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# The Foundations and Features Governing Arbitration by Iran Chamber of Cooperative

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**Abstract:** Arbitration is one of the most important dispute resolution mechanisms. It may be either voluntary or mandatory. The main goal of this article is to examine mandatory arbitration in the Iranian cooperative sector. Since arbitration has been defined as a special and private proceeding, nowadays arbitration, particularly its mandatory type, appears frequently in various fields, laws and regulations such as the Law of the Cooperative Sector of the Economy of the Islamic Republic of Iran, enacted in 2014. This law refers to mandatory arbitration in Note 14 of Article 57 and stipulates that an arbitration clause shall be included in the articles of association of the chambers of cooperative. Mandatory arbitration under the Law of the Cooperative Sector of the Economy of the Islamic Republic of Iran is based on resolving controversies and therefore, it is solely targeted at establishing compromise and reconciliation between the parties. Dispute settlement, establishing equity and justice, non-judicial and cost-free resolution of disputes, and maintaining order in the community and the interests of the parties can be recognized as the foundations governing arbitration under the Law of the Cooperative Sector of the Economy of the Islamic Republic of Iran.

**Keywords:** Arbitration, Mandatory Arbitration, Chamber of Cooperative, Dispute Resolution.

## INTRODUCTION

Arbitration, whether voluntary or mandatory, is an attempt by the parties to resolve their controversies and disputes out of courts. Given this definition, the differences between mandatory and voluntary arbitration has to be examined. Other issues to be examined here are whether mandatory arbitrations held by Iran Chamber of Cooperative have been effective and whether they have materialized the foundations governing that Chamber? Mandatory arbitration has been considered in a number of laws, including the Law on Cooperative Sector of the Economy of the Islamic Republic of Iran, enacted in 2014. Arbitration is mandatory when, due to some policies, the law requires that, without a need to the consent of the parties, the dispute is referred to arbitration. An example of this can be the cases under the Note 14 of Article 57 of the above-mentioned law as amended in May, 7, 2014.

In the above-mentioned Note 14 of Article 57, the inclusion of arbitration in the articles of association of the cooperative chambers becomes mandatory insofar as Article 76 of the same Law stipulates that cooperatives shall amend their articles of association within three months of the date of entry into force of the law and that

they shall be registered as cooperatives, otherwise they will not be recognized as cooperatives and hence, they will not be able to take benefit from the advantages of cooperatives. A common flaw in the articles of association of many commercial corporations is the lack of an arbitration clause. This leaves them no other choice than to go to the courts and consequently face many difficulties in proceedings and enforcement which results in the prolonging of the proceedings. Therefore, the best way for corporations to avoid these difficulties and resolve business disputes is to include arbitration in their articles of association. This practice should also be promoted among lawyers so that when the articles of association are being drafted, the issue is attended and arbitration provision is envisaged in the corporations' articles of association. (Habibi Dargah and Sufi, 2016) What is now going to be examined in this article, after examining the relevant concepts, is the foundations and features of mandatory arbitration contained in the aforementioned law.

### **The concept of Arbitration**

Literally, arbitration means judging and settling disputes between people and to settle a quarrel between two or more persons. (Moein, 1974) Legally speaking, it is "a technique whose purpose is to settle a dispute relating to the relationships of two or more persons by one or more other persons as the arbitrator or arbitrators who derive their powers from a private contract and render their judgment accordingly, without being assigned to such a duty by the government. (David, 1996) Arbitration, along the general courts of the judiciary, is a way of dealing with the civil disputes of persons. In other words, the institution of arbitration is parallel with the judicial bodies which are the most common way of resolving disputes, and there are many reasons why it exists. Cases such as litigation prolongation, saving time and money, speedier proceeding, and lack of due process requirements are among the reasons that cause persons to seek arbitration for the settlement of their disputes. Arbitration is therefore an out-of-court dispute settlement, by a person or persons chosen by the parties or a third party, the provisions of which are set forth in Section Seven of the Code of Civil Procedure (Articles 501-554). (Zera'at, 2012)

The legislator does not define arbitration or umpireship independently and has only referred to the cases of referring to arbitrators in various articles, for example, in Article 454, which is the first Article in the Seventh section, it stipulates: "All parties, who have the capacity to file a suit, may agree to refer their dispute to arbitration by one or more persons, whether or not it has already been brought in a court and regardless of what stage of the proceedings their litigation may be in." This is related to the appointment of arbitrators by the parties themselves. There are also cases where the court has to appoint arbitrators, such as in divorce cases, in which the court usually appoints an arbitrator for the husband and another for the wife in consultation with them, and if they cannot propose their arbitrators, the court itself will appoint the arbitrators from among their relatives or persons trusted by the court. So, by combining the above, we can define arbitration or umpireship as a process in which the parties to a dispute will, at their own discretion, or obliged by the court in particular cases, refer their dispute to arbitrators and agree to be bound by their award as the final and conclusive settlement of their dispute, subject to the specific legal requirements. (Vahedi, 2007)

The Code of Civil Procedure does not define arbitration, but paragraph A of Article 1 of the Law on International Commercial Arbitration enacted by the Islamic Consultative Assembly (Iran's Parliament) defines arbitration as "... the out-of-court settlement of a dispute between the parties by natural or legal persons appointed through their mutual agreement or by a designating party."<sup>1</sup> As noted, paragraph A of Article 1 of the Law on International Commercial Arbitration expressly mentions the arbitration of legal persons in international trade disputes. The question that arises is whether in the domestic cases a legal person can be appointed as an arbitrator? Some argue that a legal person cannot be selected as an arbitrator because arbitration is in fact a judgment that requires the analysis of the evidence acquired from the parties

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<sup>1</sup> Official Gazette No. 15335- 18,10,1997.

and mental processing of the information, and that such processing is only possible through the evaluation of the events by common sense that is only the attribute of the natural persons, not legal ones that lack intellect and sense. The legislator has been of the same opinion because Article 454 refers to arbitration by one or more individuals, and the word "individual" applies to natural persons, not legal ones. Even if legal persons are arbitrators, the person who exercises the arbitration in the name and on behalf of the legal person shall be a natural person in charge of the legal person. So, there is no doubt that the act of evaluating and processing of the evidence is performed by the natural person as the manager of the legal person. In other words, the legal person has only handled and organized the arbitration. (Shams, 2005) Another argument is that a legal person can be appointed as an arbitrator the same as a natural person can (Sadzadeh Afshar, 2000) because the word "individuals" both refers to an individual and a group and a legal person consists of a group of individuals who act like other individuals. The terms "people", "all the people", "a group of People" or "some men" from 3 to 10 in number are considered to be within the definition of "individual". (Amid, 1989) On the other hand, in paragraph A of Article 1 of the Law on International Commercial Arbitration, the legislator has used "individual" and "person" interchangeably. Furthermore, since arbitration is not naturally exclusive to the real persons, so the legal person can also enjoy this right. Article 558 of the Commercial Code also states: "A legal person may have all the rights and duties that the law provides for individuals except the rights and duties that by nature only a natural person may possess, such as the rights and duties of paternity and the like." In conclusion, given the explanations in the first argument and by accepting the result of that argument, it can be said that it is not impossible to appoint a legal person to arbitration and legal persons can act as arbitration institutions. Support for this conclusion can be found in Article 47 of the Dispute Resolution Councils Act, which provides: "In cases where the Council, as the agreed-upon arbitrator of the parties, deals with the disputes in question, it shall comply with the rules of arbitration in accordance with the Code of Civil Procedure of the Public and Revolutionary Courts." As noted above, the parties can appoint the Council as arbitrator without having acquaintance with the members of the Council while the arbitration and evaluation of the evidence is carried out by these members. (Mohajeri, 2013) As concluded from the arguments above, arbitration as a means of dispute settlement can find meaning in the cooperative sector of the economy.

## **2. Types of Mandatory Arbitration**

Referral of disputes to arbitration is basically voluntary, that is, based on the agreement of the parties. However, there are instances where the legislator has found the request of only one of the parties sufficient to refer the matter to arbitration and has required that the court take action in this regard. For example, the Umpireship Act of 20,03,1928 can be mentioned. In addition, based on Article 10 of the Law Amending Part of the Laws of the Judiciary enacted on June 15, 1977, in any litigation pending before the courts (with the exception of bankruptcy and litigations relating to the marriage and divorce and termination of marriage and paternity) that by the date of entry into force of the aforementioned law has been going on five years or more, whether it is in the court of first instance or appeal, the claimant can request in writing for the settlement of disputes through arbitration within two years if the termination of the proceedings has not been already announced. According to this article, the court is obliged to accept the request and appoint the arbitrator on behalf of the refusing party, and the umpire as the case may be. Arbitration is principally based on mutual agreement. (Shams, 2005) In some cases, the court finds it expedient to resolve a dispute according to its circumstances through arbitration and refers the matter to arbitration for resolution. This case is referred to as mandatory arbitration because the parties to the dispute have no role in this matter, an example of which is stated in the Law on the Cooperative Sector of the Economy of the Islamic Republic of Iran, enacted in 2014. Of course, since giving such a power to a judge is not justifiable, this type of arbitration is used only in cases specified by the legislator. For example, in divorce cases, some people must intervene as an umpire and arbitrator in the arbitration process. Mandatory arbitration, however, is an arbitration where the court refers

the dispute to arbitration and the parties do not have a role in this decision and the settlement of the dispute through arbitration is not based on their wills.

### **2.1. Relative Mandatory Arbitration**

According to Article 27 of the Family Protection Act of 2012, mandatory arbitration in cases other than divorce by mutual consent is accepted. This can be seen as a form of relative mandatory arbitration. (Moeinifar and Dargahi, 2015) That is, if one of the parties to the lawsuit requests that the dispute be referred to arbitration, the court is obliged to accept the request and refer the case to arbitration. Article 5 of the Family Protection Act of 1974 also states that "if the parties so request, the court is obliged to refer the matter, with the exception of the proceedings related to the essence of marriage and divorce, to one or three arbitrators ..." <sup>2</sup> However, there is a requirement for both parties to introduce an arbitrator in divorce cases both under the current applicable law and the new bill, and only in a divorce by mutual consent, pursuant to Article 27 of the Family Protection Act of 2012, arbitration is not required. (Bodaghi, 2012) It should be noted that in the divorces based on undue hardship, arbitration is required as well. (Bakhtar, 2016)

### **2.2. Absolute Mandatory Arbitration**

Absolute mandatory arbitration refers to cases where law requires that the dispute be referred to arbitration. This kind of arbitration is also enshrined in the Law of the Cooperative Sector of the Economy of the Islamic Republic of Iran, enacted in 2014, as it is envisaged in Note 14 of Article 57 of the said law. In some respects, in accordance with the Single Article Act on Amendment of Divorce Regulations of March 18, 1992 and its Implementing Regulations of Nov., 19, 1992, a couple who seek divorce are required to refer to the court. If their dispute is not settled through the court, the matter will be referred to arbitrators <sup>3</sup> who are selected by the couple or the court <sup>4</sup> as the case may be. The arbitrators are required to examine the case and report to the court on whether or not conciliation is possible. However they are not required to comment on divorce. If the arbitrators also fail to resolve the dispute, the court issues a certificate of non-conciliation and refers the case to the divorce notary to execute the divorce arrangements and register it. It should be noted that arbitration under the Act on Amendment of Divorce Regulations is not subject to the requirements of the Code of Civil Procedure, and arbitrators, whether selected by the court or the couple, must meet the following requirements:

- a. Muslim.
- b. Relative familiarity with religious, family and social issues.
- c. At least forty years of age.
- d. Married.
- e. Trustworthy.
- f. No corruption reputation. (Beheshti and Mardani, 2010)

There are also cases where the court directly refers the dispute resolution to arbitration, which is called mandatory arbitration because the parties do not have a role in this reference, and the arbitration is not the result of their will, but the court's decision. For some reason, given the circumstances of the case or the nature of the subject, the court finds it expedient to resolve the dispute through arbitration (Vahedi, 2007), such as the cases set forth in the forthcoming laws. Article 5 of the Family Protection Act of Feb. 4, 1975:

"Upon request by either party, the court is required to refer the case to one or three arbitrators, with the exception of the marriage and divorce proceedings. The court will also refer the case to arbitration based on

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<sup>2</sup> See Articles 476 and 477 of the former Code of Civil Procedure and Article 10 of the Law Amending Part of the Laws of the Judiciary.

<sup>3</sup> There shall be two arbitrators, one for each spouse. □A. See verse 35 of Surah Al-Mubarak An-Nisa.

<sup>4</sup> The court shall decide on the selection of the arbitrator(s) if either spouse refuses or is unable to nominate a qualified arbitrator. Article 3 Implementing Regulations of Note 1 of the Act on Amendment of Divorce Regulations.

its discretion where it finds it expedient to do so.

Arbitration under this law shall not be subject to the conditions of arbitration provided for in the Civil Procedure Code. The period for the arbitrators to render their award shall be determined by the court. If the said award is not rendered by the expiry of the prescribed period, the court shall proceed with the case unless the parties agree with an extension or the court finds the extension to be appropriate. If the parties do not agree with respect to the designation of the arbitrator or fail to nominate their respective arbitrators, the court will select the arbitrator or arbitrators from among their relatives or friends or acquaintances, respectively. "If these persons refuse to accept arbitration or if they cannot be selected due to their absence or otherwise, other people shall be selected." Note 2 of Article 3 of the Special Civil Court Bill, Enacted in Sep. 23, 1979: "Divorce cases are the same as those provided for in civil law and Sharia law, but in cases where the husband seeks divorce under Article 133 of the Civil Code, the court initially refers the case to arbitration in accordance with the Quran Verse that states: "And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things]..." However, if the couple has agreed on divorcing, they do not need to refer to the court. As can be seen, mandatory arbitration in family cases was initially provided for in the Family Protection Act and was broad in scope. Later, in the Law on the Establishment of a Special Civil Court that replaced the Family Protection Court, the notion of mandatory arbitration was accepted but it applies exclusively to cases where the husband is seeking divorce on the basis of Article 1133. (Vahedi, 2007)

### **3. The basis of mandatory arbitration in the Iran Cooperative Chamber**

The basis of the formation of any institution, including mandatory arbitration, contains the foundations from which that entity draws its validity; therefore, mandatory arbitration in the low governing Iran Cooperative Chamber may include some of the foundations that form the basis of that institution. In general, the basis of mandatory arbitration in Iran Cooperative Chamber can be explained as the resolution of adversities and disputes between the parties and making conciliation between them. We will discuss the details below.

#### **3.1. Dispute Settlement**

One of the foundations of mandatory arbitration is dispute resolution. Occurrence of disputes is a natural and probable phenomenon in the social and economic relations of individuals as well as in the legal exercises such as contracts. A party may claim a right that exceeds what has been designated in the contract for him while the other party denies it; or the parties may understand and interpret the terms of the contract differently and to their benefits leading to dispute. (Adibi, 2015) This dispute can end in a settlement through referring to arbitration whether by the parties or the court through mandatory arbitration mechanism. According to Principle 159 of the Constitution: "The official reference of complaints and appeals is the Judiciary"; In case the parties have agreed on arbitration or a dispute has been referred to arbitration then, a lawsuit is brought before the court for the same dispute, the law expressly states that whether the lawsuit can be heard in court or not. Despite the silence of the law in this regard, it can be argued, by reference to Articles 10 of the Civil Code and Articles 6, 454, 472 of the Code of Civil Procedure, that the lawsuit cannot be heard because the parties' agreement to refer to arbitration is an implied limitation of their right to a court hearing. On the other hand, the freedom of will and enforceability of the contract resulted from this agreement requires that the enforceability of the agreement does not lose its sanctity by the retreat of one of the parties. Therefore, if after agreeing on arbitration, a lawsuit is brought before the court, the court will issue a writ of nonsuit. Therefore, in the event of a dispute, the parties to the dispute will naturally refer the case to the courts of justice, and the judge, on the basis of Principle 167 of the Constitution: "is obliged to try to find the verdict of any lawsuit in the laws and if they cannot find the verdict there, they shall issue a verdict on the basis of valid Islamic sources or a fatwa." But it should be remembered that the dispute resolution mechanism is not

always the court, and another mechanism has also been envisaged in the law. The nature of the judicial process and the formalities required during the process of adjudication are among the factors that prolong litigation, and sometimes cause litigation to take years so that the claimant party withdraw from pursuing his or her right. In the Code of Civil Procedure another mechanism has been envisaged for dispute settlement. This mechanism is arbitration. In the seventh Section of the Code of Civil Procedure (2000), Articles 454-501 deal with arbitration. Based on what was discussed earlier, essentially the place of dispute resolution is a court of justice, but the parties can, if they agree so, refer their dispute to the arbitration, whether or not it has already been brought before a court. (Adibi, 2015) In view of the above-mentioned principles of the constitution and articles of the Code of Civil Procedure, it is clear that the very first basis for mandatory arbitration in the Chamber of Cooperative and, arbitration in general, is resolving disputes between the parties.

### **3.2. Establishing Equity and Justice**

Disputes in social and contractual relations, especially among businessmen and individuals working in cooperatives, are natural, however, under normal circumstances, referring the dispute to dispute settlement bodies is not recommended. A compromise that contains injustice is far better than going to the courts and getting a judgment. Whoever compromises amicably or through mediation is the winner. Both sides will benefit from it and the case will be win-win. Friendly negotiation and mediation is better than going to court and arbitration. Referral to court is the last resort. The court is not a good place to settle a dispute because it is about judgment, not about justice and fairness. Judgment implies cutting off, which can be fair or cruel, as the case may be. The dispute may be due to a different interpretation of the terms or conditions of the contract or laws and regulations. There cannot be a dispute over the liabilities arising from tort as well. In the world of engineering, claim identification and its management are of the utmost importance. The main steps of claim management are:

- A) Identification of claims.
- B) Quantification of the claim.
- C) Claim prevention.
- D) Claim Analysis.

In claim management, particular attention should be given to the capacity of acceptance of the claim, the cost and benefit of the claim, the value of the claim, and where the claim is pursued and followed up. Arbitration is a private proceeding in which the judge (arbitrator) is selected by the parties. It addresses many issues that the court is unable to address.

However, there are three basic stages to arbitration:

(A) Agreeing to arbitration or incorporating arbitration clause. (Darabpour and Darabpour, 2015) (B) Referral to the Tribunal and observing its rules of procedure. (C) Recognition and enforcement of arbitral awards.

### **3.3. Resolving Disputes in a Non-judicial and Cost-free Manner**

Another foundation that can be mentioned for both arbitration in general and the type of mandatory arbitration in the cooperative sector and its related law is the inexpensiveness and its non-judicial nature. All persons who are legally able to sue in a court of law shall have the right to bring their cases and disputes to arbitration by one or more persons, whether or not they have already been raised in court.<sup>5</sup> Some people are absolutely and some other relatively banned from acting as arbitrator.<sup>6</sup> The Law on International Commercial Arbitration (1997) governs such arbitrations. According to this law, it is possible to request a writ of

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<sup>5</sup> Article 454 of the Code of Civil Procedure.

<sup>6</sup> For a study of the absolute and relative prohibition of arbitration, see Shams, Abdullah, op. cit., volume 3, p. 537..

attachment or an interim measure through the arbitrator. According to the same law, the arbitration clause is independent of the contract and the nullity of the contract does not nullify the arbitration clause. The parties to the transaction may, in the course of the transaction, either be bound by a separate contract to seek arbitration in the event of a dispute between them, and may refer their arbitrators before or after the dispute, or even delegate the selection of the arbitrator to a third party or court.<sup>7</sup> If the designating authority is a third party, the parties can challenge them. Those who do not have the right and qualifications for arbitrating shall not arbitrate.<sup>8</sup> Some cases are not arbitrable by nature.<sup>9</sup> Engineers should be aware that arbitration cannot always be used as a speedy, low cost and convenient settlement way of disputes, because in contrast to judicial settlement, arbitration is less applicable, and the referral of state lawsuits to arbitration has limitations under the Constitution and other regulations<sup>10</sup>, for example, in accordance with Article 496 of the Code of Civil Procedure, bankruptcy or cases regarding marriage, its termination, divorce, and paternity cannot be referred to arbitration. It is noteworthy that the arbitration agreement, like other contracts, has a time limitation and may even not last until the end of the contract, or may be terminated by the parties, or may be terminated by the death of the arbitrator or one of the parties. Such cases, however, are not within the scope of this discussion. The arbitration does not commence until the parties appoint the arbitrator and the arbitrator accepts the appointment.

Such appointment and the acceptance thereof do not have to be in writing, but if it is written, it makes it easier for the parties to provide evidence if necessary. If the parties have referred their dispute to arbitration but have not reached an agreement on the choice of arbitrator or arbitrators, the court shall determine the arbitrator. Even in international trade cases, it is possible that a national court or arbitration institution appoint the arbitrator on behalf of the refusing party. The umpire and the arbitrator of each party must be neutral the same as a judge. The arbitrators of each party are not their agents or lawyers, and are liable to them for adverse and unlawful decisions. In cases where the legal expertise and mastery of the law and language of another country is necessary, the arbitrator shall have such capacities and if in the absence of such capacities, the parties select one as arbitrator, such person shall not accept the arbitration. If non-qualified persons are appointed for arbitration, they may cause numerous problems due to extensive qualifications needed. The consequences of such appointment cannot be easily resolved even by challenging, revocation, and nullification of the arbitration award. The disadvantage of choosing an uninformed arbitrator

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<sup>7</sup> Article 455 of the Code of Civil Procedure.

<sup>8</sup> Articles 469 and 470 of the Code of Civil Procedure. Article 469: "The court may not assign the following persons to arbitration, unless the parties so agree:

1. Those under the age of twenty-five.
2. Those who have interests in the case.
3. Those who are relative in law or in cause to one of the parties to the second degree of third category.
4. Those who are the guardian or lawyer or steward of one of the parties to the dispute or one of the parties to the dispute is their steward.
5. Those who themselves or their spouses are the heirs of one of the parties to the dispute.
6. Those who have had or are having criminal proceedings with one of the parties to the dispute or with persons who are relative in law or in cause to one of the parties to the second degree of third category.
7. Those who themselves or their spouses or one of his/her relatives in law or in cause to the second degree of third category have had or are having civil proceedings with a party to the dispute or his/her spouse or his/her relative in law or in cause.
8. Government employees in their area of mission".

Article 470: All judges and staffs of the courts are barred from arbitrating even with the consent of the parties".

<sup>9</sup> As in bankruptcy, marriage, termination of marriage, divorce and paternity under Article 496 of the Iranian Code of Civil Procedure.

<sup>10</sup> Article 457 Code of Civil Procedure: "Cases regarding public and state property may be referred to arbitration after approval by the Cabinet and notification to the Islamic Consultative Assembly [the parliament]. In cases where the party to the dispute is a foreigner or the subject of a dispute is deemed an important matter according to the law, the approval of the Islamic Consultative Assembly is also necessary".

Principle 139 of the Constitution: "Any compromise on claims regarding public and state property or their referral to arbitration, in any case, is subject to the approval of the Cabinet and must be notified to the Parliament. In cases where the party to the dispute is a foreigner and in important domestic matters, it must also be approved by Parliament. Important matters are determined by law".

who lacks expertise in the field is no less than a corrupt and biased illiterate judge. (Darabpour and Darabpour, 2015) However, litigation is usually time-consuming and costly, and ultimately, whatever the outcome, it certainly cannot fully cover the losses or benefits for both parties, and it is in fact a Lose-Lose game. (William, 2014)

From what was discussed above, it is concluded that arbitration is a legally or contractually binding dispute settlement mechanism that is binding on the parties to the arbitration. Arbitration should not be confused with litigation<sup>11</sup>, Alternative Dispute Resolution<sup>12</sup>, expert determination<sup>13</sup> or mediation.<sup>14</sup>

The advantages of referring disputes to arbitration are as follows:

1. If the subject of the arbitration is very specific, the expert arbitrator may comment on the subject.
2. The time for arbitration is usually shorter than the court proceedings.
3. Arbitration can be cheaper and more flexible.
4. Arbitration, especially private arbitration, is usually not held in public, so it can be held in secret.
5. In the States Parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the recognition and enforcement of arbitral awards is easier than court judgments.<sup>15</sup>
6. The arbitral award is usually final and may not be nullified except in rare cases. Therefore, it is superior to court judgments. (Darabpour and Darabpour, 2015)

Despite the fact that there are certain conditions for arbitration, one of the advantages of mandatory arbitration is its low cost as well as its non-judicial nature as outlined earlier using related statutory provisions.

### **3.4. Maintaining order in the community and the interests of the parties**

Mandatory arbitration in the Law of the Cooperative Sector of the Economy of the Islamic Republic of Iran can play an important role in meeting the interests of both parties and in maintaining social order and hence, some consider arbitration as a power of attorney. However, if arbitration were a kind of power of attorney, a party could dismiss the arbitrators whenever he liked. On the other hand, this would conflict with the purpose of referring the dispute to arbitration being the final and binding settlement of the dispute. The drawback of viewing arbitration as a power of attorney is that if the arbitrator is the lawyer of a party to the dispute, his or her powers are within the powers vested on him/her by the client and the attorney cannot go beyond those powers. But the basis for the decision of the arbitrators is the maintenance of the family's interests and is not limited to the extents of powers vested in them by the parties to the dispute.

## **4. Features of Mandatory Arbitration in the Chamber of Cooperative**

Mandatory Arbitration in the Law of the Cooperative Sector of the Economy of the Islamic Republic of Iran enjoys features such as impartiality in arbitration, better and speedier enforcement of arbitral awards, speedy proceedings, the confidentiality of arbitration, the peaceful resolution of disputes, the higher efficiency and binding nature of arbitration.

### **4.1. Mandatory and Binding Settlement**

Arbitration is basically voluntary but it is mandatory if referral to arbitration is obligated by laws such as the Law on Cooperative Sector of the Economy of the Islamic Republic of Iran. Arbitration is based on the will of

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<sup>11</sup> Judicial proceedings.

<sup>12</sup> Alternative Dispute Resolution (ADR).

<sup>13</sup> Expert Determination.

<sup>14</sup> Mediation

<sup>15</sup> There are many other multilateral conventions on the enforcement of arbitral awards, some of which are: The 1972 Geneva Convention; the 1961 European Convention; the 1965 Washington Convention; the 1972 Moscow Convention; the 1975 Panama Convention; and finally the 1985 UNCITRAL Arbitration Model Law.



the parties, which means that it is only possible if all parties to the dispute consent to it. Consent to arbitration can take two forms: The parties may agree on arbitration after the dispute arises. This agreement that may be limited to that same dispute is referred to as voluntary arbitration. On the other hand, the parties may agree on arbitration before a dispute arises. This is referred to as mandatory arbitration. Save cases where arbitration is mandatory by law, the parties' agreement to refer a judicial mission to a person or persons in accordance with the law, makes arbitration lawful.<sup>16</sup> The agreement of the parties for referral of their disputes to arbitration (arbitration agreement)<sup>17</sup> may appear in a separate "Arbitration Agreement"<sup>18</sup> or in a contract clause.<sup>19</sup> An Arbitration Agreement<sup>20</sup> is a contract whereby the parties agree to refer their existing dispute, whether or not it is pending in the court, or possible disputes that may arise in the future, to arbitration by one or more people. Article 454 of the Code of Civil Procedure provides that "All parties, who have the capacity to file a suit, may agree to refer their dispute to arbitration by one or more persons, whether or not it has already been brought in a court and regardless of what stage of the proceedings their litigation may be in."<sup>21</sup> (Matin Daftari, 1999) The contract referred to in this article is concluded only when a dispute has already arisen, whether or not it has been brought before a court of first instance or appeal and even the Supreme Court because in any case, the parties to the dispute can agree to refer their dispute to arbitration. Article 494 of the Code of Civil Procedure provides: "If the case is pending in the Supreme Court and the parties file a request for arbitration or the Supreme Court finds that the case shall be referred to arbitration, then the Supreme Court will send the case to the lower court that has issued the appealed judgment for referral to arbitration." Although arbitration is usually incorporated in the main contract in the form of a clause before a dispute arises, the parties to a contract can "under a separate agreement consent to refer to arbitration in the event a dispute arises between them ... " An arbitration agreement in the form of an arbitration clause occurs when two or more persons, in the course of their transaction, undertake to seek arbitration in the event of a dispute between them (Article 3 of the Code of Civil Procedure). So this kind of arbitration is agreed upon when there is not only any dispute between them but it may never happen. (Shams, 2005)

#### 4.2. Efficiency and Better Performance

One of the features of mandatory arbitration in the Law of Cooperative Sector of the Economy of the Islamic Republic of Iran can be described in terms of justice and efficiency. Some legal claims and disputes are so complex that only experts can comment on. In such cases judicial proceedings cannot produce the right and desired justice. In arbitration, it is possible for the parties to select persons with relevant expertise as arbitrator and refer their dispute to them. At least in the case of the arbitrator selected by the parties, since the arbitrator has been selected by both parties, they will naturally try to inform him of the details of the dispute. In that case, it is obvious that the award rendered by him is fully in line with the facts and is

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<sup>16</sup> "If the award is not in accordance with the document based on which the parties have agreed to his determination and its finality, but rather the parties have agreed on the umpireship of a person and that he renders his final opinion to resolve their dispute, this situation does not comply with section 3 of Article 476 of the former Code of Civil Procedure (Note to Article 331 of the present Code of Civil Procedure). "Judgment No. 774 dated 21,06,1959, Branch 1 of the Supreme Court (Matin Dafteri, Civil and Commercial Procedure, 157)

"If in the preliminary petition, the parties designate an expert to resolve and adjust any disputes regarding the shares of a person and consent to be bound by his decision, in the event of failure to mention the title (arbitrator) in the court's injunction shall have no effect on the position of the expert and the parties have the right to take acting with respect to his opinion in accordance with the law." Award No. 2925/33 of the Supreme Court.

<sup>17</sup> Convention d'arbitrage

<sup>18</sup> Compromis

<sup>19</sup> Clause compromissoire

<sup>20</sup> The term agreement implies that the arbitration agreement shall always be in writing. This term has been used in the Article 7 of the Law on International Commercial Arbitration that also stipulates that the Arbitration Agreement may be claimed by one party during an exchange of claim or defense and the other party may in fact accept it

<sup>21</sup> Article 1 of the Umpireship Act permits reference to arbitration at any stage of the legal process .

As a result, it can be concluded that arbitrators may, if designated at the appeal stage, terminate the judgment of the lower court and render their award. Verdict No. 1160, 22,09,1939, Branch 3 o the Supreme Court (Matin Daftari, op. cit., p. 156).

naturally closer to justice. (Vahedi, 2007) Since there is no such choice in judicial proceedings, it is obvious that arbitration is closer to establishing and executing justice. In fact, the judge is "the ignorant between the parties" and the litigants themselves know which party is right. But the judge has no knowledge of the merits of the case and will only issue judgment on the basis of the evidence provided by the parties, and may, in many cases, due to the failure of a party to comply with the rules governing the dispute, a claim is lost, dismissed, or face *res judicata*. (Vahedi, 2007)

#### **4.3. Peaceful Settlement of Disputes**

Another feature of mandatory arbitration in the Law of Cooperative Sector of the Economy of the Islamic Republic of Iran is the peaceful resolution of disputes. In judiciary proceedings the defendant is usually not necessarily satisfied with the lawsuit and in addition, none of the parties have the right to choose the judge, the judgment may mean the end of the dispute but it does not mean the end of adversary and usually loser of the case is always dissatisfied with the judgment which ultimately creates more hatred and adversary.

#### **4.4 Confidentiality and Secrecy of Arbitration**

Judicial and administrative hearings are often public, and the openness of courts and hearings in many cases brings both material and moral damages to litigants. For example, in commercial litigations, many trade secrets that are of great importance, such as commodity prices or delivery dates, are revealed which can be detrimental to both parties and even the domestic economy. Also, the openness of the proceedings and the judgment may result in the loser or even the winner of the case being misused by some people. On the other hand, it is very difficult for many people to attend the hearing and answer the questions of prosecutors because they sometimes have to come up with issues that are part of their privacy. Whereas, in the presence of a trusted arbitrator or arbitrators, they can easily utter all the unspoken words and make the necessary explanations to clarify the arbitrators, especially as these are, in contrast to the court, not inserted and recorded elsewhere. Due to the confidentiality and trustworthiness of the arbitrators, the content of the sessions will be kept private and will not be disseminated elsewhere outside the tribunal. (Vahedi, 2007)

#### **4.5. Speeded Settlement**

Court proceedings usually are multi-stage and each stage requires extensive and lengthy formalities. In contrast, accelerating the proceedings of dispute settlement in arbitration is one of the positive and undoubted characteristics of arbitration institution. In addition, subject to the provisions of Article 484 of the Code of Civil Procedure, the arbitration period will be three months, that is comparable with the time it takes to hear cases in the courts of justice, which sometimes exceeds 20 years. Where the parties themselves determine a lengthy arbitration period, they themselves are satisfied with it because unlike lengthy court hearings, it is based on their own will. The characteristic of the speed of settlement through arbitration, even in the era of Cyrus rule, has attracted the attention of the rulers. During the reign of Cyrus, there was a body called the "Supreme Court" consisting of seven judges and local courts were established throughout the country. The trials followed a certain order. In order to avoid a lengthy trial, each trial was scheduled for a specific time and compromise through arbitration was always offered to the parties. (Ravandi, 1989) Of course, it should be noted that in most cases of domestic arbitration, the arbitrator's award is not immediately enforced by the convicted party, and coercive enforcement becomes necessary. (Shams, 2005) That is, the winning party has to resort to the "enforcement department" of the judiciary. However, it should also be noted that many of the judgments of the courts are appealed before the court of appeal or the Supreme Court and the case may be returned to the court of first instance that rendered the judgment for a new trial. Even after several trials and judgments, if different judgments have been rendered on a case, the Supreme Court may issue a unified precedent judgment. Therefore, the referring to the court for the enforcement of the arbitral award cannot be deemed as the weakness of arbitration and cannot undermine the advantage of speed in

arbitration; in other words, losing one hour is certainly better than losing two. Of course, in international arbitrations, over ninety percent of the arbitration awards are enforced. In judicial proceedings, despite efforts to reduce litigation formalities, due to the limited facilities of the judiciary and the nature of adjudication, the desirable speed in proceedings is not achieved, and sometimes, a final judgment can take several years, while the same case can be settled conclusively in the short term through arbitration. This acceleration can in itself be financially beneficial to the parties and saves their time and money. (Madani, 1999) Thus, it takes a long time to settle a dispute through a court of law, while the arbitration process settles the case very quickly and conclusively. (Karimi, 2004) Thus, one of the important and valuable aspects of arbitration lies in the fact that the parties to the dispute, regardless of the complex legal procedures and issues involved in cases, can resolve their dispute through their own arbitrators.<sup>22</sup>

#### **4.6. Proper and Expeditious Enforcement of Arbitral Awards**

For the reasons set forth above, firstly, the convicted party will, in the light of his or her own willingness for arbitration, show greater cooperation and assistance, contrary to the cases of court judgments. Meanwhile in international arbitration, since the arbitration award is not form a state-specific authority, other states recognize and enforce them with more ease and speed.

#### **4.7. Impartiality and Independence in Arbitration**

In arbitration, impartiality of the arbitrator(s) is an essential feature and when one or all of the arbitrators lose this requirement, they may be challenged or dismissed under the terms of the arbitration agreement even in the course of proceedings. Arbitration, therefore, entails a more impartial settlement of disputes than that of courts or judicial authorities. This, of course, is not stated in the Code of Civil Procedure, but is provided for in paragraphs 1 and 2 of Article 612 of the Iran's Law on International Commercial Arbitration, and guaranteed by entitlement of the designating party to challenge the arbitrator. This is also the case in the arbitration in the cooperative sector. Therefore, impartiality and independence are fundamental to arbitration.

### **Conclusion**

Since arbitration is a means of resolving disputes, it has an important place in the Law of the Cooperative Sector of the Economy of the Islamic Republic of Iran, enacted in 2014, and the legislator has made such arbitration mandatory. Arbitration is essentially voluntary, however, in some cases arbitration has been mandated by laws the instances of which merit examination. The issue of arbitration by Iran Chamber of Cooperative is one of the important issues considered by the legislator. By virtue of Note 14 of Article 57 of the above-mentioned law, the inclusion of arbitration clause in the articles of association of the Chamber is obligatory. Therefore, it can be argued that mandatory arbitration in the cooperative sector is recognizable on the basis of maintaining order in the community and the interests of the parties involved. Hence, it is concluded that the most important basis for arbitration is making peace and reconciliation between the parties in the cooperative sector.

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