

ELITE PARS

Law Firm

At a Glance Series

ALTERNATIVE DISPUTE RESOLUTION AND ITS ENFORCEABILITY UNDER IRANIAN LAW

Elite Pars Law Firm

Second Floor, 42 Soltani St. Valiasr
Ave. Tehran.

+98 21 22 01 6586
elitepars.com

Contents

ADR AND ITS ENFORCEABILITY UNDER IRANIAN JURISDICTION	3
▪ ADR.....	3
▪ Arbitration	3
▪ Mediation.....	4
▪ Negotiation	5
▪ Conciliation.....	5
▪ Neutral Evaluation	5
▪ Multi-Step ADR.....	6
BOTTOM LINE.....	6
AFTERWORD	8
DISCLAIMER	8

Complicated issues that commercial transactions could bring about frequently sees a legal authority adjudicating thereon. On such occasions many prefer to avoid the often intricate and lengthy litigation processes; and of course, certain features of Alternative Dispute Resolution methods make them desirable for the parties to a contract to opt for, should a problem arise. Partly because these methods tend to be more flexible and less costly compared to litigation. Equally important is that they are not as time-consuming as litigation.

Establishing a successful business not only necessitates a thorough assessment of commercial aspects but also needs a person to be fully aware of the legal environment in which they operate. In this regard, Elite Pars Law Firm by closely observing the needs of businesses and clients and generally any person interested in Iranian law, has prepared a paper giving an overview of Iran's legal system with respect to different mechanisms of Alternative Dispute Resolution and their enforceability under Iranian law.

ADR AND ITS ENFORCEABILITY UNDER IRANIAN JURISDICTION

▪ **ADR**

Alternative Dispute Resolution (ADR) refers to multiple non-judicial methods of handling legal conflicts between the parties to a contract. It typically encompasses arbitration, mediation, negotiation, conciliation, and neutral evaluation. These alternatives are sought on a variety of grounds, which can also be closely associated with one another, and they inter alia may include higher cost-effectiveness and expeditiousness. That is the reduction of the expenses of dispute resolution, partly due to faster proceeding as compared with the ordinary judicial proceedings, which in turn might also contribute to creating an outcome that is better suited to the parties' underlying interests and needs, in a more amicable environment. ADR methods, in substance, might not be enumerated actual alternatives as they are not in any meaningful form, in a competition with the established judicial methods. They can, however, play roles as mechanisms that operate as additional or subsidiary processes in the discharge of the judicial system's responsibility.

▪ **Arbitration**

The most common type of ADR for civil cases is arbitration. Arbitration could be defined as a proceeding before an impartial forum consisting of adjudicators with non-judicial entitlements for deciding upon a dispute for a final and binding decision. Arbitration provisions are frequently included in commercial contracts for the sale of goods and services. Parties often

contract to arbitrate their prospective disputes, prior to any dispute actually arises. This does not mean, however, that an agreement to arbitrate cannot also be made following the emergence of a dispute, which may occur as the result of a negotiation between the parties already in conflict. The arbitration is heard and decided by an arbitral panel. Arbitration hearings can last for a day to several weeks. The panel then deliberates and issues a written decision, i.e. arbitral award, which is usually binding on all parties but does not constitute a public record. Arbitration requires a certain level of consent between the parties, though, as mentioned before, the said consent may long predate any dispute.

The United Nations Convention for the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention) provides for an arbitral award to be recognized with the same effect as domestic courts judgments without reviewing the substance of the question in dispute.

As Iran is a contracting state to the New York Convention, arbitral awards rendered from other contracting states are fully recognized and thus enforced in Iranian jurisdiction. However, as for non-contracting states, due to lack of recognition and enforcement rules specified for awards issued in such states intricacies may arise. In such a case, recourse is to be made to the general rules considering recognition of foreign judgments in Iran; with which Art. 169 Enforcement of Civil Judgments Act deals. By the virtue of this article, arbitral awards can only be recognized in Iran once they are recognized in the jurisdiction of the seat of arbitration. At any rate as a general principle, no judgments including those of foreign forums shall be in violation of Iran's peremptory rules of law and/or public policy.

▪ **Mediation**

Mediation is a relatively non-adversarial process in which a mediator, who is a neutral third party, enters into a conflict in order to aid the parties in the settlement of their disagreement. Mediators generally are skilled negotiators that attempt to provide solutions to parties for reaching an agreement for settling their conflicts and controversies. Mediation often does not possess strict rules, and instead, the mediator may have discretionary power to manage the proceeding. Mediation offers parties a methodology to address disagreements while continuing in an economically viable relationship, without incurring the cost of litigation.

On 20 December 2018, "United Nations Convention on International Settlement Agreements Resulting from Mediation" also known as the "Singapore Convention" was adopted. This convention is aimed at promoting the widespread international enforceability of settlement agreements, which directly erodes the edge of arbitration, considering that the enforceability of arbitral awards is usually ranked as arbitration's most important feature.

Iran joined the convention on 7 August 2019. Although this convention has not prescribed a specific method of enforcement, it nevertheless has provided guidance on the conditions to be fulfilled by a state to enforce a settlement agreement resulting from mediation. According to this convention, the settlement agreements which are intended to be binding by their parties

shall be enforced in accordance with rules of procedure of the member states, and under the conditions laid down in the convention. The convention coming into force on 12 September 2020, permits the parties to avoid the prolonged and somewhat inefficient methods including litigation for recognition of settlement agreements and instead directly have their settlement agreements enforced.

- **Negotiation**

Negotiation is a less formal method, whereby parties meet in good faith to discuss and address the dispute aiming to reach a mutually agreed resolution. The process of negotiation is informal in the sense of not containing defined procedures or rules governing the evidence provision, for example, and not requiring that the decisions be made or rendered by a third party. Negotiation can end either by a failure thereof, after which parties may seek to initiate other mechanisms, or by concluding a settlement agreement that though is not ordinarily reviewed judicially, it may be enforced as a contract.

- **Conciliation**

A sort of dispute settlement, wherein parties request a conciliator to aid them in reaching an amicable settlement of their dispute. Compared with mediation, conciliation is a more formal process than the latter and it could typically involve the engagement of parties' legal representatives, thus making it a costlier process too. Furthermore, the conciliator takes a more interventionist role in bringing the two parties together. Should no mutually acceptable settlement be reached eventually, the conciliator issues a recommendation that is binding on the parties unless rejected by either of them.

In Iranian jurisdiction, conciliation generally is not deemed binding, unless expressly stipulated by the parties. Should a conciliation settlement agreement which is intended to be binding by the parties be notarized as an official document then it can be enforced immediately in a manner similar to enforcing official documents in Iran. On the other hand, an ordinary and non-official settlement agreement even if it is binding per its terms, can only come into effect in line with general principles of enforcing contracts, which requires resorting to courts so as to first authenticate the agreement and subsequently have the parties to abide by it.

- **Neutral Evaluation**

A process in which the parties have an impartial and independent individual, who may be of expertise in the area of a particular question, to hear their statements and evaluate their case and stance in a confidential process. This followed by examining the evidence will lead to a non-binding opinion be provided to the parties by the evaluating party. Evaluation is simpler and less expensive than litigation or arbitration and is especially most advantageous where parties require the answer to a technical question quickly. The opinion issued is generally non-binding.

But of course, should parties have intended otherwise, such an opinion may be enforced as an agreement.

▪ **Multi-Step ADR**

The primary objective of this type of mechanism is to allow parties to resolve their disputes through rudimentary and simpler methods such as negotiation, expert determination, or mediation without resorting to more costly procedures. Such clauses often expound hierarchical stages that the parties should seek in reaching a settlement. In case the parties fail to do so, they proceed to the next phase until they run out of options necessitating the last step i.e. arbitration or litigation.

Unlike arbitration, the bindingness of the pre-arbitral contractual mechanisms is a question subject to dispute. As opposed to an arbitration agreement—one of the main effects of which being the exclusion of the courts' jurisdiction for commencing the proceedings—an agreement on mechanisms to be sought before arbitration, may not necessarily entail such an outcome. Nonetheless, it could be said that according to Iranian law, given that agreements on pre-arbitral contractual mechanisms are—as a general principle—valid, the obligations arising out of them are binding insofar as they are not inconsistent with any peremptory rules of law. This argument is further reinforced by a well-known principle that all contracts concluded under the law are presumed to be binding and irrevocable on their parties, unless otherwise stipulated by a legal or contractual provision (Iran Civil Code, Art. 219). Accordingly, in case of a two-step dispute resolution consisting of mediation and arbitration, for example; if a party refuses to initiate the mediation and instead claims directly before the arbitrators, this can raise a claim of an arbitral panel's lack of jurisdiction or a request to enforce mediation as an initial stage.

At any rate, it is highly advisable that a dispute resolution mechanism containing pre-arbitral contractual mechanisms expressly specify the enforceability of each step, as otherwise embedding such mechanisms in the contract would likely be of no practical effect. Certainty ensures that in the event of a dispute, the parties will proceed in full compliance with their obligations under the pre-arbitral contractual mechanisms and will execute their contractual agreement, prior to a final hearing. Such certainty could be further bolstered by clearly determining the timing of each stage as well.

BOTTOM LINE

Except for arbitration which is binding upon its parties, one major long-existed obstacle to a more widespread use of other ADR mechanism in Iran, is that settlement agreements still tend to be difficult to be enforced by law in the event that a party refuses to perform, although the issue seems to be addressed to certain extents with a functional enforcement method being devised following the ratification of Singapore Convention by Iran. Overall, the intention of the parties plays the most important role in determining the enforceability of ADR methods. The

phrasing also in a dispute settlement clause is one of the principal means of ensuring that the steps are duly followed and the steps of a multilayered dispute settlement clause are in full consistency with the parties' agreement. Courts in Iran usually consider the following in determining whether the parties have had a genuine and decisive intention to have ADR means to be binding on them: (a) The contemplated terms in the dispute resolution clause; (b) ADR mechanism being definite (especially taking into account the timing), and (c) Considering the conduct of the parties in light of the principle of good faith.

AFTERWORD

Elite Pars closely tracks legal developments on a global scale in order to advise and support clients in the best possible way. Our experts are available to update you on all ADR related questions and with remarkable success rate to assist you in defending your cases in Iran.

DISCLAIMER

It is to be kindly noted: the current publication does not necessarily deal with every aspect of the topic nor is it legal advice in any manner or tantamount thereto. For exhaustive and fully reliable consultation regarding your questions, be it in the field of ADR or other expertise of Elite Pars Law firm, please do feel free to contact us at (+9821) 22 016 586 or info@elitepars.com

© 2020 Elite Pars

Elite Pars has a simple, yet profound purpose: to be the place where trust, creativity, enthusiasm and hard work unite. We strive to bring truly elite legal services through care, passion and dedication. We listen carefully to our clients and draw on our broad practice capabilities to transform their challenging difficulties to success stories. We are committed to improve the well-being of the people around us and nurture the lives we touch. For the past several years, our team has had a leading role in navigating various industry participants into the Iranian market.

Contact Your Dedicated Team!