

The Arbitration and its Importance

The arbitration is considered an effective and rapid mean in solving problems and finding solution for any arising dispute between the trade partners. Judgments of the arbitrators and their decisions are always straight and neutral. The arbitration is an old method that was known and used on the old times during successive civilization's epochs. Aristotle said that disputed parties might prefer the arbitration than judicature, because the arbitrator perceives the justice while judge considers only the full application of the legislation.

Before Islam the arbitration was widely used by the Arabs, and many prominent arbitrators came out whereas every tribe has its own arbitrators. The most famous case (conflict) before Islam was, placing the Honorable Holy Black stone of the Kaaba, when the tribes of a Quraish disputed on which tribe has the right to place the Honorable stone back to its original place after the reconstruction of the Holy Kaaba.

On this critical moment, the arbitrator was our great and beloved Prophet Mohamed (May the pace and blessings of Allah be upon him).

Afterwards, Islam gave a significant importance to the arbitration in solving any arising problem in the marital relations as well as in other relations: "If ye fear a breach between them twain, appoint (two) arbiters, one from his family and the other from hers; if they wish for peace, Allah will cause their reconciliation, for Allah hath full knowledge, and is acquainted with all things" Surat Annissaa-verse 35.

At the battle of Saffain, the arbitration took place between the two parties; Ali Ibn Abi Taleb and Muawiyah Ibn Abi Sufian, and the selected arbitrators were: Amro Ibn Al-Aass and Abu Mousa Al-Ashaari (may Allah be pleased with them). The arbitration's importance continued to flourish as international commerce and commercial activities are increasing day after day between countries, companies and even between individuals. As result, the arbitration was developed to take the form of national, international organization and centers to cope with the diffusion of all kind of investment agreements and performances.

As concept, the arbitration is a sort of private judicature, based on the principle of the well power, which means that the contending parties agree on resorting to the arbitration as a way to find solution for an existing conflict or for any other conflict that might arise in the future. That means the renunciation of the contractors' rights to refer to the judicial system and the dependence on the arbitration to solve out any kind of disagreement among them. In view of the fact that the arbitration is built on the basis of an acceptance and agreement of all the parties in case of any disagreement among them, this is called arbitration condition. On the other hand, if the disagreement happened between the parties and they agreed afterwards to use arbitration that would be called an agreement of the arbitration.

The arbitration, the Reconciliation and the judicature, the arbitrations differ from the reconciliation, whereas the reconciliation is to be conducted between the parties themselves or their representatives while in the arbitration the arbitrator plays the role of the judge in taking decision whether the disputing parties accepted it or not.

The difference between the arbitration and the judicature is that in the judicature, the authority of the judge is general while the authority of the arbitrator is limited; he handled only the assigned case and cannot exceed it.

Arbitration main conditions:

The arbitration requires three main conditions:

1. An agreement between the parties of the dispute to use the arbitration.
2. The acceptance of the arbitrators.
3. The existence of an arbitration facility (place).

In terms of organization, there are two kinds of arbitration:

1. Free arbitration; when the disputing parties select one or two arbitrators to undertake the arbitration process.
2. Institutional arbitration; the subjugation of the disputing parties to one of the arbitration centers (ex. The Hague, the French ICC, The Briton AAA, Stockholm center, Cairo center, Dubai center or Ajman center for reconciliation and arbitration).

The arbitration is considered national when all related parties are nationals and the contract is domestic. If one or more of the disputing parties is foreigner; in this case we call it foreign arbitration. Every country follows specific rules in arbitration. The Kingdom of Saudi Arabia, for example, is adapting the typical jurisprudence of Imam Ahmad Bin Hannibal in the arbitration, while the whole world now turned toward applying the UNISTRAL rules, issued and approved by the United Nations.

Arbitration and other Conflict Resolutions Methods:

Arbitration is perceived as the best way for commercial conflicts resolution due to the following reasons:

First: The rapidity in resolving disputes, because the arbitrators will be dedicating themselves solely trying to find a solution or a judgment for one conflict. In most of the cases; this process would be accomplished in a period that doesn't exceed 6 months.

Secondly: The lower costs, the expenses of the arbitration are much less than that of Courts of Justice fees and lawyers' costs as well as the execution procedures.

Thirdly: The clandestineness; as the file of the quarrel is handled only by the arbitrators, while sessions of the litigation in the Courts of Justice are open to public. Not to forget that the arbitrators swear an oath to observe neutrality and clandestineness in all and every case they are handling.

Fourthly: The arbitration is characterized by the simplicity of its procedures. The board of arbitrators is given a considerable amount of freedoms to conclude the disagreement.

Fifthly: The selection of the arbitrators is to be done by the disputing parties themselves, so that everybody could feel comfortable and satisfied.

Sixthly: Avoidance of the spitefulness between the disputed parties. Usually the decisions are accepted by both parties due to the confidence they put in the arbitrators, and consequently the disagreement will disappear and the good relation will prevail again.

Many people of those related to the arbitration issue agreed that it has been subject to the considerable development in terms of laws to serve the merchants who request the arbitration as solution for their disagreements away from the judicature and its laws to the extent that the arbitration is currently capable of playing a prominent and basic role in developing and formulating a particular professional cooperative law to be used especially for international commerce.

The arbitration is no more considered as a commodity that needs marketing; it became a necessity imposed by the international commerce reality. Its role is no more limited to solve conflicts, but in the view point of the fourth international conference for arbitration held in Moscow 1972 and the fifth international conference held in London during October 1974, the arbitration is an effective tool that should be used to avoid disputes during international negotiations for long term commercial contracts ratification related to technology transfer and/or joint projects as well as during the implementation of these contracts.

As we mentioned earlier, the arbitration enjoyed an important position in the last fifty years. This was concretized by the international agreements, one of which is New York agreement 1958 regarding recognition and accomplishing foreign arbitration's decisions, this agreement was signed by the 11 Arab countries. Further more, the European agreement signed in Geneva, April 1961 concerning that international commercial arbitration and the application procedures' memo signed on 17 December 1962. Moreover, the special agreement proposed by the I.B.R.D. and called (B.I.R.D) agreement dealing with investments' conflict arising between the host states and foreign parties signed during March 1965 in addition to the general condition agreement 1968 that controls the goods supply within the COMICOM states. Also Moscow convention, May 1972, is concerning using arbitration in resolving disputes between socialist states and open for all other countries. Nowadays the United Nations issued the UNISTRAL law adopted by most of the world's countries.

The Arbitration's Reality and Future:

The international commerce growth, the interlacement of interest, the information and communication technology revolution that turned the universe into a small village, the easiness of capitals money mobility in the form of huge investment projects, and technology transfer contracts, construction contracts, international trade contracts, air and seas cargo contracts, insurance contracts and banking contracts, all that created an urgent need for developing international mechanism for commercial arbitration to serve as an effective and suitable mean and a safe refuge for the contracting parties in case a disagreement or conflict occurred between them. This reality of the arbitration constitutes the backbone of the business and trade fields. Because of the aforesaid causes, most of the investors prefer to use the arbitration away from the national judicature and its measures.

As a practical example, the French I/she/you obeyed laws were prohibiting the use of the arbitration in any legal relation concerning French state; this was applied only on the private sectors. When the joint project Euro Disney in Paris was to be discussed with the American companies the investors decided to include a clause on using the arbitrations for resolving any arising conflict between the parties of the contract. France insisted on refusing this condition for five years, and afterward the French parliament approved the use of the international arbitrations an effective alternative tool in conflict resolution on the year 1992, and accordingly, it was agreed on including this article of arbitration, and the Euro Disney was established.

Based on the above mentioned facts, the arbitration will continue to develop following the development of the various life aspects mentioned earlier. Therefore, we should pay attention to the arbitration and the development its mechanisms to cope with the development of the societies' current and future needs and aspirations. We should also enlighten the businessmen and help them get acquainted of the arbitration and its importance as an alternative way to settle the commercial disputes.

Accordingly, His Highness Sheikh Humaid Bin Rashid Al-Nuaimi, the Ruler of Ajman issued the decree number 6/2004 regarding the rules and the procedures of Ajman Center for Reconciliation and Commercial Arbitration, which comes as a coronation of the continuous efforts paid by His Highness the ruler of Ajman, to provide the investors in the emirate with favorable investment environment and condition that cope with their aspirations.

Behind this decree, a venerable initiative from H.H. the deputy ruler of Ajman, and exhausting efforts paid by the executive council of Ajman Chamber of Commerce and Industry as the party responsible for the implementation of the decree and the management of the center that we hope it will be of great benefit.

Allah is the source of all success.

Dr. Ali Khalil Al-Hudaithi Lawyer and international arbitrator, PHD in investment and technology transfer contracts counselor of Ajman Chamber of Commerce and Industry.