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Confidentiality as a Justification for Resorting to Arbitration in Investment Contracts Disputes

Ahmed Faleh Al-Abadla
Ph.D. Student, Mutah University, Karak, Jordan

Abstract

The study aimed to identify the extent of the arbitration parties' commitment to confidentiality in arbitration and to identify the extent to which the principle of confidentiality is assumed in arbitration. The study adopted the comparative analytical and descriptive method. The study reached results, the most important of which are: Confidentiality is the most important characteristic of arbitration, which makes arbitration distinct from the state's judiciary, and that confidentiality is one of the justifications for resorting to arbitration, to preserve the commercial, industrial and technical secrets of the parties to the dispute. Confidentiality is an assumed principle in arbitration in investment contract disputes without stipulating it in the arbitration agreement. The study recommended: The arbitral institutions should confirm the extent to which the principle of confidentiality is applied in investment contract disputes in their arbitral procedures. Arbitral institutions should organize their position when justifications for transparency are achieved in the arbitral process. The contracting parties shall clarify in the arbitration agreement what is related to applying the principle of confidentiality and what is related to the application of transparency.

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Introduction

Public trials are one of the foundations of the judicial system. Since the principle in trials is public because of its justifications to achieve justice, the exception is confidentiality in trials, according to special provisions, as in juvenile trials it is conducted in secret, except the judgment pronouncement session, which is not considered a violation of the principle of confidentiality in the trial.

As for arbitration, the principle is confidentiality, which is considered one of the characteristics of arbitration, as the contracting parties are agreed to resolve their disputes through arbitration, under the arbitration clause, which is independent of the original contract organized between the two parties, even if this clause is included in the terms of the original contract, this is in order to avoid resorting to the ordinary judiciary, given the many advantages of arbitration, including the principle of confidentiality, and avoiding publicity that harms the contracting parties and their basic interests when any dispute arises between them, which negatively affects their positions and the secret of their business and undermines confidence in them in the commercial circles, especially in the commercial contract, which requires Its speed and professional nature is based on trust in dealing between the two parties, this leads them to agree on choosing arbitration as a means of resolving their disputes arising through the agreement between the parties to the dispute under the arbitration clause, or the agreement between the parties to the contract on the future disputes arising under the arbitration clause.

Significance of the Study

The principle of confidentiality in the arbitration to what extent it remains in investment contracts concluded between the state and the foreign investor, although it is one of the characteristics of arbitration.

The Study Problem

The principle of confidentiality finds difficulties in application in practice, especially concerning investment contracts, which often include an arbitration clause because of the many advantages of arbitration, including confidentiality in arbitration without the need to stipulate it in the arbitration agreement, as it is assumed that it is present in arbitration, however. It was stated within the legislation of some countries not to assume the principle of confidentiality in arbitration unless it was explicitly forgotten in the arbitration agreement and considering this principle inconsistent with the principles of transparency. This emerged due to the rapid development in societies and their realization of their right to obtain information related to arbitration because its results affect their interests.

Objectives of the study

The study aims to:

1. Identify the extent of the arbitration parties' commitment to the principle of confidentiality in arbitration.

2. Identify the extent to which the principle of confidentiality in arbitration is assumed or required to be stipulated in the arbitration agreement.

The Study Questions

This topic points to many difficulties and questions, for example:

1. The extent of the arbitration parties' commitment to the principle of confidentiality in arbitration.

2. Is the principle of confidentiality in arbitration assumed in it, or is it required to be stipulated in the arbitration agreement?

These and other questions will focus on our study to find answers for those interested in this aspect.

Procedural definitions

Arbitral Tribunal: It is the body that has the task of settling the dispute

Confidentiality: It is what is hidden, concealed, and not disclosed

The Study Methodology

The study relied on the comparative analytical and descriptive approach to analyze the relevant legal texts and their contents, determine judicial rulings, and knowing their compatibility with the texts and jurisprudential opinions that were said on this subject and the provisions of the Washington Convention on Arbitration in Investment Contracts.

The Study Framework

Our study will focus on the subject of [confidentiality as a justification for resorting to arbitration for investment contract disputes] without addressing the justifications for transparency in arbitration except to the extent necessary and incidental and required by this study.

The Division of the Study

Based on the preceding, we will divide this topic into two sections:
The first topic: Justifications for resorting to arbitration in investment contract disputes.
The second topic: the concept of confidentiality in arbitration

The first topic
Justifications for resorting to arbitration in investment contract disputes

The importance of arbitration in resolving investment disputes is highlighted because of its advantages compared to the restrictions and formalities in the legal systems of different countries, and to get rid of the problem of conflict of laws, compared to the fact that the judge applies national law even if the dispute is related to international trade[1].

Therefore, the foreign investor contracting with the state is keen to include the arbitration clause in investment contracts for fear of the state using its sovereignty over disputes in the courts. His lack of confidence in the justice of the host country's courts, in addition to the foreign investors, fear of the state making sudden changes and changes that affect his interests.[2].

Therefore, the will of the foreign investor tends to resort to arbitration in investment contracts, as investment contracts are characterized by a special nature resulting from the nature of agreements between the host country on the one hand and the foreign investor on the other hand. The process under contract relates to a huge project that takes several years to implement and costs hundreds of millions of dollars and the intertwined relations. It requires high technical expertise, and with this particularity, arbitration represents the natural judiciary to resolve investment contract disputes.

[1] Elias Nassif, International Contracts, Electronic Arbitration, first edition, Al-Halabi Human Rights Publications, Beirut, 2012, p. 17.
[2] Ahmed Abdel-Lah Al-Maraghi, Legal Protection of Mental Rights, first edition, The National Center for Legal Publications, Cairo, 2017, p. 111

Arbitration presents a different nature of justice that responds to the wishes of the disputing parties, which distinguishes it from the state's judiciary with advantages represented in the following.[1]:

First: the speed of the procedures

The settlement of investment contract disputes requires speed in issuing judgments, as there are investments and large amounts of cash frozen pending the issuance of the arbitration ruling, and then there is a realized loss as a result of delaying those amounts.

There are delay penalties and benefits that increase as a result of the delay in settling the dispute. In arbitration, the parties to the dispute determine the arbitration procedures, leading to the speedy issuance of the arbitration decision. Speed is by obligating the arbitrator to settle the dispute before him at a time determined by the parties as a general principle, as the arbitrator loses his capacity after its termination. In addition to the fact that arbitration is a litigation system in one degree, the judgment issued by the arbitrator enjoys the authority of the res judicata. It may not be challenged by any of the ordinary methods of appeal, with the possibility of filing a nullity action in respect of it for any of the reasons stated exclusively in the law.

Also, choosing specialized arbitrators in the field of investment gives them that great ability to understand the problems presented to them and to find the best solutions to them. Moreover, arbitration is the most capable of applying the objective provisions that govern the relations at hand due to their international nature.[2].

This is in contrast to the courts, which resort to appointing specialized experts in disputed issues, extending the time for litigation.[3]

Settle disputes by arbitration, given the commercial life's need for speed, simplicity, and confidence in dealing, in contrast to civil life, which is characterized by slowness and laxity in concluding contracts and actions by its being based on extreme deliberation and caution. Arbitration leads to a quick and flexible purification of the commercial environment from these disputes that impede the smoothness of commercial life and impede commercial dealings, instead of merchants entering the courtyards of the judicial courts and submitting to their long, complex and costly procedures, which leads to the disclosure of commercial secrets and the destabilization of confidence in them.[4].

Second: Arbitration is a specialized judiciary in the dispute

One of the main advantages of arbitration is the specialization of the arbitral tribunal in the issues under dispute. There are bodies specialized in maritime disputes and others specialized in industrial disputes, and other disciplines, the presence of a judiciary specialized in disputes related to these issues would achieve justice[5].

Arbitration guarantees the knowledge and specialized legal and technical expertise necessary for settling investment disputes, the superiority of which requires modern economic and technical expertise and appropriate expertise with the expansion of foreign investment fields.

It is most likely that the arbitrators have the highest level of scientific and legal competence to settle the disputes entrusted to them, and also that they often have scientific and practical experience in the disputes they are chosen to decide on, and what they are distinguished for in the knowledge of the norms and customs of the contracts in dispute.[6].

Also, the nature of international commercial disputes requires familiarity with the original languages in which transactions are conducted and familiarity with the norms, customs, and terminology of international business. So, because arbitration is a specialized judiciary, the arbitrators have experience, competence, and unique know-how in the areas related to the dispute, and this leads to the speed of arbitration procedures; as a result, the dispute is quickly resolved.[7].

Third: Freedom of the Parties under Arbitration

The parties are free to choose the type of arbitration, whether private or institutional, the place and time

[1] Khaled Kamal Okasha, The Role of Arbitration in Resolving Investment Contract Disputes, First Edition, House of Culture for Publishing and Distribution, Amman, 2014, p. 165
[2] Robert Merkin – Arbitration ACT 1996 – Condon – Hon Gkong, 2000, P. 233.
[3] Salah El-Din Gamal El-Din, The Role of Arbitration Rulings in Developing Solutions to the Problem of Conflict of Laws, Dar Al-Fikr Al-Jami`, Alexandria, 2004, p. 8
[4] Hosni Al-Masry, International Commercial Arbitration, House of Legal Books, Cairo, 2006, pg. 9
[5] Counselor Moawad Abdel Tawab, The New In International Commercial Arbitration, First Edition, Dar Al-Fikr Al-Jamii, Alexandria, 1997, p.17
[6] Hafidha Al-Sayyid Al-Haddad, The Brief on the General Theory of International Commercial Arbitration, first edition, Al-Halabi Human Rights Publications, Beirut, 2004, p.29
[7] Khaled Kamal Okasha, previous reference, p. 168

of the arbitration, the law applied by the arbitrators, and the selection of arbitration procedures.[1].

Fourth: Arbitration is a flexible judiciary.

The arbitration judiciary is characterized by flexibility, which means that the arbitrator does not abide by many procedural rules in his relationship with the litigation management before him. Nevertheless, the judge cannot escape, and thus arbitration differs from the judiciary.

And the fact that arbitration is flexible does not mean that the arbitrator is freed from the basic legal restrictions and rules, even if he is authorized to conciliate, it respects the basic principles of litigation, the rights of defense, equality between the conflicting parties, and the principle of prima facie case.

And that the rooted parties in the field of international trade desire the continuation of the existing relations between them, so they agree to resolve the disputes arising, or that may arise between them by arbitration, which is characterized by flexibility.

The dispute between them is resolved on new grounds established by the arbitration judiciary, and this is the result of the flexible concept of justice available in the arbitration judiciary.[2].

One of the arbitral tribunals formed in accordance with the International Chamber of Commerce rules in Paris, who complained about it to the parties' advisors, expressed their high professional competence, courtesy, and good treatment that appeared during the arbitration sessions.[3].

It should be noted that the place in arbitration with the authorization of conciliation applies the rules of justice and equity without applying the rules of substantive law that are not related to public order and the idea of justice.

And some international judicial bodies defined the principles of justice and equity by saying (it is a natural feeling of justice independent of the principles of law and judicial precedents).

Thus, the principles of justice and fairness include a set of principles derived from the nature of things and express a set of ideal values.[4].

Fifth: Justifications for the host country for investment and for the foreign investor contracting with it to resort to arbitration

It is necessary to study the reasons for resorting to arbitration to settle possible disputes regarding the validity, implementation, or interpretation of contracts concluded between the host country for investment and foreign persons belonging to another country. This is because the international investment contracts that are organized between the state and the foreign investor may require their implementation usually for a long period, which may arise during their implementation as a result of changing investment conditions from the economic and political aspects, which has an impact on the obligations of any parties to this contract.[5].

The parties may renegotiate to amend the terms of the contract according to the developments that occurred during the implementation period because of the importance of the contract for the continuation of the investment and its survival. However, some negotiations may sometimes fail, and arbitration is resorted to resolve the investors' disputes in the host country and between the foreign investor, whether he is a natural or legal person, because of the advantages and motives of arbitration that push the two parties to resort to arbitration. This is divided into two types of motives: motives related to the fears of the contracting party with the state from the state's adherence to its immunity and the impartiality of its judiciary.

And motives related to the state's desire to resort to arbitration as a procedural guarantee to encourage investment.[6].

a. The motives of the foreign investor contracting with the state to resort to arbitration.

1. The fear of the foreign investor from the impartiality of the judiciary of the Contracting State

The state enjoys sovereign privileges that enable it to upset the contract's economic balance and violate the impartiality and independence that must be available to the national judicial authority and to which the dispute can be submitted if it arises.

The national judiciary of the contracting state, which is characterized by impartiality and independence

[1] Jaafar Theeb Al-Maani, Electronic Arbitration, and the National Judicial Role inactivating it, first edition, House of Culture for Publishing and Distribution, Amman, 2014, p.40

[2] Georgi Shafiq Sari, Arbitration and the Permissibility of Recourse to It for Disputes in the Field of Administrative Contracts, Dar Al-Nahda Al-Arabiya, Cairo, 1999, p. 67

[3] Hafizah Al-Sayyid Al-Haddad, previous reference, pp. 29-30.

[4] Rashad Aref Yousef Al-Sayed, Principles of Public International Law, first edition, Al-Noor Model Press, No, 1985, p.121

[5] Hafizah Al-Sayyid Al-Haddad, previous reference, p. 31

[6] Jalal Wafa Muhammedin, Arbitration between the foreign investor and the investment host country before the International Center for Settlement of Investment Disputes, New University Publishing House, Alexandria, 2001, p. 5

from the state itself, may be impartial concerning disputes in which the state or one of its agencies is a party with a foreign contractor, especially if the disputes arise from a contract related to the economic or social interests of the state, which is biased in favor of the state.

And averting this is by depriving him of jurisdiction and giving it to another neutral judiciary, which is the arbitration court, even at the expense of not completing the contract.[1].

2. The fear of the foreign investor from the state's adherence to judicial immunity

With its independence and sovereignty, the state enjoys judicial immunity that misleads the national judiciary of any other state when examining disputes in which the state is a party.

The foreign investor contracting with the state or one of its affiliated agencies will face an obstacle represented in the form enjoying judicial immunity if the foreign investor files a lawsuit against the state before the national judiciary of another state.[2].

This leads to the issuance of his special rights out of respect for the state's immunity, which prompted the contractors with the state or with its affiliated agencies to include the arbitration clause in the contracts between them to avoid the dangers arising from the state's enjoyment of sovereignty and judicial immunity.[3].

b. Arbitration is a procedural guarantee to encourage investment

This reason is based on the state itself and motivates it to accept arbitration, which afterward serves as a procedural guarantee to promote investment.

This prompted many countries to include explicit provisions stating the acceptance of arbitration to encourage investment.[4].

The Egyptian legislator has included successive Egyptian investment legislation on the guarantee of arbitration, starting with Resolution No. 65 of 1971 and passing through Law No. 43 of 1994 known as the Law on Investment of Arab and Foreign Money and Free Zones, as amended by Law No. 32 of 1977, investment Law No. 230 of 1989. Investment Guarantees and Incentives Law No. 8 of 1997 enshrined the principle of arbitration in settling investment disputes following the provisions of the Egyptian Arbitration Law No. 27 of 1994.[5]

The Lebanese legislator has adopted arbitration as a means of resolving the disputes that arise between the institution and the investor resulting from the incentive basket contracts, as the second article 12 of Law No. 360 of August 16, 2001, known as the Investment Promotion Law in Lebanon stipulates that "disputes between the institution and the investor are resolved amicably.[6]" As for the confidentiality feature, it will be dealt with in a separate study.

The Second Topic
Confidentiality in Arbitration

Definition of confidentiality

The secret is the language of what a person conceals in himself, i.e., concealed.[7].

The term "secret" means: not to leak everything seen in the arbitration dispute from the procedural stage to the end of the arbitral decision and its implementation. Rather conceal the existence of the dispute in itself because the existence of the dispute may affect the reputation and activity of the investor party to the dispute.[8].

Confidentiality is legally an obligation to abstain from its content. In sum, the parties to the arbitration and everyone who attends its sessions, even its residents, including lawyers, witnesses, experts, arbitrators, and their assistants, are obligated not to disclose information and documents related to their knowledge due to arbitration, and those who are not involved in arbitration are not allowed to attend its sessions except with the consent of its parties.[9].

[1] Jalal Wafaa Muhammedin, previous reference, pp. 9-11.
[2] Khaled Kamal Okasha, previous reference, p. 169
[3] Hafida Al-Sayyid Al-Haddad, previous reference, p. 34
[4] Khaled Kamal Okasha, previous reference, p. 171
[5] Jalal Wafaa Muhammedin, previous reference, p. 11
[6] Hafida Al-Sayyid Al-Haddad, previous reference, p. 35
[7] Al-Munajjid in Language and Media, Dar Al-Mashreq, Beirut, 1986.
[8]Issawi Muhammad, Arbitration by Investments: Confidentiality of Confidentiality and Demands for Structural Colloquial Transparency for Arab and International Arbitration, Issue 62, 2012, p. 82 et seq
[9] Muhammad Salim Al-Awa, Studies in Egyptian and Comparative Arbitration Law, Arab Center for Arbitration, Cairo, 2009, pp. 307 et seq

Definition of confidential information

Some jurisprudence holds that what is meant by a secret is the one whose disclosure results in material or moral harm. Thus, confidentiality bestows on information whose exposure results in damage to public peace and the interests of individuals; confidentiality requires that no one knows about the center or the news, except for the persons whose circumstances require them to maintain this confidentiality. They are obliged to work with secrecy without being public.

Disclosure is the transfer of information by any means and informing others of it without the consent of its owner, who wishes to preserve it. Commitment to confidentiality rests with the public employee who possesses the information and has access to it by the nature of his work in the administration.

Definition of business confidentiality

Determining what is meant by business secrecy varies according to the activity, the size of the project, and the position of the trader himself. However, business secrecy has several concepts: secrecy of methods and means related to manufacturing techniques and the commitment of employees not to disclose professional secrets.[1]. Confidentiality of administrative work that the employee obtains as a result of performing his job.

The importance of confidentiality in arbitration

As a result of the confidentiality of arbitration, which leads to the preservation of the financial positions of the contracting parties, the preservation of their reputation and the continuation of their contractual relations, which calls on the contracting parties to choose arbitration as a means of settling disputes that arise between them, without resorting to the judiciary and being public in it, as the contracting parties are keen on their trade and industrial secrets. and technical, artistic, and other secrets, the disclosure of which leads to the harm of its owner; in arbitration, the sessions are held in secret so that only the parties to the arbitration or their representatives and the arbitrators attend them[2], discussions and proposals remain confidential, as the parties to investment contracts require their interest not to know the disputes arising between them, their causes and motives so that this knowledge does not lead to prejudice to their financial and economic positions and all their activities.

The principle is that the arbitration rulings may not be published for the consequences of publishing the effects affecting the parties to the dispute or one of them, except with the consent of the litigants and arbitrators, and that most arbitration laws stipulate that judgments issued in arbitration cases may not be published except with the consent of the parties to the dispute. Even the right holder in the arbitration case He may be harmed by the publicity of the trial, as others may refrain from contracting with him.[3].

The importance of settling commercial disputes through arbitration is highlighted because of the commercial life's need for confidentiality in dealing, as arbitration is conducted in secrecy instead of merchants frequenting the courtyards, which often ends in defaming opponents and undermining confidence in them due to the openness of the sessions and the issuance of judicial rulings.[4].

One of the fundamental guarantees of litigation in the state's judiciary is public trials, where publicity is one of its distinguishing features so that every individual has the right to try his public and fair courts, as stipulated by many international conventions, including the European Convention on Human Rights, as stated in Article VI of it.

Confidentiality is one of the advantages of arbitration that distinguishes it from the state's judiciary because publicity leads to prejudice to the financial and economic positions of dealers in the international trade when the disputes arising between them and their causes and motives are known, which prompts the parties to choose arbitration as a means to resolve disputes arising between them or that may appear. Because of its confidentiality, as it is a secret judiciary, and international trade depends on reputation, the contracting party is afraid to disclose its transactions and volume.[5].

The principle of confidentiality is assumed in arbitration, and it is related to it, which does not make it necessary to stipulate in the parties' agreement to respect this principle in their contracts that include the arbitration clause.

This is because once the parties agree to refer the dispute to arbitration, this includes the principle of confidentiality in arbitration without stipulating it in the arbitration agreement. After all, it is one of its requirements. It is noted that many arbitration regulations single out special provisions that include the principle

[1] Tahani Hassan Ezz El-Din Ahmed Saleh, The Right to Information, Means, Restrictions, Obstacles, Crimes of Abuse of Rights and Guarantees of Protection, First Edition, The National Center for Legal Publications, Cairo, d. p. 150
[2] Khaled Kamal Okasha, previous reference, p. 168
[3] Muhammad Salim Al-Awa, previous reference, p. 287
[4] Hosni Al-Masry, previous reference, pg. 9
[5] Fathi Wali, Arbitration in National, International and Commercial Disputes in Knowledge and Practice, Dar Al Maaref Facility, Cairo, 2014, p. 14

of confidentiality in arbitration and protect it.

For example, Article 20, Paragraph 7 of the International Chamber of Commerce Regulations in Paris stipulates the principle of confidentiality in arbitration sessions.

As well as Article 35 of the Regulations of the American Arbitration Association, as well as Articles 73 and 76 of the Regulations for the Protection of Intellectual Property Rights (OMPI)

The confidentiality of the arbitration judiciary is translated into several forms, including:

The obligation of the defendant not to disclose what is related to the dispute presented to him[1].

The arbitrators must abide by confidentiality.

The arbitrators must maintain the arbitration secrets that reach them through the arbitration process because the arbitral cases contain secrets of the parties to the dispute that may not be accessed, especially professional, commercial, and industrial secrets related to competitive areas. The obligation of confidentiality is originally the responsibility of the arbitrators, and that it is a contract to others who, by their work, have access to the information circulating between them, such as those who are in charge of the secretariat of the arbitral tribunals, and for those who carry out administrative and technical work among the employees of the arbitration centers and its founder.[2].

Confidentiality of arbitral work the seventh and eighth articles of the CIHRS rules deal with it, whereby the seventh article states that (the arbitrator may not take advantage of confidential information obtained during the arbitral proceedings to achieve any opponent for himself or others or to prejudice the interests of others).

Article 8 stipulates that (the courts are obligated to maintain the confidentiality of all matters related to arbitration procedures, including deliberations and the arbitration award).

Maintaining confidentiality is one of the most important considerations in arbitration and the advantages of the arbitration system because the publicity of the arbitration may lead to damage to the financial, professional, commercial, or other positions of the parties.

Where the parties to the relationship are keen to maintain the confidentiality of the dispute and its facts to maintain their similar interests with third parties, the client, or in the face of the competitor to them, it is in the interest of the party in the dispute to withhold the implementation of his late or defective commitment from his competitors and his customers, especially in contracts that are replaced by a new product, so it is confidential. It is essential to withhold the technology related to it from everyone, so resorting to arbitration guarantees the parties to the conflict this protection.[3].

This means preventing the publication of what includes disclosing the names of the litigants or the facts of the dispute in a way that enables their persons to be identified and all how the secret of the arbitration can be disclosed, and the prohibition does not refer to legal principles or practical applications unless it enables the litigants to be known and to announce what they are keen on confidentiality of information dealt with by the arbitration.

If confidentiality is breached by publishing the arbitration award or part of it without the consent of all the parties, the person affected by such publication shall have the right to recourse against the publisher and the one who caused the compensation, noting that the publication does not affect the validity of the judgment.

In international arbitration, publication may not be made without the consent of all the parties to the arbitration.[4].

Article 44/2 of the Egyptian Arbitration Law stipulates that (... it is not permissible to publish the arbitration award, or parts of it, except with the consent of the two parties to the arbitration)[5].

Article 42, paragraph (b) of the Jordanian Arbitration Law stipulates that (it is not permissible to publish the arbitration award, or parts of it, except with the consent of the two parties to the arbitration)[6].

The rules for settling trade and investment disputes issued by the Cairo Regional Center for International Commercial Arbitration (June 2007) stipulate a commitment to confidentiality in Article No. (37 bis), which is stated as follows:

1. The parties are obligated to maintain the confidentiality of the arbitral awards, all papers, documents, and expert reports submitted in the arbitration case. As well as the statements of witnesses and all procedures, unless the law stipulates or the parties expressly or in writing agree otherwise.

[1] Hafidha Al-Sayyid Al-Haddad, previous reference, p. 20
[2] Muhammad Salim Al-Awa, previous reference, p. 59
[3] Ahmed Khalil, Arbitration Rules, Al-Halabi Human Rights Publications, Beirut, 2002, p. 11
[4]Muhammad Salim Al-Awa, previous reference, p. 72
[5] Egyptian Arbitration Law No. (16) of 2018.
[6] Jordanian Arbitration Law, No. (31) of 2001, and amended No. (16) of 2018

2. The deliberations of the arbitral tribunal shall be confidential among its members, except as permitted by the applicable law or the applicable rules of the arbitrator who differs in opinion regarding the arbitral award.

3. The center is obligated not to publish any decision or arbitration award or part of it indicating the personality of any of the parties without the prior written consent of all parties.

4. Copies of documents, correspondence, and correspondences received and issued to and from the center, the arbitral tribunal. The parties to the dispute may be destroyed after a period of six months starting from the date of the arbitral award unless any of the parties to the dispute submits a written request to withdraw his papers or any papers related to the appeal or implementation of the award.[1].

If original copies of documents or contracts are deposited, the person who deposited them must submit a written request to retrieve them within one month from the ruling date.

The center is not responsible for any of the documents above after the mentioned date.

The jurisprudence goes that publishing arbitration rulings has advantages, as the published rulings establish arbitration precedents for their indicative value, and publishing rulings lead to the development of the arbitration system and inspires confidence in the arbitration system and helps researchers, arbitration practitioners, or lawyers to obtain information related to arbitration rulings.

In practice, arbitration rulings are published without the parties' consent, despite the text of most arbitration institutions to prevent publication without the consent of the parties.

It has published several rulings for the International Chamber of Commerce (ICC), the Cairo Regional Center for International Commercial Arbitration, the Stockholm Chamber of Commerce, etc.

The permission to file an action for the nullity of the arbitration ruling makes all the arbitration data available to everyone since the nullity case is the jurisdiction of the courts, whose rulings are made public to all, to get out of that. It must be stipulated that the publication ban applies even to a claim for the nullity of the arbitral award.[2].

The legal basis for the arbitrator's obligation of confidentiality

There are various opinions about determining the legal basis for the arbitrator's commitment to confidentiality. However, a part of the jurisprudence has gone to the respect of the parties' legitimate expectations to the dispute who resorted to arbitration as a means of settling the dispute between them due to the confidentiality of arbitration, which explains the arbitrator's commitment to confidentiality.

Another aspect of jurisprudence is that the arbitrator's commitment to confidentiality stems from moral motives related to the arbitration system, as confirmed in the three regulations on international arbitration ethics, which included texts urging confidentiality.

Another aspect of jurisprudence went to say that the undertaking that results from the arbitration contract as a civil contractual obligation begins before the arbitration contract is concluded so that the arbitrator is responsible in the event of a breach of it.[3].

It is difficult to attribute the arbitrator's obligation of confidentiality to only one factor: the arbitrator's commitment to privacy and not to disclose the information that came to his knowledge and as soon as he was informed of the desire to choose him as an arbitrator to accept or reject the task and before signing the arbitration contract because the ethics of arbitration obligate him to do so, as for his commitment to confidentiality after signing the arbitration contract, it is a civil contractual obligation, and the arbitrator's commitment to privacy is not absolute and general. Moreover, the judgment was not issued unanimously but rather by the majority or by reporting facts and matters revealed to him during the arbitration sessions, including a crime punishable by law.[4].

The importance of adhering to the confidentiality of arbitration procedures in investment contract disputes.

Confidentiality in arbitration procedures is a fundamental principle of arbitration, and this is an advantage that prompts the parties to choose arbitration to resolve disputes between them.[5].

The importance of confidentiality in the field of international trade for investment increases because it may be related to economic or professional secrets, for the consequences of their publicity, or disclosure of

[1] Muhammad Salim Al-Awa, previous reference, p. 73
[2] Muhammad Salim Al-Awa, previous reference, p. 208
[3]Mr. Karam Mohamed Zidan Al-Najjar, The Legal Center of the Arbitrator, first edition, Dar Al-Fikr Al-Jami'i, Alexandria, 2010, p.248
[4] Hafiza Al-Sayyid Al-Haddad, previous reference, p. 22
[5] Bashar Muhammad Al-Asaad, The International Effectiveness of Arbitration in International Investment Contract Disputes, First Edition, Al-Halabi Human Rights Publications, Beirut, 2009, p. 42

damages to the parties' positions to the relationship in question. Continuing the relationship between the conflicting parties, as the principle is not to publish the arbitrators' judgments, and the importance increases in investment contract disputes, due to the great political and economic consequences of these contracts that affect the interests of countries and major investment companies due to the sensitivity of the information, documents, and secrets related to the conclusion of these contracts, and publicity is harmful to the parties to the dispute because disputes are available for everyone to see[1],[2].

For example, oil contracts, the sensitivity of the information that is not kept confidential and related to the production level in a field or production flow, may lead to crises or political or economic turmoil or lead to turbulence in oil prices in global markets.

Also, industrial cooperation contracts, failure to observe confidentiality in them may lead to the leakage of technological secrets used in these contracts to others, and some jurisprudence believes that the obligation of confidentiality is an implicit obligation between the parties due to the nature of arbitration as a special means of settling disputes.

As an accidental rule in arbitration cases, arbitration ethics impose a commitment to confidentiality. The principle of confidentiality is one of the important elements in arbitration, and it is important in investment contract disputes. It is one of the most important reasons for the parties to a dispute choosing arbitration as a means to settle disputes, the legal basis for the confidentiality of arbitration procedures, in general, was discussed through judicial rulings issued, including what the Paris Court of Appeal announced in its judgment issued on February 18, 1986, that "in line with the nature of arbitration and its procedures, ensuring the confidentiality of the resolution of disputes of a special nature, which responds agreement of the disputing parties.[3].

Conclusion

As we have come to the end of this research, in which I dealt with: confidentiality as a justification for resorting to arbitration in investment contract disputes, we reached a set of the following results and recommendations:

First, the results:

The study reached the conclusions that:

1. Confidentiality is the most important characteristic of arbitration, which makes arbitration distinct from the state's judiciary.

2. Confidentiality is one of the justifications for resorting to arbitration to preserve the parties' commercial, industrial and technical secrets to the dispute, the disclosure of which would harm them, their interests, and their positions.

3. Confidentiality is an assumed principle in arbitration in investment contract disputes without stipulating it in the arbitration agreement.

Second: Recommendations

The study recommends:

1. The arbitral institutions must confirm in their arbitral procedures models the extent to which the principle of confidentiality is applied in investment contract disputes. So the parties to the arbitration, especially the state party to the arbitration against the other party, the foreign investor.

2. Arbitral institutions should organize their position when justifications for transparency are achieved in the arbitral process.

3. The contracting parties shall clarify in the arbitration agreement what is related to applying the principle of confidentiality and what is associated with the application of transparency, especially if the state is one of the contracting parties.

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