

## **Dispute Resolution in Iran Part 1: 1 – Arbitration**

Since the signing of the JCPOA and the subsequent lifting of sanctions there has been significant growth in interest from international companies to invest in and do business with Iran.

Many commercial agreements are currently being signed with Iranian parties and it is therefore important to consider the type of dispute resolution mechanisms available.

The Iranian Code of Civil procedure has since 1939 allowed referrals to arbitration as a method of resolving disputes. Further, as a result of long running disputes such as **(the Iran v United States Claims Tribunal)**, Iranian lawyers have had significant exposure to arbitration.

Arbitration has therefore been a favourite method of resolving disputes in particular in relation to international commercial disputes.

### **The Law for International and Commercial Arbitration (“LICA”), 1997**

This governs International Arbitration in Iran and its provisions are based on the Uncitral Model Law with some significant changes.

#### **Some important aspects of LICA**

- The arbitrator does not have to be of Iranian nationality.
- The arbitrator can decide on his own jurisdiction and on whether the arbitration agreement existed.
- The parties are free to agree the procedure to be adopted with regard to proceedings.
- The parties can agree the seat of the arbitration and the language used.
- The arbitration award is binding.
- However, there are various grounds under which the award can be set aside.
  
- LICA does not say anything regarding “*confidentiality*” which therefore needs to be dealt with in the Arbitration Agreement.
  
- Given that LICA makes no reference to costs of arbitration it is essential that this should be decided and agreed between the parties.

### **The special position of public or state companies and Article 139 of the Iranian Constitution**

Article 139 of the Iranian Constitution provides that:

*“The settlement of disputes relating to public and government property or the referral of such disputes to arbitration are on each occasion dependent on approval being given by the Council of Ministers and Parliament must be informed”.*

It goes on to say:

*“In cases where one party to the dispute is a foreigner, as well as in important domestic cases, Parliament must also approve. Important cases will be determined by law”.*

Jurisprudence has established that where a party enters into an arbitration agreement with an Iranian state entity or an entity which owns public assets in Iran will have to seek approval from the Council of Ministers and potentially Parliament prior to execution of the agreement.

### **1. Tehran Regional Arbitration Centre (TRAC)**

This arbitration centre was set up in 1997 and has a number of international arbitrators. The rules are essentially based on Uncitral rules of arbitration. The rules allow the possibility for the parties to determine the number of arbitrators, appoint the arbitrators of their choice and define the procedure for their appointment. The rules also provide for the parties to select the place of arbitration, procedural rules and substantive law that may be applied to the arbitration.

### **2. "Arbitration Centre of the Iran Chamber"**

This was established in 2002 by way of a specific law called *"the law on articles of association of ACIC"*. These arbitration rules are based on LICA and essentially adopt the Uncitral model law.

### **Other arbitration institutions**

Traditionally, the International Chamber of Commerce (ICC) and increasingly the London Chamber of International Arbitration (LCIA) have been the favourite institutions used for international commercial arbitration with Iranian parties.

Also, many parties are now also using DIFC arbitration which is convenient because of Dubai being geographically close to Iran.

### **New York Convention**

As a result of the *"Law concerning the accession of Iran to the 1958 New York Convention on the recognition and enforcement of Foreign Arbitral Awards 2001"* Iran acceded to the 1958 New York Convention on the recognition and enforcement of Foreign Arbitral Awards.

Any award obtained by a foreign arbitral tribunal can therefore be enforced in Iran.

### **Conclusion**

The terms of an arbitration agreement with an Iranian party should be skilfully agreed and negotiated. The drafters must be *"au fait"* with the issues that are specific to this jurisdiction and ensure that all eventualities are catered for.

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