



Drafting Arbitration Clauses in Agreements with Iranian Public Sector Entities

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1. Introduction

Iran is among the most important trading partners in the Middle East - irrespective of all political irritations which at times overshadow economic relations. When doing business with Iran, state contracts are of paramount importance. The Iranian government, over the last few years, has been pursuing ambitious plans aiming at a comprehensive overhaul of the domestic infrastructure. In connection herewith, Iran is seeking access to foreign know how and the co-operation with international partners, as is the case in the oil and gas industry. In addition, many of the significant economic players in Iran, for instance, in the automotive industry, are public sector enterprises. Iranian public sector entities, therefore, often are party to the large, international transactions.

When contracting with Iranian public sector entities, in many instances it is not a feasible option to agree on a (state) jurisdiction outside Iran, what routinely is refused by the Iranian side. Submitting potential disputes to arbitration, as often, is a compromise solution which allows to break that deadlock. When drafting arbitration clauses involving Iranian public sector entities, however, certain restrictions of Iranian constitutional and statutory law must be observed. This paper, based on the author's practical experience, discusses the existing legal restrictions and develops strategies of how pitfalls when drafting arbitration clauses in agreements with Iranian public sector entities can be avoided. The Annex contains a – simple – model arbitration clause which can be used in commercial agreements with Iranian public sector enterprises.

2. Constitutional Law Restrictions on Arbitration

Under the Iranian Constitution (1979), the arbitrability of disputes involving the Iranian public sector is seriously curtailed, as initiating arbitration proceedings by a foreign party is dependent on the approval of the Iranian Parliament. Under Iranian law, the foreign party can not submit a matter to arbitration without having obtained the Parliament's consent. This "Parliamentary Veto Right" raises a number of issues: