affect the validity of the arbitration clause contained in the contract. Also, the principle of separation is applicable in cases where it has been argued that the original contract is void due to termination, fundamental breach or fundamental change of circumstances in such a way that the implementation of the contract is impossible⁸.

X. CONCLUSIONS

1. It can be said that the adoption of the International Commercial Arbitration Law has been a major step towards developing and updating Iran's rules on arbitration and harmonization and compliance with the requirements of commercial arbitration. The law has taken this major step by instilling flexible and, to a large extent, self-enforcing and independent arbitration in international trade disputes. Some of the details and provisions of this law must, of course, be interpreted and modified in the practical procedure.

⁶ See *Jaral Decoracion, S.L vs. Penasco Rodilla, SL* (case 94/2007-07/2005).

⁷ See *Cecrop Co. vs. Kinetic Sciences Inc.*; *Krutov. vs. Vancouver Hockey Club Limited*; and *Blue Limited v. Jaribu Credit Traders Limited*.

⁸ See *NetSys Technology Group AB vs. Open Text Corp.*

2. Along with the evolution of the procedure, it is necessary to amend some of the rules and laws related to Iran's private international law, which have implications for international arbitration. Since judging is one of the most important ways of resolving international disputes. This method is easier, more valued and faster than other dispute resolution methods. The contract may contain the condition for the referral of disputes to arbitration. The arbitration clause is independent of the contract that it involves.

3. Consequently, the discussion of the validity of the contract containing the condition of arbitration does not necessarily apply to the condition of the arbitration or the exclusion of the arbitral tribunal from being heard by the parties to the dispute over the dispute. The independence doctrine of the arbitration clause is expressed with the express intention of the parties to the parties that they agree to arbitrate any and all differences between themselves, including those concerning the validity of the contract containing the arbitration clause. All relevant commercial contracts, especially in international commercial contracts, are intended to resolve future disputes in the context of a contract or individually arbitration clauses.

4. As mentioned, the main trend in arbitration laws in most countries, as well as in the rules and rules of arbitration of international arbitration bodies, is to consider the arbitration clause independent of the original contract. Some countries have explicit provisions for the independence of arbitration, and some interpret the terms of the arbitration clause, intent on the parties, the terms and conditions of the contract, and the previous business relations of the parties or the relevant conventions for the interpretation of the contract, indicating the intention of the parties to separate the condition of arbitration from the original contract. Institutions and international arbitration bodies have also accepted the principle of independence of arbitration in their rules of arbitration, in such a way that the dispute about the existence or influence of the main contract does not affect the validity of the arbitration clause and the arbitration body and the difference in the parties to the original The contract will also be considered. This is the rule that is referred to as "qualification" or "competence in qualification". Art. 16 of the International Commercial Arbitration Law of Iran, approved in 1376, explicitly accepted this rule and entered the Iranian law system.

5. Although the law refers to international judgments, it indicates the intention of the legislator and, with the abrogation of the property, can and should be used for the interpretation and development of arbitration rights of Iran, with the abrogation of the property. Today, in most commercial cases, the parties to the agreement state that the referral of disputes to the arbitral tribunal is included in the ranking of the terms of the contract. They,

by doing so, exclude their possible litigation from the jurisdiction of the judicial authorities and hand it over to arbitrarily chosen ones. The arbitration clause is the basis for the award of jurisdiction to the arbitral tribunal and relates to disputes relating to the interpretation or execution of the main contract in the future. The parties who make this condition must have the right to conclude it, because by including this obligation to the court, they will be judged by a third party as the referee. The argument of the independence of the arbitration clause is raised in the arbitration clauses in the referral clauses of the controversy, which means that the original termination or termination of the arbitration clause is not subject to the condition that the condition is independent. 6. Independence is the condition of the arbitration of the product of the implied will of the parties, because, one of the differences between the parties may be the same, one of the parties claiming the validity of the contract and the other one denying it and arbitrarily resolving these differences, which have chosen the arbitrators. The issue of independence the condition of arbitration from the main contract is one of the important principles of arbitration that guarantees effective and usefulness and validity of the condition of arbitration.

7. In theory, the parties to the contract, by incorporating the terms of the arbitration, actually conclude two contracts: one of the principal contracts, which expresses the essential obligations of the parties, and in parallel with the contract containing the arbitration clause. The principle of independence of the arbitration clause grants a special and independent effect to the original contract subject to arbitration.

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