

A Comparative Study of the Impact of an Arbitration Agreement on the Jurisdiction of the Court

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Abstract

Arbitration Agreement grant an authority to arbitrator for resolving the dispute, but it does not eliminate the jurisdiction of the court. So that, if the action in relation to matters falling within the scope of the agreement commences in the court, it will be resolved, even though the arbitral process would have been initiated. To ensure the commitment of the parties to the arbitration agreement, in the Iranian International Commercial Arbitration Act, the USA Federal Arbitration Act, the UK Arbitration Act, the UNCITRAL Model Law on International Commercial Arbitration and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards an approach has been recognized, namely stay of legal proceedings, that is considered as indirect sanction for enforcement of the arbitration agreement. This remedy is established when jurisdiction of the court is demurred by the interested party seeking performance of the arbitration agreement; provided the validity of the arbitration agreement has been ascertained by the court. This remedy can be emerged in various orders including order of non-admissibility, order of decline jurisdiction and order of referring the parties to arbitration. The last order has better function than others; because, without dismissing litigation, the dispute is referred to arbitration and, consequently, in addition to saving of time and cost, the court proceedings will continue if the arbitral process does not achieve the result.

Keywords: Referral of the Claim; Stay of Legal Proceedings; Remedy; Sanction.

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