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Arbitration in Iran: Challenges and Opportunities

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ABSTRACT

Iran's Law on International Commercial Arbitration (LICA), inspired by the UNCITRAL Model Law on International Arbitration, was enacted in 1997 with the aim of modernizing the country's approach to international commercial disputes. Employing a descriptive-analytical methodology, this paper analyzes LICA's strengths and weaknesses with a focus on the Iranian Constitution which- as the country's Supreme Law - has seemingly eclipsed the arbitration process. Specifically, this research zeroes in on the potential conflict between Article 139 of the Constitution, which mandates parliamentary approval for foreign disputes involving state assets, and the inherently expeditious nature of arbitration. This study argues that these constitutional formalities - while safeguarding national interests - should be reduced as they may hamper the efficiency and expeditiousness typically associated with arbitration. The author proposes that - as arbitration is intertwined with less formality - the Guardian Council can invoke its constitutional powers to curtail these formalities and create an environment conducive to a standard arbitration process. This analysis maintains that the Iranian Constitution does not necessarily supersede arbitration provisions, and proposes that the Council has the authority to streamline arbitral procedures within the legal framework of the Islamic Republic of Iran.

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Introduction

Arbitration is a method that aims to resolve disputes without the need to go to court, and impartial arbitrators can be hired to settle a dispute in a friendly and cooperative manner. Parties often opt for arbitration over litigation for several reasons. One of the most important reasons is the enforceability of arbitral awards. Dr. Anton G. Maurer, a leading alternative dispute resolution (ADR) professional focused on arbitration and resolution of cross-border disputes, reinforces this by saying: "Foreign arbitral awards are enforceable in at least 172 countries under the New York Convention[1] or, if applicable, the Inter-American Convention on International Commercial Arbitration. Convention countries are obliged to enforce foreign arbitral awards except for seven reasons, which are stipulated in Article V of the relevant convention."[2] Finality is another reason that attracts parties to a dispute to choose arbitration. Maurer has also highlighted this in his enumeration of ten reasons, noting, "Generally, an arbitral award is final. There is no appeal. Even a court that is asked to set aside an arbitral award will not fully review the decision (no révision au fond), only whether the special reasons for setting aside an award are met."[3] From among other reasons one can say that arbitrations are efficient and cost-effective, which means they can be quicker compared to court litigation. Another reason is that international commercial arbitration proceedings are "private and not open to the public or third parties unless the parties agree otherwise".[4]

Gloria Miccioli[5], American Society of International Law Electronic Resource Guide, believes the non-judicial nature of arbitration is attractive. "As the number of international commercial disputes mushrooms, so too does the use of arbitration to resolve them. The non-judicial nature of arbitration makes it both attractive and effective for several reasons. There may be distrust of a foreign legal system on the part of one or more of the parties involved in the dispute. In addition, litigation in a foreign court can be time-consuming, complicated, and expensive. Further, a decision rendered in a foreign court is potentially unenforceable. On the other hand, arbitral awards have a great degree of international recognition. For example, more

1 As of January 2023, the convention has 172 state parties, which includes 169 of the 193 United Nations member states plus the Cook Islands, the Holy See, and the State of Palestine.

2 Available at https://www.jamsadr.com/blog/2024/10-reasons-why-companies-prefer-to-resolve

3 ibid

4 ibid

5 Available at https://www.asil.org/sites/default/files/ERG_ARB.pdf (last accessed on Nov. 26, 2024). Authored by Gloria Miccioli, published by the American Society of International Law (ASIL)

than 172 countries have agreed to abide by the terms of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958."

She adds that another reason for favoring arbitration is the involvement of a mutually agreed-upon panel of arbitrators. These experts may possess specialized knowledge in the specific field of dispute. Arbitral awards are typically final and binding, streamlining the resolution process and eliminating lengthy appeals. Additionally, the confidentiality inherent in arbitration appeals to those seeking to keep settlement terms private. Miccioli holds that a significant challenge in researching international commercial arbitration is the increasing interest from external parties as the practice gains popularity. "However, because many awards are not made public, it can be frustrating to search for information."[1]

The Islamic Republic of Iran – as part of its efforts to facilitate the resolution of international commercial disputes and update the country's laws governing commercial disputes – passed the Law on International Commercial Arbitration (LICA)[2] in 1997. This research will primarily explore global conventions governing commercial arbitration and bilateral investment treaties (BITs). Subsequently, it will delve into the UNCITRAL Model Law on International Commercial Arbitration and its functions. The final part of this paper will analyze Iran's Law on International Commercial Arbitration, highlighting its challenges, limitations, innovations, and achievements in light of Article 139 of the Constitution and Chapter Seven of the Iranian Code of Civil Procedure.

1. International Commercial Arbitration Conventions

International Commercial Arbitration Conventions are legal treaties that establish a framework for settling international commercial disputes via arbitration. The objective of these conventions is to encourage cross-border trade and investment by developing a reliable dispute-resolution mechanism. International commercial arbitrations are often governed by multilateral conventions signed by member states. Based on International Commercial Arbitration (ICA), States choose to settle their disputes without the involvement of the courts of a particular country, which is more expeditious and cost-effective. The conventions act as facilitators and streamline the process of dispute settlement. A comprehensive list of major conventions can be found on the website of Columbia Law School's Diamond Law Library[3], as referenced below.

1.1. Geneva Protocol and Geneva Convention

Two early modern agreements on International Commercial Arbitration are the 1923 *Geneva Protocol* and the *1927 Geneva Convention*.

1.2. New York Convention (United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards)

Replacing the Geneva Protocol and Geneva Convention is the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, otherwise known as the *New York*

1 Available at https://www.asil.org/sites/default/files/ERG_ARB.pdf
2 English translation available at www.newyorkconvention.org/media/uploads/pdf/5/7/570_the-law-concerning-international-commercial-arbitration-iran.pdf
3 Available at https://guides.law.columbia.edu/c.php?g=1143492&p=8594689

Convention.[1] Once a state becomes a party to the New York Convention, they are no longer subject to the Geneva Protocol and Geneva Convention. The list of parties to the New York Convention and their potential declarations or reservations can be found in the *UN Treaty Collection.*[2]

1.3. European Convention on International Commercial Arbitration

The *European Convention*[3] on ICA deals with arbitration agreements, arbitral procedures, and awards. The list of parties to this convention and any declarations or reservations made by the parties to the convention are available through the *UN Treaty Collection*.

1.4. Panama Convention (Inter-American Convention on International Commercial Arbitration)

This convention was entered into in 1975 among the United States and most South American nations. It is also known as the *Panama Convention*.[4] The signatories to the convention can be found through the website of the *General Secretariat of the Organization of American States.*[5]

1.5. ICSID Convention; Washington Convention (International Center for the Settlement of Investment Disputes Convention)

This convention is also known as the ICSID Convention or the Washington Convention of 1965. It deals with investment disputes between a state (or some state entities) and an individual who is a national of another state that signed the ICSID convention. The language of the *convention,*[6] rules and regulations regarding arbitrations through the can be found through the website of the World Bank as well as a current list of *parties*[7] to the ICSID convention.

1.6. Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters

This *convention*[8] was concluded in 1971, but has been entered into by only 5 countries. Currently, the five *signatories*[9] are: Albania, Cyprus, Kuwait, Netherlands and Portugal.

1.7. Council Regulation

Council regulation[10] on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters deals with the issue of enforcement of arbitral decisions for members of the European Union.

1.8. Inter-American Convention on International Commercial Arbitration

The text of the *convention*[11] and the *signatories*[12] can be found on the Organization of American States website.

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1 Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/new-york-convention-e.pdf
2 Available at https://treaties.un.org/Pages/Home.aspx?clang=_en
3 Available at https://treaties.un.org/doc/Treaties/1964/01/19640107%2002-01%20AM/Ch_XXII_02p.pdf
4 Available at https://treaties.un.org/doc/Publication/UNTS/Volume%201438/volume-1438-I-24384-English.pdf
5 Available at https://www.oas.org/juridico/english/Sigs/b-35.html
6 Available at https://icsid.worldbank.org/sites/default/files/ICSID%20Convention%20English.pdf
7 Available at https://icsid.worldbank.org/sites/default/files/ICSID-3.pdf
8 Available at https://assets.hcch.net/docs/bacf7323-9337-48df-9b9a-ef33e62b43be.pdf
9 Available at https://www.hcch.net/en/instruments/conventions/status-table/?cid=78
10 Available at https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:012:0001:0023:en:PDF
11 Available at https://www.oas.org/en/sla/dil/inter_american_treaties_B-35_international_commercial_arbitration.asp
12 Available at https://www.oas.org/juridico/english/sigs/b-35.html

2. Bilateral Investment Treaties

Fair and equitable treatment, protection from expropriation, and the free transfer of funds[1] are among the major characteristics of Bilateral Investment Treaties (BITs). These international agreements typically also include provisions allowing foreign investors to initiate international arbitration proceedings against the host state in certain types of investment disputes. These treaties often contain clauses ensuring the enforceability of international arbitration awards. Investment treaty terms are often the subject of extensive negotiation between state parties, the result being that no two investment treaties are ever the same.[2]

Researchers and anyone interested in BITs can now easily explore relevant agreements thanks to the official website of the International Center for Settlement of Investment Disputes (ICSID). The website offers a user-friendly database[3] allowing users to browse treaties by country, year of signature, and keyword search. Furthermore, the United Nations Conference on Trade and Development (UNCTAD) provides a comprehensive database of Bilateral Investment Treaties (BITs). This searchable database[4] allows users to explore all BITs entered into by a specific country, including their signature and entry into force dates.

3. UNCITRAL Model Law on International Commercial Arbitration

The International Commercial Arbitration Model Law[5], originally adopted in 1985 and amended[6] in 2006, provides a framework to help countries modernize their legal systems to accommodate international commercial arbitration. The United Nations Commission on International Trade Law (UNCITRAL) maintains a record of countries[7] that have adopted ICA legislation consistent with the Model Law. Iran's 1997 Law on International Commercial Arbitration (LICA) has adopted its principles from the UNCITRAL Model Law.

According to the official website of the UN, "it covers all stages of the arbitral process from the arbitration agreement, the composition and jurisdiction of the arbitral tribunal and the extent of court intervention through to the recognition and enforcement of the arbitral award. It reflects worldwide consensus on key aspects of international arbitration practice having been accepted by States of all regions and the different legal or economic systems of the world. Amendments to articles 1 (2), 7, and 35 (2), a new chapter IV A to replace article 17 and a new article 2 A were adopted by UNCITRAL on 7 July 2006. The revised version of Article 7 is intended to modernize the form required of an arbitration agreement to better conform with international contract practices. The newly introduced Chapter IV A establishes a more comprehensive legal regime dealing with interim measures in support of arbitration. As of 2006, the standard version of the Model Law is the amended version. The original 1985 text is also reproduced in view of the many national enactments based on this original version."[8]

1 Available at https://guides.ll.georgetown.edu/c.php?g=371540&p=4187393#:~:text=BITs%20grant%20investors%20from%20a,disputes%20with%20the%20host%20state.

2 Available at https://www.lexology.com/library/detail.aspx?g=6b317652-49f0-4038-bc36-7f7550afa115

3 Available at https://icsid.worldbank.org/resources/databases/bilateral-investment-treaties

4 Available at https://investmentpolicy.unctad.org/international-investment-agreements/by-economy#iiaInnerMenu

5 Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-54671_ebook.pdf

6 Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf

7 Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/overview-status-table.pdf

8 Available at https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration

4. Two Main Types of Arbitration: Institutional and Ad Hoc

Institutional arbitration is overseen by an organization that provides administrative support and follows specific rules. Ad hoc arbitration is more flexible, as the parties involved agree on the specific rules and procedures to be followed. In both cases, arbitrators, who are independent decision-makers, are selected to resolve the dispute. However, in institutional arbitration, the institution plays a more active role in administering the process, while in ad hoc arbitration, the parties have more control over the proceedings.

Although parties are free to arbitrate without the assistance of an arbitral institution, institutional arbitration is often preferred because it relieves the parties of the complicated process of producing their own appropriate set of rules and procedures and enables them to rely instead on the time-tested rules developed by an arbitral institution.[1]

5. Ad Hoc Arbitrations

Unlike institutional arbitrations, ad hoc arbitrations – sometimes referred to as an unadministered arbitration – are not administered by a specific institution. Instead, they are privately arranged by the parties involved in the dispute.

Two commonly used sets of rules for ad hoc arbitrations are:

5.1. UNCITRAL Arbitration Rules

The UNCITRAL Arbitration Rules, developed by the United Nations Commission on International Trade Law[2] (UNCITRAL), provide a framework for conducting ad hoc arbitrations. Both the original (1976) and updated (2014) versions of the rules are available on the UNCITRAL website.

5.2. CPR Rules for Non-Administered Arbitration of International Disputes

International Institute for Conflict Prevention & Resolution (CPR)[3] has developed its own set of rules[4] for ad hoc arbitrations. The most recent revision of these rules was in 2018.

6. Arbitration in Iran

Commercial arbitration in Iran is categorized into two forms: domestic and international.

The Iranian judiciary has, in recent years, pursued a policy of encouraging people to refer their disputes to arbitral tribunals through establishing necessary mechanisms and facilitating recourse to arbitration. On July 10, 2024, the head of the Tehran Court of Justice, Ali Alqasi, highlighted the importance of arbitration in dispute settlement and said, "We are working to establish the necessary mechanism for the operation of arbitration within the country's judicial system."[5]

An official with the Tehran Regional Arbitration Center (TRAC)[6], confirms that the number

1 Available at https://uk.practicallaw.thomsonreuters.com/w-005 4966?transitionType=Default&contextData=(sc.Default)&firstPage=true#:~:text=An%20arbitration%20organised%20and%20administered,the%20auspices%20of%20that%20institution.

2 Available at https://uncitral.un.org/

3 Available at https://drs.cpradr.org/rules/arbitration

4 Available at https://www.cpradr.org/resource-center/rules/arbitration/non-administered/2018-cpr-non-administered-arbitration-rules

5 Available at mehrnews.com/x35pLT

6 TRAC was established under an agreement signed between the Islamic Republic of Iran and AALCO (Asian–African Legal Consultative Organization) on May 3, 1997. The agreement came into force in July 2004, after receiving ratification from the

of commercial disputes submitted to this center for resolution has been on the rise in the past years. In a 2019 interview, he said, "…I should explain that in the last 4 years, TRAC has received considerably more cases than in the previous 10 years. Therefore, I can confirm that a noticeable increase has started in the TRAC caseload as a well-known arbitration institution in the region. In addition, in recent years, TRAC has been more known among Iranian and regional lawyers and business users and we are aware that TRAC arbitration clause has been increasingly inserted in various types of international contracts such as oil and gas services, foreign trade, transport, distribution, banking, export credits, telecommunications, construction and engineering. Therefore, we expect that TRAC caseload would continue to increase in the future."[1]

6.1. Domestic Arbitration

Chapter Seven of the Iranian Code of Civil Procedure deals with the regulations governing domestic arbitration. This code[2], enacted by the Iranian parliament on April 9, 2000, consists of 529 articles and 72 notes. It was subsequently ratified by the Guardian Council on April 16 of the same year. Article 458 of the Civil Code stipulates that "all individuals with the legal capacity to initiate legal proceedings may, by mutual consent, refer their dispute or disagreement, whether or not it has been filed in court, and if filed, at any stage of the proceedings, to the arbitration of one or more arbitrators." Iranian nationals shall submit their dispute to one or more arbitrators, secure a binding decision, and resolve their disputes without going to court as provided by this Article.

6.2. International Arbitration

Article 457 of the Code of Civil Procedure outlines the specific procedures for resolving foreign disputes, noting that in cases where a foreign entity is a party to the dispute, the Parliament's approval is mandatory. It states, "Referral of disputes concerning public or state property to arbitration requires prior approval from the Cabinet of Ministers and subsequent notification to the Parliament. Parliamentary approval is additionally essential in cases where a foreign entity is a party to the dispute or when the subject matter of the dispute is deemed significant by law."[3]

Article 139 of the Constitution of the Islamic Republic of Iran also provides for arbitration, prescribing some degree of formality. It stipulates that "the settlement of disputes concerning public and state property or their submission to arbitration shall require the approval of the Cabinet of Ministers and shall be notified to the Parliament (Majlis). In cases where the party to the dispute is a foreigner and in important domestic cases, the Majlis must also approve (the settlement of the dispute). Important cases are determined by law."[4]

6.3. Iran Law on International Commercial Arbitration (LICA)

As part of efforts to close potential loopholes in international commercial arbitration and modernize the existing provisions, the Iranian Parliament enacted the Law on International Commercial Arbitration (LICA) in 1997. This law officially came into effect on November 5, 1997.

Iranian Parliament (Available at https://rc.majlis.ir/fa/law/show/99688). TRAC effectively commenced its activities a year later, in July 2005, by publishing its Rules of Arbitration.

1 Available at https://arbitrationblog.kluwerarbitration.com/2019/08/16/interviews-with-our-editors-perspectives-on-arbitration-in-iran-from-oveis-rezvanian-director-of-the-tehran-regional-arbitration-centre/

2 Farsi text available at https://rc.majlis.ir/fa/law/show/93305

3 ibid

4 English translation available at https://www.shora-gc.ir/en/news/87/constitution-of-the-islamic-republic-of-iran-full-text

In a paper titled "Iran's Arbitration at a Glance: A Brief Practical Review", Rezvanian and Oladi (2022) provide a historical overview of the development of arbitration in Iran, highlighting the key legal frameworks that have shaped its current system. They write[1], "In 1910, arbitration was introduced to Iran's legal system for the first time through the Law of Trial Principles. Their provisions detailing arbitration, provided a comprehensive legal framework for arbitration proceedings in Iran 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, 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). 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."

They further note that the development of arbitration in Iran has led to a multi-faceted legal framework, saying that while LICA and the Civil Procedure Code of 2000 serve as the foundation, the rules of arbitral institutions and various substantive laws with arbitration provisions also play significant roles.

In a commentary titled "Reflections on the Status of International Commercial Arbitration in Iran", Mohammadi (2021) outlines the factors that prompted the Iranian Parliament to enact LICA. He writes[2], "…the Act of 1997 was passed in response to deficiencies of the arbitration regulations of the Iranian Code of Civil Procedure and serves as the legal basis for international arbitration. Such deficiencies were related to, inter alia, lack of rules on multilateral arbitration, silence on the jurisdiction of the arbitral tribunal to determine its jurisdiction, silence on the independence of the arbitration clause from the main contract, silence on the principles of due process, challenges to the arbitrator and how to deal with it, silence on how to determine the language of arbitration and the place of arbitration, the limits of the domestic court's authority to intervene in the international arbitration process held in Iran, and finally, the issue of recognition and enforcement of arbitral awards."

Everyone with an inkling legal knowledge is privy to the fact that LICA was enacted to attract foreign investment and stimulate economic growth in Iran by establishing a modern legal framework for resolving international commercial disputes. A key point that needs to be mentioned here is that LICA's full implementation – despite its weaknesses – is expected to have a positive impact on the country's economy as this would guarantee expeditious dispute settlement. Therefore, it is imperative that the government focus on spotting potential obstacles to the arbitration process and clear them.

1 Oveis Rezvanian, Kamyar Oladi 'Iran's Arbitration at a Glance: A Brief Practical Review' (2021), Asian African Legal Consultative Organization (AALCO), p. 41-58 (Available at https://www.aalco.int/journal2020/3.%20Oveis%20Rezvanian%20and%20Kamyar%20(Sajad)%20Oladi-%20VOL.9%20(41-58).pdf)

2 Available at https://www.jurist.org/commentary/2021/10/mehrdad-mohamadi-commercial-arbitration-iran/

6.4. LICA and UNCITRAL

The principles and provisions of the UNCITRAL (The United Nations Commission on International Trade Law) Model Law on International Commercial Arbitration appear to have served as a significant source for drafting the Iranian Law on International Commercial Arbitration.

In a paper titled "The New Law on International Commercial Arbitration in Iran", Jafarian and Rezaian (1998) assert that Iran has adopted the UNCITRAL Model Law on International Commercial Arbitration as the basis for its own domestic law on international commercial arbitration. They write,[1] "A prima facie study of the LICA reveals that the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration has been used as the drafting model of this law, placing the Islamic Republic among those jurisdictions that utilized the Model Law to draft their domestic legislation in the field of international commercial arbitration."

Seyed Hossein Safaei, a professor at the University of Tehran's Faculty of Law and Political Science, advocated for the enactment of an International Commercial Arbitration Law in his article[2], "A Few Words on Innovations and Shortcomings of International Commercial Arbitration Law." He argues, "The existing arbitration provisions within the 1939 Code of Civil Procedure (Articles 632-680), which were derived from the French Code of Procedure, were outdated. These provisions, over six decades old, had failed to keep pace with the substantial advancements in both domestic and international arbitration regulations."

He further states that the Act is a significant step forward for international commercial arbitration in Iran as it provides a modern framework based on international standards, promoting predictability and efficiency in resolving international commercial disputes.

However, Safaei reiterates that the Act "has some shortcomings due to deviations from the UNCITRAL Model Law. There are concerns about potential judicial interference and challenges in the appointment of arbitrators."

Seyed Jamal Seifi[3] in his paper[4] (1998) titled "The New International Commercial Arbitration Act of Iran - Towards Harmony with the UNCITRAL Model Law," provides a comprehensive analysis of LICA, outlining its achievements and shortcomings. He writes, "Iran's International Commercial Arbitration Law appears to be significantly influenced by the UNCITRAL Model Law on International Commercial Arbitration, while also incorporating domestic legal considerations. The Law exhibits two key features: Adoption of International Standards as it has adopted and implements widely recognized principles and practices of international commercial arbitration; and Addressing Domestic Shortcomings as it has rectified deficiencies in Iran's previous arbitration laws, modernizing its legal framework."

He further highlights the Law's strengths, and notes, "The Law places a strong emphasis

1 Mansour Jafarian, Mehrdad Rezaeian 'The New Law on International Commercial Arbitration in Iran' (1998), Kluwer Law International (Available at https://heinonline.org/HOL/LandingPage?handle=hein.kluwer/jia0015&div=28&id=&page)

2 Seyed Hossein Safaei 'A Few Words on Innovations and Shortcomings of International Commercial Arbitration Law' (1999), Law and Political Science Journal (Farsi edition available at https://jflps.ut.ac.ir/article_14180.html)

3 Judge, Iranian Judiciary, 1979-1985; Lecturer in Law, University of Hull, UK, 1989-1991; Asst. Professor of Law, Shahid Behesti (National) University of Iran, 1991-1998; Visiting Professor of Law, University of Hull, UK, 1999-2000.

4 Jamal Seifi 'The New International Commercial Arbitration Act of Iran – Towards Harmony with the UNCITRAL Model Law' (1998), Journal of International Arbitration, vol. 15, issue 2, pp. 5-35 (Available at https://kluwerlawonline.com/journalarticle/Journal+of+International+Arbitration/15.2/JOIA1998010)

on international commercial arbitration, recognizing the validity of a wide range of arbitration agreements, regardless of their form. It grants significant autonomy to the parties and arbitrators to determine the procedural rules and rules of arbitration. The Law explicitly recognizes and encourages institutional arbitration, while also enhancing the enforceability of arbitration agreements. The Law prioritizes the impartiality of arbitrators, regardless of their appointment method, and empowers arbitral tribunals to determine their jurisdiction and the applicable substantive law. It further strengthens the finality, recognition, and enforcement of arbitral awards. However, certain aspects of these reforms may require further clarification and interpretation."

With respect to LICA's limitations and shortcomings, Seifi notes that the new law falls short of providing a comprehensive definition of international commercial relations and instead, it offers a non-exhaustive list of commercial activities, which diverges from the more expansive approach of the UNCITRAL Model Law.

"The Model Law defines the scope of its application by reference to the international nature of the arbitration and outlines specific types of relationships. The new law, however, remains silent on the criteria for determining the international character of a commercial relationship. The law narrowly defines international arbitration, relying solely on the nationality of one of the parties. This contrasts with the more nuanced approach of the UNCITRAL Model Law. The new law excludes individuals with dual Iranian-foreign citizenship from the definition of non-Iranian nationals, potentially limiting the scope of its application. Furthermore, the law's geographic scope remains unclear. While it is implied that the law applies to arbitrations seated in Iran, a more explicit statement would have provided greater clarity. This lack of clarity could potentially lead to uncertainty and confusion," he writes.[1]

Mohammadi[2] (2021) also describes the arbitrability of disputes based on the new Act as a "significant point", and writes, "In this regard, Article 2(2) of the Act establishes that 'any person having legal capacity to file a suit shall be allowed to refer to arbitration his international commercial disputes by mutual consent in accordance with the provisions of this Law whether such disputes have been raised or not in courts, and if raised at whatever stage it could be.' However, paragraph 2 of Article 36 needs to be taken into account, which states that 'the restrictions of other laws regarding the referral of disputes to arbitration must be observed.' Notwithstanding Article 496 of the Code of Civil Procedure of Iran, which prohibits the referral of certain claims to arbitration (namely bankruptcy, marriage, revocation of marriage, divorce, and consanguinity), it should be noted that Article 139 of the Iranian Constitution is an obstacle to recourse to arbitration by Iranian government institutions."

6.5. Strengths and Weaknesses of Iran's Law on International Commercial Arbitration (LICA)

In light of the preceding discussion, the Law's strengths and weaknesses can be outlined as follows. On the one hand, LICA has several strengths, including Modernization, Enhanced International Appeal, Party Autonomy, and Enforcement of Awards. On the other hand, the Law also has certain

1 ibid
2 Available at https://www.jurist.org/commentary/2021/10/mehrdad-mohamadi-commercial-arbitration-iran/

weaknesses, such as a Limited Scope of Application, Potential Judicial Interference, Lack of Clarity on Geographic Scope, and Dual Nationality Issue.

6.5.1. Strengths

6.5.1.1. Modernization

LICA incorporates key principles from the UNCITRAL Model Law, aligning Iran's arbitration framework with international standards. As mentioned earlier, the United Nations Commission on International Trade Law (UNCITRAL) created the International Commercial Arbitration (ICA) Model Law in 1985. This model law helps countries update their legal systems to support international commercial arbitration. The law was revised in 2006. Many countries, including Iran, have implemented their arbitration laws based on this model.

6.5.5.1. Enhanced International Appeal:

The law's modernization has made Iran a more attractive venue for international commercial arbitration.

6.5.2. Party Autonomy

LICA provides for party autonomy, allowing parties to agree on the rules of arbitration, the language of the arbitration, the number of arbitrators, and the venue of arbitration.

For instance, Article 21 of the LICA asserts:

> *"The parties shall agree on the language/s to be used in arbitration proceedings. Otherwise, the "arbitrator" may determine the language/s to be used in arbitration. The agreement of the parties or a decision by the "arbitrator" in this regard shall include any letters of defense, documents and evidences furnished by the parties, deliberations of the investigation proceedings, "arbitrator's" correspondence and issuance of award."*[1]

Another instance is Article 20 (1) which provides for the venue of the arbitration and asserts:

> *"Arbitration shall take place at a mutually agreed venue. In case of lack of agreement, the venue of arbitration shall be determined by the "arbitrator" with due consideration of the circumstances and conditions of the case and easy access for the parties."*[2]

6.5.5.1. Enforcement of Awards

The law provides for the enforcement of domestic and foreign arbitral awards, enhancing the predictability and enforceability of arbitration agreements.

With respect to the enforcement, the Law's Article 35 (2) underlines that "In case one of the parties demands the cancellation of the award from the court mentioned in Article (6) of this Law and the other party demands its recognition or enforcement, the court shall prescribe that the party demanding nullification to deposit an appropriate guarantee provided that the party demanding recognition or enforcement of the judgment requests so."[3]

1 English translation available at www.newyorkconvention.org/media/uploads/pdf/5/7/570_the-law-concerning-international-commercial-arbitration-iran.pdf
2 Ibid, Article 20
3 Ibid, Article 35, 6

6.5.3. Weaknesses

6.5.5.1. Limited Scope of Application

The law's definition of international arbitration is narrower than the UNCITRAL Model Law, potentially excluding certain types of cross-border disputes.

6.5.5.2. Potential Judicial Interference

There are concerns about potential judicial interference in arbitration proceedings, which could undermine the independence of arbitral tribunals.

The reason for the potential judicial interference is that Article 11 asserts that "for the appointment of the members of the board of arbitrators, each party will choose his favorite arbitrator. The elected arbitrators shall then appoint an umpire (a presiding arbitrator). Should one of the parties fail to appoint, within a period of thirty days from the date of commencement of arbitration, his favorite arbitrator or confirm the appointment of his arbitrator, or if the elected arbitrators fail to agree, within a period of thirty days from the date of their appointment, about an umpire, then such appointment of the arbitrator for the abstaining party or the umpire shall be carried out in accordance with the provisions of Article 6 above upon a request by one of the parties, as the case may be."[1]

Article 6 establishes that until an arbitration tribunal is established, the Tehran Public Court will handle these matters, noting that the court's decisions will be definitive and cannot be appealed.

6.5.5.3. Lack of Clarity on Geographic Scope

The law lacks clarity regarding its geographic scope, specifically whether it applies to arbitrations seated outside of Iran.

Article 6 of the Law asserts: "The obligations under Article 9, Clauses 3 and 4; Article 11, Clause 3; Article 13, Clause 1; Article 1; Article 14, Clause 3; and Articles 16, 33 and 35 shall be fulfilled by public courts located in provincial capitals where the seat of arbitration is located. As long as the seat of arbitration has not been determined, such obligations shall be fulfilled by Tehran's public court. The decisions of the court in these instances shall be final and binding.

6.5.5.4. Dual Nationality Issue

The law's treatment of dual nationals may create uncertainties in determining the international character of a dispute.

Article 11 stipulates, "The parties to a dispute shall agree, duly observing the provisions of Clauses 3 and 4 of this Article, on the method of appointment of arbitrators. The Iranian party cannot, as long as a dispute does not occur, bind himself in any manner whatsoever that in case of occurrence of a dispute it shall be resolved by way of arbitration of one or more arbiters or by a board of arbiters, having the same nationality as that of the party to the transaction."

6.6. Arbitration in Iran Constitution

As mentioned above, this research investigates the potential incompatibility between the constitutional requirement of parliamentary approval for foreign disputes involving state assets, as stipulated in Article 139, and the inherently expeditious nature of arbitration. It posits that these

1 Ibid, Article 11

constitutional formalities, while designed to protect national interests, may nonetheless detract from the efficiency and timeliness typically associated with arbitral proceedings.

In a recent paper[1] titled "Article 139 of the Constitution of the I.R. of Iran in light of International Arbitral Decisions and Iran's Reservations to Investment Treaties," Jamal Seifi notes, "The idea of protecting public interests by including specific regulations in private contracts or international treaties has been accepted in some legal systems. Regulations regarding the issuance of permits under Article 139 of the Constitution of the Islamic Republic of Iran are aimed at safeguarding public and state property or referring these claims to arbitration. The case law of international arbitral tribunals over the past forty years indicates that despite the explicit provisions for respecting Article 139 in contracts, international arbitral tribunals have not paid attention to the limitations of Article 139."[2]

> *"Considering that, there is a risk that legal entities of Iranian public law may invoke objections based on Article 139 and given the unsuccessful experience of Article 139 in international commercial arbitrations, it is necessary to revise Iran's approach in this regard to avoid this in the field of investment arbitrations. Firstly, it should be noted that including a reservation related to Article 139 at the time of ratification of investment treaties indicates the validity of the arbitration clause before the issuance of a permit to refer to arbitration by the parliament. This practice conflicts with the approach of the Administrative Court of Justice in its General Board ruling No. 139-138 dated 23/03/1391 [2012], which declared that accepting an arbitration clause by state bodies without obtaining prior permission under Article 139 is contrary to the Constitution and void."*[3]

Seifi further asserts that Article 139 unilaterally imposes a reservation to bilateral treaties, saying, "…there is a consensus among international legal scholars that in bilateral treaties, any imposition of a reservation is considered a counter-offer to the other contracting party. Consequently, in finalizing the text of the treaty, the other party must be informed so that, as the case may be, the possibility of accepting or rejecting it exists. Therefore, reservations related to Article 139 of the Constitution of the Islamic Republic of Iran must necessarily be communicated to the other state during government negotiations and the conclusion of a bilateral investment treaty, and that state's consent to the reservation must be obtained. It should be added that the status of bilateral investment treaties in terms of reservations subsequent to their conclusion is completely different from multilateral treaties. In other words, in multilateral treaties where reservations are permitted, including a reservation during the ratification of treaties by the legislative body is an acceptable matter and, depending on whether it is subsequently objected to, will be subject to the regulations on reservations in treaty law. In bilateral treaties, the principle of treaty integrity prevails, and including a reservation during its ratification without informing

1 Jamal Seifi, "Article 139 of the Constitution of the I.R. of Iran in light of International Arbitral Decisions and Iran's Reservations to Investment Treaties" (2024), Tehran University Public Law Journal, p. 203-234. (Available at https://jplsq.ut.ac.ir/article_88131_622f52ad46739c49a5e2b95060ded9c6.pdf)
2 Ibid, p. 229
3 Ibid, p. 229-230

the other state is a completely unconventional matter, unless it is explicitly and subsequently communicated to the other member states and accepted by that state."[1]

In his piece, he provides several examples to substantiate his assertion, two of which concern disputes brought by foreign firms against Iranian state companies. They are as follows:

6.6.1. Gatoil International Inc v. National Iranian Oil Company [2]

In April 1982, the National Iranian Oil Company (NIOC) and Gatoil International entered into a series of contracts for the purchase and sale of oil. "Section 8 of the written contract provided that the parties would refer any disputes to arbitration in accordance with the laws of Iran. Section 8 also provided that the party that initiated the arbitration would nominate one arbitrator, while the other party would nominate a second arbitrator. The two arbitrators would then appoint a third arbitrator; the President of the Appeal Court in Iran would appoint the third arbitrator if the two arbitrators could not reach an agreement. Section 8 also provided the arbitration would occur in Tehran."[3]

In 1987, Gatoil filed a lawsuit in a London court, alleging that NIOC had failed to deliver 44 million barrels of oil and seeking $108 million in damages. However, because the contracts contained an arbitration clause, NIOC asked the London court to stay the proceedings and refer the dispute to arbitration. The London court, relying on English arbitration law and the New York Convention, granted NIOC's request and referred the case to arbitration. Gatoil then argued that the arbitration agreement was invalid under Iranian law, citing Article 139 of the Iranian Constitution, which requires parliamentary approval for the arbitration of disputes involving state-owned assets. However, the London court rejected this argument, ruling that Gatoil should have sought the necessary parliamentary approval before challenging the arbitration agreement. The Court of Appeal in London upheld the lower court's decision, confirming that Gatoil was bound by the arbitration agreement.[4]

In a similar case, the International Court of Arbitration of the Paris Chamber of Commerce[5] also rejected a similar argument raised by Gatoil, further solidifying the principle that state-owned enterprises cannot avoid arbitration agreements by invoking domestic laws that require parliamentary approval.[6]

6.6.2. Westinghouse Electric Corporation v. Iran Ministry of Defense[7]

Between 1971 and 1978, the Iranian Ministry of Defense and Westinghouse, an American company, entered into a series of contracts to purchase and install advanced radar systems. One of these contracts included an arbitration clause, agreeing to resolve any disputes through international arbitration. In October 1991, Westinghouse filed a lawsuit[8] against the Iranian

1 Ibid, p. 230-231
2 Ibid, p. 219-221
3 Available at https://www.quimbee.com/cases/gatoil-international-v-national-iranian-oil-co
4 Jamal Seifi, "Article 139 of the Constitution of the I.R. of Iran in light of International Arbitral Decisions and Iran's Reservations to Investment Treaties" (2024), Tehran University Public Law Journal, p. 220-221.
5 French edition available at https://arbitrationlaw.com/library/paris-court-appeal-1st-chamber-%E2%80%93-section-c-17-december-1991-soci%C3%A9t%C3%A9-gatoil-international
6 Jamal Seifi, "Article 139 of the Constitution of the I.R. of Iran in light of International Arbitral Decisions and Iran's Reservations to Investment Treaties" (2024), Tehran University Public Law Journal, p. 221.
7 Ibid, p. 221-223
8 Available at https://jusmundi.com/en/document/decision/en-westinghouse-electric-corporation-v-the-islamic-republic-of-

Ministry of Defense in a London court, alleging a breach of contract. The Ministry of Defense, relying on the arbitration clause, requested that the London court stay the proceedings and refer the dispute to arbitration. The London court granted the Ministry of Defense's request and referred the case to arbitration. Westinghouse then argued that the arbitration agreement was invalid under Iranian law, citing Article 139 of the Iranian Constitution, which requires parliamentary approval for the arbitration of disputes involving state-owned assets.[1]

The international arbitral tribunal rejected Westinghouse's argument, concluding that Article 139 of the Iranian Constitution did not invalidate the arbitration agreement. Citing international case law, particularly a similar case decided by the Paris Court of Appeal, the tribunal held that a party cannot rely on domestic law to avoid an arbitration agreement once it has been entered into. The tribunal emphasized that the purpose of international arbitration is to facilitate international trade and provide parties with a neutral forum for dispute resolution. Allowing a party to avoid an arbitration agreement based on domestic restrictions would undermine this purpose.[2]

Apparently, arbitration in Iran still faces certain limitations and challenges, including those prescribed by Article 139 of the Constitution. It should be noted that Article 139 correctly mandates parliamentary approval for the arbitration of disputes concerning state properties. However, it seems that the formalities stipulated by the Article are against the nature of arbitration which is meant to be expeditious and to avoid the time and expense associated with proceeding in court. As rightly noted above, Iran needs to revise its approach and here the Guardian Council can play a key role by streamlining the arbitration process and fostering a more efficient dispute resolution process. In fact, a streamlined approach can be achieved by reducing unnecessary formalities and promoting a more supportive framework for arbitration. While courts operate within a well-defined system of rules and procedures, arbitration tribunals enjoy greater flexibility, allowing for more tailored and efficient dispute resolution.

Conclusion

The 1997 enactment of Iran's International Commercial Arbitration Law (LICA) represents a major development in the modernization of the legal framework governing international commercial disputes within the Islamic Republic of Iran. By incorporating key principles of the UNCITRAL Model Law, LICA holds the potential to enhance the predictability, efficiency, and enforceability of arbitral awards despite certain weaknesses. However, the realization of this potential is constrained by existing constitutional and procedural impediments, specifically Articles 139 of the Constitution and 457 of the Code of Civil Procedure, which mandate parliamentary approval for arbitral awards involving foreign entities. This requirement urges a procedural formality that stands in contrast to the inherent flexibility and expeditious nature of international commercial arbitration, posing a substantial risk of discouraging foreign investment due to potential protracted delays. This analysis posits that the Iranian Constitution does not necessarily preclude the efficacy

iran-the-islamic-republic-of-iran-air-force-iran-air-ministry-of-water-power-shahpur-chemical-co-ltd-also-known-as-razi-chemical-co-iranians-bank-final-award-award-no-579-389-2-wednesday-26th-march-1997

1 Ibid p. 221-222

2 ibid

of arbitration provisions. Furthermore, it argues that the Guardian Council has the authority to streamline arbitral procedures within the existing legal framework of the Islamic Republic. While a degree of procedural structure is undeniably necessary for any dispute resolution mechanism, the current system's emphasis on parliamentary approval undermines arbitration's fundamental capacity to adapt to the unique exigencies of the parties involved. To fully realize LICA's objectives and foster a more favorable environment for international commercial arbitration in Iran, a streamlined approach—facilitated by the Guardian Council upon inquiries by relevant authorities—is essential. Strategies for reducing formalities, while important, fall beyond the scope of the present article and can be discussed elsewhere.

References

Oveis Rezvanian, Kamyar Oladi 'Iran's Arbitration at a Glance: A Brief Practical Review' (2021), Asian African Legal Consultative Organization (AALCO), 41-58 [In English]

Masour Jafarian, Mehrdad Rezaeian 'The New Law on International Commercial Arbitration in Iran' (1998), Kluwer Law International [In English]

Seyed Hossein Safaei 'A Few Words on Innovations and Shortcomings of International Commercial Arbitration Law' (1999), Law and Political Science Journal, [In Persian]

Jamal Seifi 'The New International Commercial Arbitration Act of Iran – Towards Harmony with the UNCITRAL Model Law' (1998), Journal of International Arbitration, vol. 15, issue 2, 5-35 [In Persian]

Jamal Seifi, "Article 139 of the Constitution of the I.R. of Iran in light of International Arbitral Decisions and Iran's Reservations to Investment Treaties" (2024), Tehran University Public Law Journal, 203-234 [In Persian]

'The Constitution of the Islamic Republic of Iran', English Translation Available at https://www.shora-gc.ir/en/news/87/constitution-of-the-islamic-republic-of-iran-full-text

'THE LAW CONCERNING INTERNATIONAL COMMERCIAL ARBITRATION (LICA)', English Translation Available at https://www.newyorkconvention.org/media/uploads/pdf/5/7/570_the-law-concerning-international-commercial-arbitration-iran.pdf

'10 Reasons Why Companies Prefer to Resolve International Commercial Disputes by International Arbitration', Available at https://www.jamsadr.com/blog/2024/10-reasons-why-companies-prefer-to-resolve

https://www.asil.org/sites/default/files/ERG_ARB.pdf (last accessed on Nov. 26, 2024)

'International Commercial Arbitration", Available at https://www.asil.org/sites/default/files/ERG_ARB.pdf

www.newyorkconvention.org/media/uploads/pdf/5/7/570_the-law-concerning-international-commercial-arbitration-iran.pdf

'International Commercial Arbitration Conventions', Available at https://guides.law.columbia.edu/c.php?g=1143492&p=8594689

'Convention on the Recognition and Enforcement of Foreign Arbitral Awards', Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/new-york-convention-e.pdf

'European Convention on International Commercial Arbitration', Available at https://treaties.un.org/doc/Treaties/1964/01/19640107%2002-01%20AM/Ch_XXII_02p.pdf

'Inter-American Convention on International Commercial Arbitration', Available at https://treaties.un.org/doc/Publication/UNTS/Volume%201438/volume-1438-I-24384-English.pdf

'INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION', Available at https://www.oas.org/juridico/english/Sigs/b-35.html

'ICSID CONVENTION, REGULATIONS AND RULES', Available at https://icsid.worldbank.org/sites/default/files/ICSID%20Convention%20English.pdf

'LIST OF CONTRACTING STATES AND OTHER SIGNATORIES OF THE CONVENTION (as of June 9, 2020)', Available athttps://icsid.worldbank.org/sites/default/files/ICSID-3.pdf

'CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS', Available at https://assets.hcch.net/docs/bacf7323-9337-48df-9b9a-ef33e62b43be.pdf

'Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters', Available at https://www.hcch.net/en/instruments/conventions/status-table/?cid=78

'COUNCIL REGULATION (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters', Available at https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:012:0001:0023:en:PDF

'INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION (B-35)', Available at https://www.oas.org/en/sla/dil/inter_american_treaties_B 35_international_commercial_arbitration.asp

'Investment Treaty Arbitration - An Overview', Available at https://www.lexology.com/library/detail.aspx?g=6b317652-49f0-4038-bc36-7f7550afa115

'International Investment Agreements Navigator', Available at https://investmentpolicy.unctad.org/international-investment-agreements/by-economy#iiaInnerMenu

'UNCITRAL Model Law on International Commercial Arbitration', Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-54671_ebook.pdf

'UNCITRAL Model Law on International Commercial Arbitration (United Nations documents A/40/17, annex I and A/61/17, annex I) (As adopted by the United Nations Commission on International Trade Law on 21 June 1985, and as amended

by the United Nations Commission on International Trade Law on 7 July 2006)', Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf

'Status of UNCITRAL Conventions and the New York Convention', https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/overview-status-table.pdf

'UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006', Available at https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration

https://uncitral.un.org/

'CPR dispute resolution: Arbitration Rules', Available at https://drs.cpradr.org/rules/arbitration

'ICSID Databases', Available at https://icsid.worldbank.org/resources/databases/bilateral-investment-treaties

'Interviews with Our Editors: Perspectives on Arbitration in Iran from Oveis Rezvanian, Director of the Tehran Regional Arbitration Centre', Available at https://arbitrationblog.kluwerarbitration.com/2019/08/16/interviews-with-our-editors-perspectives-on-arbitration-in-iran-from-oveis-rezvanian-director-of-the-tehran-regional-arbitration-centre/

'Reflections on the Status of International Commercial Arbitration in Iran', Available at https://www.jurist.org/commentary/2021/10/mehrdad-mohamadi-commercial-arbitration-iran/

'Gatoil International v. National Iranian Oil Co.', Available at https://www.quimbee.com/cases/gatoil-international-v-national-iranian-oil-co

'Westinghouse Electric Corporation v. Iran', Available at https://jusmundi.com/en/document/decision/en-westinghouse-electric-corporation-v-the-islamic-republic-of-iran-the-islamic-republic-of-iran-air-force-iran-air-ministry-of-water-power-shahpur-chemical-co-ltd-also-known-as-razi-chemical-co-iranians-bank-final-award-award-no-579-389-2-wednesday-26th-march-1997

"Farsi Text of An Interview with Head of the Tehran Court of Justice Ali Alqasi', Available at mehrnews.com/x35pLT