

# Iran's Arbitration at a Glance A Brief Practical Review

Oveis Rezvanian\* and Kamyar (Sajad) Oladi\*

## Abstract:

*This article is a brief review of arbitration law and practice in Iran. It addresses the most important elements of arbitration in Iran's legal system, i.e. the laws governing the procedure and substance of arbitration, the enforceability of arbitral awards and the grounds for setting aside or annulment, at both domestic and international levels. This article highlights certain differences that exist between domestic arbitration (governed by Section 7 of the Civil Procedure Code (CPC)) and international arbitration (governed by the Law on International Commercial Arbitration (LICA)) and the effects this has thereon. Parties' agreement, however, has the primary role in both international and domestic arbitration, thus a substantial part of the arbitration procedure is determinable by the parties' agreement. Iranian courts enforce arbitral awards issued in Iran (national awards) in accordance with the CPC and LICA, while foreign arbitral awards are enforced by virtue of the New York Convention, of which Iran is also a member. There are also certain grounds for Iranian courts to set aside, annul or refuse the enforcement of arbitral awards, which remarkably depends on the national or foreign character of the award.*

## 1. Introduction

While Iran's legal system is based mainly on Islamic Sharia and Fiqh,<sup>1</sup> it has certain similarities with the Romano-Germanic legal system, which places Iran as a member of the Romano-Germanic legal family.<sup>2</sup> The Constitutional Revolution of 1906, historically paved the way for Iran to join this family, by virtue of its expansion of the role of written law in Iran's legal system. The role of written law has expanded further, and today written law has an even more prominent role in Iran, acting as the legal foundation. Written law serves as the most important resource for law practitioners and researchers in Iran, courts and tribunals are obliged to

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\* Director, Tehran Regional Arbitration Centre, Tehran, Islamic Republic of Iran.

\* Senior Legal Counsel, Tehran Regional Arbitration Centre, Tehran, Islamic Republic Of Iran.

<sup>1</sup> I.R.I. Constitution 1969 amended 1989, Chapter 1, Principle 4.

<sup>2</sup> Kamaledin Herisinejad, Ta'ammoli Dar Avamele Ta'sirpazirie Hoqooqe Novine Iran Az Nizame Hoqooqie Roomi-Germany (Reflection on the factors influencing Roman-German Legal System on Iran's New Legal System), Law Quarterly, Journal Of Law And Political Faculty, 32 Private Law Studies, Issue 2, At 369, 380-381 (2009).

follow the words of the law,<sup>3</sup> and in order to study or practice law, one must have an understanding of Iran's written law materials. The framework of all legal subject matters in Iran is defined firstly through written laws and secondly through judicial practice. Arbitration is not an exception to this framework.

In 1910, arbitration was introduced to Iran's legal system for the first time through the Law of Trial Principles.<sup>4</sup> Their provisions detailing arbitration, provided a comprehensive legal framework for arbitration proceedings in Iran<sup>5</sup> and became a source of debate among Iranian practitioners and scholars. Accordingly, a subsequent set of principles enacted in 1927 overruled the preceding principles of 1910, with the subsequent principles incorporating a non-final compulsive arbitration. However, as a result of many practical difficulties that ensued, this law was amended a year later and the arbitration provisions were reverted to the previous,<sup>6</sup> up until 1935. The original principles of 1910 contained more comprehensive and practical provisions regarding arbitration, thus it became the basis of Iran's Civil Procedure Code of 1939 (former CPC).<sup>7</sup> Subsequently in 1997, the ratification of the Law of International Commercial Arbitration of Iran (LICA) was momentous for arbitration in Iran, since it distinguished between domestic and international arbitration. Today, LICA and Iran's Civil Procedure Code of 2000 (CPC) are two laws which govern arbitration in Iran.

Through the development of arbitration in Iran, the rules of arbitral institutions, as well as some substantive laws which have provisions related to arbitration, have become other important sources of the arbitration system in Iran. In this article, we will take a two-tier approach when looking at Iran's arbitration system, by first reviewing all law materials related to Iran's arbitration system as the primary sources and then, by focusing on the practice of Iranian courts and arbitral tribunals as the second source of law. To this end, our discussion will draw upon the laws and rules related to arbitration in Iran and on how the proceedings unfold,

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<sup>3</sup> See Article 3 of the CPC: "Court judges are obliged to hear the cases, render appropriate verdicts or resolute the disputes in accordance with the law. ..." Article 482 Of The CPC: "An arbitrator's award must be justified and well-reasoned and not against the laws which create the rights." Supreme Court Decision as a unified judicial precedent no. 58 And Article 36 Of the Constitutional Law of the Islamic Republic Of Iran: "The ratification and execution of a sentence may only be carried out through a qualified court and must be in accordance with law."

<sup>4</sup> Abdollah Shams, *movafeghat nameye davari va salahiate dadgah (Arbitration Agreement And Court Competence)*, Journal Of Legal Research, Issue 37, At 10, 13, <[Ensani.Ir/File/Download/Article/20120329150242-50\\_34-1.Pdf](http://Ensani.Ir/File/Download/Article/20120329150242-50_34-1.Pdf)>.

<sup>5</sup> Goodarz Eftekhar Jahromi, *Tahavvolate Nahade Davari Dar Ghavanine Mozooye Iran: dastavarde an dar hozeye davarie beynolmelali (The Developments of Arbitration in Iran Written Laws: Its Achievement in International Arbitration)*, Journal Of Legal Research, Issue 27-28, At 13, 16, <[Ensani.Ir/Fa/Article/7103](http://Ensani.Ir/Fa/Article/7103)>.

<sup>6</sup> *Id.* At 20.

<sup>7</sup> *Id.* At 22.