ST. MARY UNIVERSITY COLLEGE

LLB.THESIS

(PROBLEMS IN RECOGNITION AND ENFORCMENT OF INTERNATIONAL COMMERCIAL ARBITRAL AWARDS; UNDER ETHIOPIAN LAW)

By: Saba Tadesse

ADDIS ABABA,ETHIOPIA
July 2008

PROBLEMS IN RECOGNITION AND ENFORCEMENT OF INTERNATIONAL ARBITRAL AWARDSUNDER ETHIOPIAN LAW

By: Saba Tadesse

Advisor (Ato Assefa Ali)

Submitted in partial fulfillment of the requirements for the Bachelors Degree of Law (LLB)at the Faculty of Law, St. Mary University College

ADDIS ABABA, ETHIOPIA

July 2008

Statement of declaration

I here by declare that the paper is my original work and I will take full responsibility for any failure to observe the conventional rules of citation.

Name:Saba Tadesse

Signature:_____

Acknowledgment

I would like thanks to my family for their assest always being there for me. Last,but not least,my special thanks to my advisor Ato Assefa Ali who contributed a lot to the out come of this paper for their cooperation with the necessary material.

I am also thanks to Ethiopian Arbitration and Conciliation Center library and lastly thanks to Ato Zewidu Kebede Degree in Management for editing my thesis.

Abbreviation

1.A.A.A	American Arbitration Association.
2.ADR	Alternative Dispute Resolution.
3.F.A.A	Federal Arbitration Act.
4.ICC	International Chamber of Commerce.
5.ICSID	International Center for the Settlement of Investment Disputes.
6.UAA	Uniform Arbitration Act.
7.UNCITRAL	United Nations Commission on International Trade Law.

Table of content

CHAPTER ONE

General Over View of Arbitration

INTRODUCTION

Arbitration is a private procedure, and it is only the parties to the arbitration agreement and their respective can attend any arbitration meeting or hearing. This characteristic of privacy is very important in commerce and trade.[1]

Arbitration is reference of a dispute to an impartial person or persons called arbitrators, for a decision or award based on evidence and arguments presented by the disputanats.[2] The parties involved usually agree to resort to arbitration in lieu of court proceedings to resolve an existing dispute or any grievance that may arise between them.[3] Most arbitration in the United states has involved labor or commercial disputes.[4] In recent years, however, other uses of arbitration have gained acceptance, international commercial arbitration has importance both in planning international transactions and in resolving disputes when they arise.

"*According to international trade law center international Commercial arbitration is the process of resolving business dispute between or among transactional parties through one or more arbitrators rather than through courts."* It requires the agreement of the parties, which is usually given an arbitration clause that is inserted into the contract or business agreement.[5] In this process, disputing parties present their case to a neutral third party who is empowered to render a decision, and the decision is binding.[6]

1.1 Definitions of Arbitration

Black's law dictionary defines the concept of "arbitration as a process of dispute resolution in which a neutral third party/arbitrator renders a decision after hearing at which both parties have an opportunity to be heard."[7] As one grapes from this definition, arbitration is a dispute resolution in which both parties in dispute present their sides and argument in the hearing. The arbitrator gives a decision after hearing both parties.

As defined by Sedler, "arbitration is a contract where by the parties to dispute entrust its solution to a third party.[8] The arbitrators who under takes to settle dispute in accordance with the principle of law".[9] It is performed when the parties to a contract give their consent to appoint arbitrator according to the principles of law. Arbitration is a contract and thus concluded when it is accompanied by the elements of contract. This is not to limit the scope of arbitration; instead the parties brought their dispute to arbitration.[10]

As defined by Nolan Haley, "arbitration is a favored method of resolving international commercial disputes for the same reasons on the domestic front, such as speed, low costs, privacy, expertise of the decision makers and procedural flexibility." It resolves international disputes with amicable means. It an available means of solving dispute.[11] The basic reason for choice of arbitration in commercial dispute is its voluntary character. The parties to dispute resort there case to arbitrators who have the expertise instead of going to judicial proceeding, which is less speedy, cost and more adversarial procedure.[12]

As defined by Harold Crowder, "arbitration is a process where by agreement parties to a contract submit their differences or disputes to the consideration and decision of one or more independent persons."

Arbitration award is backed by enforcement and generally an arbitrator's decision, called an award, can be enforced in the courts just as a judgment of the court.[13]

1.2 Historical Background of Arbitration

The arbitration dates back to the emergence of a civilized society where the rule of law prevailed. Its origin can be referred to the institution of the family. The smallest unit of the society, where the head of the family settled all disputes amongst its members amicably. with the growth and development of the society, the institution of arbitration which had been recognized as one of the forms of justice dispensation system spread and widened, covering with in its ambit not only the family but also the whole community or sometimes various communications being the larger sections of the society. All the jurists have acknowledged its prevalence all over the world in one or the other form.[14]

In the Middle Ages, and even before, when merchants fell into dispute in connection with their trade, they would often refer it to another merchant of high esteem for his decision and the disputing parties would agree to abide by his decision.[15] They needed quick and simple justice with readily understandable procedures. The custom of merchants developed over the years into legal rules.

Eventually the practice of arbitration was given "statutory basis." In England, parliament passed the first arbitration rule in 1698.[16] At one time there was great resentment between the courts and arbitration as the courts regarded arbitrators as people who were taking their business away. Those times have changed and in modern times the courts and arbitrators have enjoyed a close working relationship.[17]

Commercial arbitration has flourished in American since the 18th century even though the courts have not always looked kindly toward the arbitration process.[18] "For a long period in American legal history the courts adapted the English courts antagonism towards executor arbitration agreements and routinely refused to enforce contract clause which required the arbitration future disputes.[19] Judicial attitudes toward arbitration began to change in the early twentieth century with the passage of state and federal statues promoting arbitration.[20] In 1920, New York became the first state to enact an arbitration statue giving parties the right to control future disputes as well as existing disputes through the arbitration process. "The New York statue provided a model for the Uniform Arbitration Acts of 1955, (UAA)."[21]

In 1925, congress enacted the United States Arbitration Act, known today's as the Federal Arbitration Act (FAA) to encourage the use of commercial arbitration as an alternative to court.[22]

Arbitration received increasing visibility After the II World War with its expansion into the labor management arena. In 1977 when international community has faced a problem the response to these problem has been the widespread use of arbitration clause in international trade contracts.[23]

Use of international commercial arbitration has increased substantially. In recent years this development has been fueled by growing global economic interdependence and a world wide tendency to ward market-oriented economic reform, the trend toward arbitration has been marked by adoption in many countries of the UNICTRAL model law on international commercial arbitrations.[24]

1.3 Formation of arbitration

1. By arbitral submission:-where the disputant parties agree to submit the issues to the arbitrators the requirements for a valid contract have to be fulfilled in the application of this mechanism too. The rules governing with respect to formation, effect and extinction of contractual obligation are in the same way applied to arbitral submission.

2. Arbitral agreement:-where the arbitration formed at the beginning of the parties concluded the contract or when the dispute arises between the parties, they can agree to solve their dispute through arbitration to submit the case by the parties.[25]

3. Arbitration clause:-where arbitration is formed in the main contract before the dispute arises, for the settlement of present or future disputes between the parties. If the main contract is valid because of such defects, as illegality of objects, fraud in the inducement, lack of a meeting of the minds or lack of mutuality of considerations, the arbitration clause could not be invalid. The arbitration clause can stand by itself in accordance with the "principle of separability".[26]

1.3.1 Types of arbitration

There are two types of commercial arbitration. These are;

ad hoc arbitration:-Which usually takes place when the arbitration clause in the original agreement between the parties provides for arbitration without designating any arbitral institutional rules.[27]Together with the arbitrators, the parties control the arbitration. Thus the ad hoc arbitration rule must be drafted with care. This is a very difficult task. As it is impossible to fore see and provide for all the procedural issues that may arise, often, however,

the legislation in force at the place of the arbitration may supply any deficiencies.[28]

"In ad hoc arbitration the parties themselves prescribe the mode of appointment of the arbitrator who upon being appointed controls the proceedings himself," within the limits laid down by the parties and the law.[29]Tthe arbitration agreement may leave the procedure governing the arbitration to be determined by the parties themselves and the arbitrator or it may incorporate procedural rules promulgated by a trade association or national or international organization, which may be an institution administering arbitrator or a body having no arbitral functions of its own.[30]

"There is no institution to supervise the conduct of the arbitration. Therefore, the parties will have to agree upon setting of time limits, fees and such other matters directly with the arbitrators." In addition, much will depend on the arbitrators as to how they organize proceedings and whether they keep control over proceedings.[31]

(b) **Institutional Arbitration**:- where parties choose to conduct their arbitration procedure in accordance with the rules and with the assistance of an arbitral institution.[32] The parties except from the arbitral institution, certain services in connection with the organizations and supervision of the arbitral proceeding .The arbitral institutions charge the parties a fee for the services it renders.[33]

An institutional arbitration is one in which the arbitrator is appointed, "the proceedings conducted and the award issued in accordance with the rules of national of international arbitral organization."[34] Institutional arbitration has the advantage of possessing clear frame work of procedure outside those prescribed by law; and in many cases of

institutional facilities for the conduct of the arbitration as well as an international appeal system. These advantages necessarily involve some loss of flexibility but contribute greatly to consistency in the conduct of arbitrations with in the system of business activity concerned. Among the London arbitral organization are the London Court of International Arbitration, the London Maritime Arbitrators Association and the Leading commodity associations, such as the Grain and Feed Trade Associations (GAFTA) and the Federation of oils, Seeds and Fats Associations.[35] Among the leading foreign national arbitral institutions are the American Arbitration Association,[36] the Swedish Chamber of Commerce [37] and Netherlands Arbitration Institutions. [38]

There is a formal large quantity of foreign international organizations concerned with the international commercial arbitration. [39]some of these are general and global in character. Such as the International chamber of commerce (ICC) and the United Nations commission on international trade law (UNCITRAL)

Others are specialist such as ICSID /The international Center for settlement of Investment Disputes /and the Iran-US claims Tribunal at the Hague, or regional such as the inter-American Commercial Arbitration Commission.[40] ICC arbitrators are controlled by the ICC's Court of Arbitration.[41] In Ethiopia there are tow institutional arbitrations, the Addis Ababa Chamber of Commerce Sectoral Associations [42] and the Ethiopian Conciliation and Arbitration Center,[43] which exercise a high degree of procedural supervision with a view to ensuring that awards are respected internationally and nationality are as far as possible immune from challenge.

1.3.2 Classification of Arbitration

Arbitration in general has classified into mandatory and voluntary character in the traditional model of arbitration contemplates in public context as well as private settings.

(1) **Voluntary Arbitration**:-The parties to the dispute can refer voluntarily to arbitration, civil disputes which cannot be resolved amicably.[44] when dispute occurs between the two contracting parties, the parties to dispute entrust its solution at choice to direct there case inter to arbitration voluntarily. There are four elements of voluntary arbitration.

(a) The decision to arbitration:- which is the decision of agreement before actual dispute occurs.[45]

(b) The types of arbitration:- were the parties must decided wither they wish the arbitration decision is to be binding or not. The winning party may reset to the courts to enforce the decision of arbitrators, if from the beginning it is stipulated that the decision of the arbitral tribunal are final unless there is a fraud or dishonesty on the part of the arbitrators, the court is not expected to interfere in the decision of arbitrators.

On the other hand, the losing party is under full right not to obey the decision of arbitrator, if their decision is not binding.[46] In addition, either party may subsequently require that the case be heard in a court.

(c) Arbitration forum:- Where a person chosen is willing to serve, the parties may choose any one in whom they have confidence to arbitrate their dispute.[47] As stated by stern there are many organizations that ready to arbitrate disputes for fee at the request of the parties.[48]

(d) The enforcement of the award:- where award of arbitrator, unlike courts,[49] which have various methods of enforcement their judgments,

have no power to see that their decisions are complied with.[50] The winning party may opt the enforcement of award if the losing party voluntary accept the decision of arbitration. If this is not followed by the losing party, the winning party may go to the appropriate court which has jurisdiction over the subject matter to enforce the decision.[51]

(2). In compulsory arbitration, "The parties are obliged to present their case to arbitration due to the ever increasing volume of law suits".[52] This results in delays of suits from their commencement to the time of trial.[53] Compulsory arbitration is one of the reforms to ease this problem.[54] Compulsory arbitration is party of court system, [55] Until the time of trial, cases subject to compulsory arbitration are treated in the same manner as other case before the court procedurally. The case will be referred to an arbitration panel, regardless of the wishes of the parties, when the case is ready for trial.[56] The rules governing conduct of hearing and the manner of selecting arbitrators are controlled by the court rather than by the parties.

Compulsory arbitration because of the court congestion, some cases delays in the court. So, to tackle this problem, the court has send the case directly to the arbitration by following all the procedure, the arbitration has to follow.[57]

Some of most visible growth areas for mandatory arbitration are:-

(1) **Public sector arbitration**, where administrative disputes are solved by arbitration to control the public sector problem by itself.[58] Critical public sector employees such as the police, teachers and fire fighters, are usually not permitted to participate in strikes as part of their labor negotiations.[59] A majority of states, therefore, have enacted legislation requiring compulsory arbitration as the final step in negotiating the

terms of a collective bargaining agreement between municipalities and their critical employees.[60]

Judicial review of compulsory arbitration awards differs from review of traditional arbitration awards since there is usually a record of the arbitration hearing and a written decision from the arbitrator. Courts are therefore able to examine the awards to determine whether they are supported by substantial evidence in the record.[61]

A major constitutional concern with compulsory arbitration statutes is that they delegate legislative power to independent arbitrators who are not accountable to the public for their decisions. "This is a significant concern since many issues decided by these arbitrators ultimately involve political or legislative questions."[62] While some state laws have been invalidated on the grounds of impermissible delegation of legislative power, the majority of courts have upheld the constitutionality of these statues where there is a reasonable criterion for the arbitration awards.

(2) **Court Annexed Arbitration**;- court annexed arbitration system is an effort to reduce the delay and expense associated with disposition of civil litigation. "Court annexed systems, also known as judicial arbitration, generally operate by diverting specific categories of civil cases to mandatory arbitration".[63] Some systems, however, are permissive and litigants are simply offered the opinion of arbitration. "The arbitrations are usually conducted by attorneys or re-tired judges who have quasi-judicial power." Attorneys are required to participate in good faith and risk sanctions for their failure to do so.[64]

Court annexed arbitration differs from the traditional arbitration model in a number of respects. It lacks the private and consensual attributes of tradition since it operates under the court's supervision.

(3). **Medical Malpractice Arbitration:-** where medical issues of disputes are mandatory resolved through arbitration. Medical issues involve millions of dollars and require parties to pay high court fee and high lawyer fee.[65] It causes policy problem. That is why it is needed to be resolved through mandatory arbitration. USA and other states make Medical Malpractice as mandatory arbitration.[66]

One response to the rising costs of medical mal-practice lawsuits has been the diversion of these cases from tort litigation to compulsory arbitration. "A grate number of states have enacted statues requiring the arbitration of medical malpractice disputes."[67] Some states provide for mandatory non-binding arbitration as a pre-requisite for bringing a case to court. Often, as an adjunct to this process, parties are required to submit their cases to a screening panel. Some times known as an arbitration boar, "whose function is to weed out frivolous law suits."[68]

Other states provide for voluntary but binding arbitration agreements which patients sign before receiving medical treatment. Since the arbitrator's award is final in these situations, it is important to show that the patient had knowledge that he or she was agreeing to arbitration.[69]

1.3.3 Composition of the Arbitral Tribunal

In the most important cases which give rise to arbitration in international trade to entertain the case preference may be given to a single judge or a collegiality of arbitrators.[70] "The model law provides for the number of arbitrators it may be sole or three arbitrators."[71] And the procedure for their appointment when the parties have not determined these questions. there relevant court will assist the parties in case of delay or deadlock.[72] "Any person approached to be an arbitrator must be disclose any circumstance likely rise to justifiable doubts as to his independence or impartiality."[73]

The obligation to disclose exists throughout challenged only if circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or If he does no possess the qualifications agreed to by the parties.[74]

If a challenge is not successful, the challenging party may, with in thirty days after receiving notice of rejection of the challenge, request the relevant court to decide on the challenge, which decision is not subject to appeal.[75] "While such request is pending the arbitral tribunal, including the challenged arbitrator may continue the arbitral proceedings and make an award. These provisions are intended to reduce the risk and effects of "dilatory tacics." The parties may remove an arbitrator or a substitute arbitrator at any time prior to the final award, regardless of how the arbitrator was appointed.

1.5 Jurisdiction of Arbitral Tribunals

An arbitral tribunal may rule on its own jurisdiction including any objections with respect to the existence and validity of the arbitration clause or agreement.[76] "The objections to the jurisdiction of the tribunal must be raised as early as possible".[77]

When negotiating a contract, parties with equal bargaining positions normally prefer not to give the other party any advantage by agreeing to a dispute resolution in the contracting country. This entails the application of law of that country.[78] "When the parties choose arbitration they can avoid such choices simply by allowing disputes to be resolved under rules of various arbitration institutions such as ICC court of Arbitration." If the parties have not stipulated the place of arbitration it will be fixed by the ICC court,[79] and if the parties have not chosen the applicable law, the arbitral will apply the rules of law which it determines to be appropriate.[80]

The arbitrator has empowered an arbitral tribunal rule on its own jurisdiction like a court. In deciding the questions, an arbitral tribunal shall take into account the following factors,

a) *an arbitration clause which forms part of a contract and*
b) *a decision by the arbitral tribunal that the contract is null and void will not entail the invalidity of the arbitration clause*[81]

The arbitral tribunal may rule on the plea of lack of jurisdiction as a preliminary question or in the award on the merits.[82] If it rules as a preliminary question that it has jurisdiction "any party may request, jurisdiction of an arbitral tribunal act with in their competence or not, if an arbitral tribunal has not act in his own jurisdiction, any party raise a preliminary objection within a period prescribed thirty days after having received notice of the ruling, the relevant court decided the matter, which decision is to subject to appeal." Again, while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.[83]

1.6 Special Features of Arbitration

In the many different types of arbitration each have their own unique features. "Indeed, one of the main advantageous feature points of arbitration is its ability to incorporate the precise dispute resolution characteristics desired by the parties"[84] Commercial arbitrations held under the rules of the American Arbitration Association differ greatly from grievance arbitrations held pursuant to collective bargaining agreements.[85] However, there are certain characteristics common to most. The following are some of them:-

(1) Adjudication:- An arbitration represents an adjudicatory trial. While arbitrations are normally more informal than court trials, they nontheless constitute reasoned presentations of proof by the disputants to the decision maker,[86] a single arbitrator or multiple arbitrators. Arbitration is essentially, a trial like device. At the arbitration hearing the disputants make presentations of their proof to the arbitrators who must resolve the relevant issues.

(2)Privacy:- Arbitration hearings take place entirely in private, removed from the public eye.[87]For many parties to arbitral contracts, privacy is the single most important feature; the parties have some control over who has access to the arbitrator's opinion and award. This does not exist in the regular courtroom.[88]

(**3) Informal Procedural Rules**:- Arbitration is an informal, flexible process. When compared with trial judges, arbitrators have relatively few procedural rules to curb their discretion in administering a hearing.[89]Formal rules of evidence do not prevail. According to the American Arbitration Association, Commercial Arbitration Rules, Rule 31 "conformity to legal rules of evidence shall not be necessary".[90]Formal pleading rules do not apply in arbitration while rights to minimal discovery are increasingly available in arbitration; arbitrators have discretion to control the timing and nature of discovery. Broad litigation style discovery is to be usually avoided in arbitration. That is arbitration trail procedures are highly informal.

(**4) Subordination of substantive Law**:- Arbitrators need not apply principles of substantive law. "The very nature of arbitration amounts to signatories to a written contact agreeing to opt out of a legal system characterized by substantive rules".[91] It is accordingly, not surprising that courts have long permitted arbitrators to "disregard strict rules of law or evidence and decided according to their sense of equity."[92] The

arbitrator will tend to "do justice as he sees it" and to custom craft an arbitral award based upon the facts presented.[93]

5) Finality:- Arbitration awards are said to be "final". "Arbitrators are not bound by rules of law and their decisions are essentially final."[94]

1) **Expertise and Lack of jury**:- Arbitrators are often selected because of their impartial expertise. Historically, expertise of arbitrator ranks as one of the essential characteristics of arbitration.[95] It is interesting that the expertise of the arbitrator is nowhere legally mandated. "No laws condition arbitrator expertise s a requisite for the job." Qualifications, however, are often set by arbitral organizations who supply arbitrators.[96]

It is useful to consider the relationship between arbitral expertise and the civil jury.[97] many parties to arbitration proceedings are clearly opting for a system of adjudication other than a civil jury trial. For the parties, often business, the expert arbitrator represents a greatly preferred alternative to the civil jury. [98]

Chapter one end note

1. Harlod Crowter, Introduction to Arbitration Published in LLP Reference London Hong Kong,(1998)PP.1
2. Michael E.Swartz, Alternative Dispute Resolution, Published by A.Satore,Inc. (2004), PP.31
3. Electronic Resource Guide http://www.asil.org/resource/arbt.htm 1/2/2008
4. Electronic Resource Microsoft ® Encarta ® Reference library 2004 © (1993) 2003 Miss Corporation.
5. Ibid
6. Ibid
7. International trade law center, Arbitration and Alterative Dispute Resolution, How to settle International business dispute, Trade law series Geneva, (2001) PP.2.
8. Black's law dictionary, 8th ed, west publishing Co. (1990), PP.112.
9. Robert Allen Sendler, Ethiopia Civil Procedure, Published by the Faculty of Law Haile Sellasie I University A.A. in Association with Oxford University Press A.A., (1968) PP.3887.
10. Ibid
11. P.P.S Gogna, Mercantile law (commercial law) published by S.chand and company LTD 3rded (2005) PP.536
12. Jacqueline M. Nolan Haley, Alternative Dispute Resolution in a Nut Shell; West publishing co,(1992) PP.140
13. Ibid
14. supra note 1
15. Jarome T. BARRETT, A History of Alternative Dispute Resolution, Published in Affiliation the Association for Conflict Resolution. (2004) PP.1
16. supra note 12
17. Ibid
18. Ibid
19. Supra note P.119
20. Ibid

21. Ibid
22. Ibid
23. supra note 12 P.121
24. Ibid
25. Ibid
26. Jain D.P Mercantile Law, Konark Publishers PVT LTD, Delhi 110092,(1992)PP.426
27. Supra note 12, P.140
28. Alan Redferm Maritin Hunter, Law and Practice of International Commercial Arbitration, 2nd ed, published by Sweet and Maxwell London (1991), PP.56
29. Ibid
30. Roy Good,Commercial Law, 2nd ed, Published by the Penguin group, (1995) PP. 1178 – 79
31. D.Paul Emond, Commercial Dispute Resolution, Published in Canada law book INC. (1989) PP.123
32. Ibid
33. Supra note 28, P.54
34. Supra note 30, P. 1180
35. Ibid
36. Ibid.
37. supra note 30 P.1181
38. Ibid
39. Ibid
40. Ibid
41. Ibid
42. Ibid
43. WWW. Addis Chamber. com
44. WWW.eaeccom.et
45. Steven, Tstem. Introduction to Civil Litigation,Published in New York, (1997) PP.55
46. Ibid

47. Ibid
48. Ibid
49. Supra note 45, P.56
50. Ibid
51. Ibid
52. Supra note 45, P.58
53. Ibid
54. Ibid
55. Ibid
56. Ibid
57. Ibid
58. Supra note 12, P.125
59. Ibid
60. Ibid
61. Supra note 12, P.126
62. Ibid
63. Ibid
64. Supra note 12, P.12
65. Ibid
66. Ibid
67. Supra note 12, P.129
68. Ibid
69. Ibid
70. Ibid
71. Supra note 12, P.130
72. Rene David, Attrition in International Trade, Published Trade law serious (1906) PP.224
73. UNCITRAL Article, 1976
74. Supra note 31,P.138
75. Supra note 73, Article12
76. Supra note 73, Article 13(3)

77. Supra note 73, Article 16 (3)
78. Supra note 31, P. 139
79. Supra note 73, Article 16 (1) (2)
80. Professor Jan Rambers, ICC Guide to Incoterms , Published in by ICC publishing S.A November 1999, (2000) PP.36
81. ICC Article 14
82. M.C Kuchhal, Mercantile Law, Published by VIKAS publishing House PVT L.T.D. 5thed, (1999) PP.576
83. Supra note 81 Article 17
84. Supra note 82, P.577
85. Edward Brant, Alternative Disputation Resolution the Advocator Perspective 2nded, MICHIE law publisher Charlottesville Virginia (1997) PP.315
86. Supra note 73, Article 16 (3)
87. Ibid
88. Ibid
89. Supra note 85, P.316
90. Ibid
91. Ibid
92. Ibid
93. Ibid
94. Ibid
95. Ibid
96. Supra note 85, P.317
97. Supra note 85, P.318
98. Ibid

CHAPTER TWO

Arbitration Proceeding

2.1. The Formation of an Arbitral Agreement

Arbitration agreement is defined as "an agreement by the parties to submit to arbitration all or certain disputes which have arised or which may arise between them in respect of a defined legal relationship in a contract."[1]

An arbitral agreement is formed and complete where the offer for arbitration made by one party is accepted by the other party without reservation. [2]

Arbitration agreement may be formed in the form of an arbitration clause in a contract or in the form of a separate agreement. It must be in writing if it is contained in:-

> ***a)*** *a document signed by the parties,*
>
> ***b)*** *an exchange of letters, telex, telegrams or other means of telecommunications which provide a record of the agreement or*
>
> ***c)*** *an exchange of statement of claim or defence whereby the existence of an agreement alleged by one party is not denied by the other party.* [3]

A document containing an arbitration clause may be adopted by making a reference to it in a contract in writing so as to make that arbitration close part of the contract.

The dispute which may be referred to an arbitrator can be either present or future disputes. Arbitration agreement must fulfill essentials of a valid

and binding procedure. [4] Therefore, a valid arbitration agreement must fulfill the following essentials elements:

1. *It must be based on an agreement;*
2. *it must be made in writing;*
3. *It must fulfill all essential elements of a valid contract;*
4. *It must refer a dispute to arbitration;*
5. *The agreement must be binding on the parties;*
6. *It must give bilateral rights of reference;*
7. *It may or may not contain the name of an arbitrator;*

Whenever disputing parties agree to submit their disputes to an arbitrator, their agreements is required to fulfill all these elements in order to make a valid conclusion. It can be made by the parties through any form such as exchange of letters telex, telegram, etc. The parties are free to establish an arbitral contract in any form they wish to fulfill the essential elements of a valid contract.[5]

2.2 Capacity of Parties to make an Arbitral Agreement

It is necessary to be certain whether a contracting party to an arbitration agreement has the capacity to enter into an arbitration agreement. [6] The party's capacity to enter into an arbitration agreement depends on the requirements of national law. [7] The capacity required for the submission of an arbitration is stipulated under the 1958 New York Convention Article V(1)(a), Model Law Article 34(2)(a)(i) and Article 36(1)(a)(i). These provisions tell us that the capacity of parties is important to form a valid arbitration agreement.

As a general rule, capacity to submit disputes to arbitration is co-extensive with capacity to a contract. [8] Thus, parties to an arbitration agreement must be competent to enter into a valid contract. A dispute can be referred to arbitration by a party for an arbitration agreement. It, therefore, follows that a person who is incompetent to a contract cannot refer a dispute to arbitration. [9] The capacity of certain persons to refer a dispute to arbitration is briefly discussed as follows:

(1) Minor:- A minor is not competent to enter into a contract and, therefore, there cannot be a valid submission to arbitration by such person. However, a natural guardian of a minor can refer a dispute to arbitration if it is for the benefit and protection of the minor.

(2) Judicially interdicted persons:-have the effect of being incapacitated through judgment of courts according to Article 243 of the Ethiopian Civil Code. A person deemed to be insane under article 339 of the Ethiopian Civil Code or infirm under Article 340 of the same Code may also be declared by a court as an interdict to protect the interest of such insane. Interdicted person cannot enter into a contract. By the same token she/he cannot submit a dispute to an arbitration as they do not understand the result of their acts by the reason of their mental defects. Infirm persons, on the other hand, are persons who have physical disability as a result of which lack the ability to take care of themselves. Due to these, their agreement of arbitration is invalid.[10]

(3) Legal interdiction:- According to Article 380 of the Ethiopian Civil Code a legal interdicted person has no capacity to form a valid arbitration agreement. It is a subsidiary measure to a criminal sentence. The court that passes the criminal sentence may also give judgment that deprives the interdicted person the exercise of some of his civil rights.

Therefore, such person cannot conclude a contract to submit his dispute to arbitration.

2.3 Appointment of Arbitrators and limiting their powers

2.3.1 Appointment of Arbitrators:- The contracting parties have freedom to fix the number of arbitrators provided that such number shall not be an even number i.e. the number of arbitrators must be odd.[11] This helps the appointed arbitrators to decide in a majority vote where there is a tie.[12] If they fail to determine the number of arbitrators, the arbitral tribunal shall consist of a co-arbitrator, sole arbitrators and chairman of Arbitral Tribunal persons nominated by the parties pursuant to their agreements.[13]

A person of any nationality may be an arbitrator, unless and otherwise agreed by the parties. The parties are free to agree on procedures for appointment of an arbitrator. Generally, the parties to a dispute may select the arbitrator by mutual consent on the matter. The parties have four available options in appointing arbitrators.[14]

(1) t hey can appoint the arbitrators during the submission period or subsequently give the name of arbitrators;

(2) they can specify, without the necessity of appointing by name, the manner of appointing arbitrators;

(3) the parties can merely refer to arbitration institution;

(4) the parties can omit the appointment. Hence, an arbitrator may be appointed by a court.[15]

It must be pointed out that since arbitrators could, for various reasons, be unable to discharge their functions, the parties would normally lay down the procedures for the replacement of the arbitrators, as well.[16]

2.3.2. Powers of Arbitrators:- Next to the appointment of arbitrators, the powers of arbitrators have to be given by the disputants themselves and it should be indicated in the arbitral submission. This

(a) Amiable composition:- It is a power to decide a certain case based on equity or fairness.[19] The tribunal is not even required to determine the applicable law or to have reference to it to dispose of the dispute, in consideration of justice to give decision.

(b) Variation of the contract:- The power has to vary or modify a contract by the arbitrators. Most of the time arbitrators are experts in a given case. Courts have no power to vary or modify a contract.

(c) The power to decide on its own jurisdiction:- This principle is known as kompetent-kompetent in the law of arbitration. The arbitrators have two powers:

1. The power to decide on their jurisdiction, and

2. The power to decide on the case using facts and investigations on the legal issues of a case.[20]

To state briefly, the arbitrators, unless a contrary intention is expressed in the arbitration agreement, shall have the following powers:[21]

(i) *to administer oath to the parties and witness appearing before them ;*

(ii) *to refer matters of law or an award for the opinion of a court;*

iii. *to correct in the award any clerical mistake or error arising from any accidental slip or omission;*

iv. *to put the necessary interrogatories to any part to the arbitration.*

Besides the above powers, arbitrators have also the following powers unless and otherwise agreed.[22]

(a*) to award interest up to the date of the award;*

(b) to determine by and to whom the costs of reference and the award shall be paid;

(c) to allow payment by installments;

(d) to make an interim award;

(e) to order for the specific performance of the contract;

(f) to appoint experts for his guidance questions of a scientific or technical nature.

2.4 The Arbitration Hearing

It is a general composition for a trial which focuses on the occurrence of an arbitration process. Here the parties to a dispute bring their witnesses, arguments, cases, causes and advocates. There are two types of hearings:[23]

1. The grievance hearing and,
2. The interest hearing.

(1) **The grievance hearing**

It usually deals with an alleged violation of a contract or existing agreement between the parties. Thus, matters of discharge, alleged

violation of company rules, alleged violations of wage rates are explored. The outcome of grievance arbitration is a ruling on whether there was or was not a violation of the ready existing contract and remedy if there was a violation.

(2) The interest hearing

It deals with the dispute between the parties as they attempt to work out an agreement. The outcome of interest hearing is an arbitrators' decision that bind the parties in a contract form.

The parties may have a hand in adjusting the rules of procedures to fit the particular nature of issues. Arbitrators, as far as possible, must check out this before hand so that they can be prepared to deal with the style used. The process is flexible and more varieties of hearing styles are likely to occur than in formal courts.[24]

Both parties make opening statements and present their case to a neutral third party. Case presentations may include witnesses, documentations, and site inspections. The parties make closing arguments and may be required to submit briefings and memorandum in support of their position before a neutral arbitrator renders a decision.

The form of the hearing is essentially decided by the parties who often will agree to abide by the rules of the agency which administers the arbitration.[25]

The arbitration process is different from the formality of litigation and trial in a number of respects. Arbitral fact finding is not generally equivalent to judicial fact finding. The record of the arbitration proceedings is not as complete as court proceedings. Written transcripts are usually unnecessary unless the parties decide to order them. The usual evidentiary rules are not applicable as arbitrators have

considerable discretion in the admission of evidences. Finally, the rights such as discovery, compulsory process, cross examination, and testimony under oath, are often limited.[26]

In contrast to trials which are usually open to public and the press, arbitration hearings are generally closed to non-participants. Typically there is no transcript or other record of hearing. Some important aspects of the process are the following:

(a) Hearing:- both parties present opening statements and presenting their case. The hearing process of arbitration is some what different from formal litigation in courts. When a hearing is to be held, the Arbitral Tribunal by giving reasonable notice, shall summon the parties to appear before it on the day and at the place fixed by it.[27]

(b) Role of lawyers:- lawyers in many arbitration hearings do what they do at trial. They make an open statement, call witnesses who testify under oath, cross examine opposing witnesses and make closing arguments.[28] But all hearings may not strictly follow this style. In some arbitration lawyers often are not present. If lawyers are present before an arbitration hearing they are probably well advised to act some what differently than they do at a trial.

(c) Rules of evidence:- Rules of evidence are historically interwined with courts. In much arbitration there are no rules of evidence. The parties can present whatever evidence they like and the arbitrators can give to it whatever weight they like.

Formal rules of evidence do not conform at arbitration hearing.[29] "Conformity to legal rules of evidence shall not be necessary". Evidently, rules like other aspects of arbitration are primarily determined by the arbitration organizations such as the American Arbitration Association

(A.A.A), Addis Ababa Chamber of Commerce Arbitration Institution (A.A.C.C.I) of Ethiopia. The A.A.A's commercial arbitration rules allow the parties to offer into evidence whatever is relevant and material. The same is true in Ethiopian Arbitration and Conciliation Center whose Article 28 takes about the presentation of evidence.[30]

The A.A.A's rules say that parties shall produce to the arbitrator anything that deems necessary. This is typical of most arbitration in that it contemplates a more active role by the arbitrator than is typical of judges. Judges are typically passive tries-of-fact receiving only the evidence presented by the parties. In contrast, arbitrators tend to be more inquisitorial i.e. questioning witnesses making other investigation into evidence.[31]

(d) Awards:- Award is a decision of an arbitrator which is binding upon parties. The Arbitral Tribunal is composed of more than one arbitrator. An Award is given by a majority decision.[32] Arbitrators' decision or arbitration award is generally given in writing. Addis Ababa Chamber of Commerce Arbitration Institution says under Art. 20(2) "the award shall be made in writing and shall be final and binding to the parties. Any where parties to arbitration have the right to choose arbitrator or to ask the institute to appoint one or more on their behalf. The chance of getting a fair award is thereby greatly increased through the assurance that all arbitrations are independent and impartial.[33]

Arbitration may take place in any country in any language and with arbitrators of any nationality.[34] Therefore, parties are placed on an equal footing in five aspects.

1. The place of arbitrators,
2. Procedures of rules of law applied,

3. Nationalities of arbitrators,

4. Language used, and

5. Nationalities of the representation.

The flexibility is generally the best guarantee that the procedure will no offer any undue advantage to any of the parties.[35] Arbitrations like most of the dispute resolution alternatives to courts, ultimately relies on the good will and cooperation of the parties.[36]

Chapter two end note

1. M.C Kuchhal, Mercantile Law, Published by Vikas publishing house,(1999)PP. 566
2. UNCITRAL Article 7, 1985.
3. Supra note 1
4. Jain, D.P, Mercantile Law, Konark Publisher PVT LTD,Delhill0092,(1992)PP.427-429
5. Supra note 1
6. D.Paul Emand, Commercial Dispute Resolution,Published in Canada Law Book InC., (1989)PP. 129
7. Ibid
8. Supra note 1,P.569
9. P.P.S GOGNA,A Text Book of Mercantile Law,Published by S.Chand and Company Ltd (22005)PP. 539-40
10. Bezawork Shimelash,Journal of Ethiopian Law,Vol.17,No.1,(1994)PP.80,Article242,339,340
11. Supra note 1,P.573
12. Ibid
13. ICC Rule 1998,Article9(2)
14. Supra note 10,P.78

15. Supra note 13,Article9(6)
16. Supra note 13 Article 12
17. Supra note 10
18. Supra note 1,P.576
19. Tilahun Teshome, Ethiopian Bar Review, Publish the Ethiopian Bar Association (2007)PP.69
20. UNICTRAL Arbitration Rule Article21)
21. Ibid
22. Ibid
23. John W(same) Kelter, The Management of struggle, Elements of Dispute Resolution through Negotiation, Medation and Arbitration, Published in the United States of America, Hampton press(2001)PP.157
24. Ibid
25. John Wiley and sons, A History of Alternative Dispute Resolution, Published in Canada,(2004),PP. 155
26. Ibid
27. Supra note 13 ,Article 21
28. Supra note13
29. A.A.A Rule 33
30. Ibid
31. Edward, Brant, Alternative Dispute Resolution the Advocates Perspective, Publish by Michie law Cahrcottesvillen Virgina(2001) PP. 494
32. Supra note 23,Article25, International Center for Settlement of Investment Dispute Article 48
33. Supra note 41,P.496
34. Ibid
35. Ibid

CHAPTER THREE

Recognition and Enforcement of International Commercial Arbitral Awards

3.1 Definition of terms.

Recognition is defensive process. It arises when a court is asked to grant a remedy in respect of a dispute the party in whose favour the award was made will object that the dispute has already been determined; and to prove this will seek to produce the award to the court and ask the court to recognize it as valid and binding up on the parties in respect of the issues which it dealt.[1]Recognition involves the question of proving to another court that a decision has already been given in a case presented to the court as a new case. The court has the obligation of recognizing an arbitral award as being equivalent to a decision of any ordinary court and to refer to allege the new regular for reconsideration of the case.

Enforcement means applying "legal sanctions to compel the party against whom the award was made to carry it out."[2] *Even though arbitration is a voluntary process, in the first instance most jurisdictions will recognize and enforce an agreement to refer a dispute to arbitration. The parties cannot assume that once they agree to arbitrate they will be able to change their mind at a latter point.*[3]

Enforcements of an arbitral award mean that the parties have the obligation of carrying out the decision given by the arbitral tribunal. Arbitration is like a judicial process created by the parties for reason of convenience. But its binding nature is the same as other judicial decisions.

Commercial arbitration as defined by Michael E.swartz an agreed private process, in which there is a legal determination of a dispute by an

independent adjudicate or chosen by the parties. The essence of arbitration is that it is consensual. Both the parties must agree to have their dispute resolved privately by an arbitrator rather than going through the courts and presenting their case to a judge.[5]

Arbitral award is the decision rendered by the arbitral tribunal on the issues submitted to it. It is similar to judgment of courts and is enforceable before the court as if it were a judgment which is binding on the parties. [6]

Award as defined in the Ethiopian civil procedure as per article 318. The decision of an arbitrator which is binding on the parties, unless set aside on some grounds by the appellate court an *award on a submission may be enforced in the same manner a judgment or order to the same effect.* [7]

3.2 Methods of Recognition and Enforcement Of Commercial Arbitral Award

The enforcement of an award may prove to be a simple administrative formality. Internationally there are more methods of obtain recognition and enforcement of an international award than of the judgments of foreign national courts.[8] this is because the network of international and regional conventions providing for the recognition and enforcement of international a wards is more widespread and better developed than a corresponding provisions for the recognition and enforcement of foreign judgments. Indeed, this is one of the principal advantages of arbitration as a method of resolving, international commercial disputes. [9]

The method of recognition and enforcement to be adopted in any particular case depends upon the place where the award was made. It also depends on the relevant provisions of the law at the place of interned enforcement. On this aspect, it is important to obtain advice from experienced lawyers in the forum state.

Recognition and enforcement I likely to be easiest to obtain under an international convention where the forum state is bound by such a convention, but other methods of recognition and enforcement may be available. [10]

Local formalities are bound to be involved, whether or not one of the international conventions is applicable. For example, the original or certified copies of the arbitration agreement and award are usually required. The language of the award will be different form the language of the court of the forum state. So that a translation is required and it may be necessary for this to be under taken with considerable formality; for example, by consular attestation in the country of origin to be provided.[11]

3.3 Recognition and Enforcement of Commercial Arbitral Award

Arbitration has a long tradition in setting international commercial disputes, which leading to a binding decision comparable to that of judgment by a state court. Commercial arbitration is a remedy that is some times used in an effort to resolve disputes that arise in international business transactions.[12] Arbitration may be resorted to by agreement or by a provision in a treaty of friendship, commerce and navigation . It will allow trading partners to work out some of this difference without a resort to litigation. [13]

Commercial arbitration allows international law trading partners to agree in advance on the ground of rules for resolving their trade disputes as they happen. Their agreement to arbitrate should be in writing and the parties must agree on the choice of an arbitrator, the conduct of hearing and their willing to be bound by the arbitrator's award.[14]

Initially the use of arbitration was not universally accepted as a remedy. National courts viewed arbitration as an attempt to oust the court of its jurisdiction on trade matters in favor of the arbitration. The 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards to which most of the world's leading commercial nations are parties make the enforcement of arbitral awards easier.[15]

The basic purpose of the 1958 convention was to encourage the recognition and enforcement of commercial arbitration agreement in international contracts.

In most of the cases, an award may be executed in accordance with the agreement of the parties. In certain cases, the losing party may not be willing to cooperate. In such cases, therefore, the winning party may be compelled to take the award to court of law to demand its enforcement.[16] The court of such country may or may not accept the demand of the winning party for various grounds.

The question of reciprocity may be raised. The validity may be tested. In general, the award must be recognized first by such court before it is accepted for enforcement.[17]In order to recognize an award, a court may consider certain things. Some of these are:-

1. whether the award fulfils formal requirements or not ;
2. whether the award is within the submission or not;
3. the legality of the award;
4. the possibility of performance (implementation);
5. the completeness and finality of the award;
6. the certainty and consistency;
7. whether there was fair hearing of both sides or not, and;
8. whether it was signed by a majority of the arbitrators or not;

These and other matters are considered by a court which has been requested to involve in the enforcement of an award.

Complex questions of law arise in the course of an international commercial arbitration.[18] Technical expertise; residence and place of arbitration experience, knowledge of foreign language also should be taken into consideration. [19]

It is important to stipulate an acceptable place of arbitration as this choice will determine the procedural laws or rules applicable to the arbitration and the degree of assistance and intervention of courts of that place.[20] The place of arbitration also indicates which rules are mandatory and which are permissive.

The place of arbitration should be in a state that is a party to the 1958 convention or has adopted the model law in order to force the courts of that state to defer to arbitration when allowed to hear disputes with respect to a contract that contains an arbitration clause, [21] and in order to facilitate the recognition and enforcement of the award in another signatory state where the dependant's assets are located. [22]

The language to be used in the arbitral proceedings should be stipulated in the arbitration clause or agreement, [23] the language of the award will frequently be different form the language of in which recognition or enforcement is sought. In this event to clear and easily understandable translation is important.

The selection of the law applicable to the substance of the dispute is very important if one wishes to avoid the possibility of lengthy dispute on this question.[24] This choice of law clause does not determine the procedure to be used in the arbitral proceedings nor the law that gives the arbitration clause or agreement of its validity. In order not to undermine the effect of specific provisions of the contract or in order to avoid unacceptable legal rules, the parties may wish to adopt a clause to that effect.[25]

It is not clear whether the arbitral tribunal would give effect to a clause whereby the parties selected "*the widely accepted principles of law governing international commercial contract.*" With no specific reference to a particular system of law as though Article 28(1) of the model law by referring to rules of law would seem to suggest that the parties are free to designate rules of law from various sources including instruments without the force of law. Whether there exists a lax moratoria of international commercial contracts is not at all certain, of course, it is acceptable to refer to trade usages. [26]The parties may also wish to choose the same laws that are applicable to the validity and effect of the arbitration clause or agreement.

If the parties have desire to give the arbitral tribunal the maximum freedom to accept its decision free from strict rules of law, will authorize it to decide exacquo etbono or as amiable. The arbitral tribunal shall be entitled to decide according to equity and good conscience and shall not be required to follow the strict rules of law.[27]

In general, the rules of procedure to be followed by an arbitral tribunal are those contained in the rules of the chosen arbitral institution. If some or all of them are not acceptable to the parties, they may adopt special rules or refer to other rules in the arbitration clause.[28]

Arbitration leads to a binding decision comparable to that of judgment by a state court. Because they are enforceable worldwide on the basis of the New York Convention, this has made arbitration a universally used dispute resolution procedure in most areas of international trade. [29]

3.4 Problems in Recognition and enforcement of International Commercial Arbitral Awards under Ethiopian law

Arbitration has a long tradition in settling international commercial disputes. The parties to international transaction frequently prefer arbitration because through it they can avoid case load deficiencies of court procedures and create a level playing field for the resolution of a dispute. [30]

The law governing arbitral award in Ethiopia is to be found in the domain of the 1965 Civil Procedure Code. The Civil Code provision dealing with the substantive aspect of arbitration while the Civil Procedure Code mainly regulates the procedures empowering arbitral proceedings.[31]

The arbitrators render the award in the commercial disputes. The award can be rendered in foreign commercial arbitration. After rendering the award there is a problem to recognize and enforce in Ethiopia because Ethiopia is not a member of ICC and does not ratify the 1958 New York Convention on the recognition and enforcement of foreign arbitral awards.[32] where the convention is the major international convention on the subject of enforcement of foreign arbitral awards.[33]

The first problem we usually encounter is to divide to which national court to take the award for enforcement. The contracting party of an

Ethiopian trader and a Sudanese trader, their relation ship is contract of sale of goods. The parties agreed in their contract, if dispute arises between them, to solve through arbitration. After certain period of time dispute arise between the parties based on non-performance of contract was instituted against Ethiopian trader.. The case was seen by the arbitrator according to their agreement.

The arbitrator after examine the issue decided the case in favor of Sudanese. The Ethiopian trader may not be willing to cooperate. In such case, the winning party may be compelled to take the award to court of law to demand its enforcement. In this regard, say that the most convenient and also effective one is the court of the country where the losing party has got some kind of property situated in Ethiopia. The court such country may or may not accept the demand of the winning party. In this scenario which court has the power to enforce the award, to avoid the problem the country has amended the national laws. Because of lack of recognition and enforcement of international commercial awards, Ethiopia has not as yet become a party to the 1958 New York Convention or treaty, bilateral or multilateral agreement on the contracting country. So Ethiopia has enter into bilateral or multilateral agreement.

There is a problem of the applicable law. Foreign arbitral award to enforce in Ethiopia has not a substantive law unless procedural laws. Because Ethiopia has not any substantive law to follow about the recognition and enforcement of foreign commercial awards, the only law has procedural laws, the purpose of procedural law has to exercise the right given by the substantive laws, in this subject matter procedural laws has lost their purpose. To enforce the foreign arbitral awards without right from the substantive law. Any foreign contracting party to conclude arbitration agreement with Ethiopian traders has to fill the gap

of the substantive law. The parties need bilateral agreement to recognizes and enforce the award.

The problem of the jurisdiction of the court as seen in the case of the Ethiopian Import-Export Corporation (ETIMEX) Vs revenged olie fabrieken (oilos) the dispute arised between the parties before reaching on the arbitration agreement.[34] The case as it is, however, abundantly demonstrates the process of forming or concluding an arbitral agreement and also it separated from the main contract.[35]During the process of arbitration agreement formed the dispute arise between the parties, a suit based on breach of contract was instituted against oilos in Rotterdam. The arbitrators after investigation the issue decide the case in favor of E.TIMX. In this issue the power to enforce the a word has difficult. Because of the language of arbitrators panel, the applicable law then at the beginning of the formation of the agreement has not full acceptance between the parties. The dispute arises at the submission of the arbitration agreement to their offer. In this case the arbitration agreement to see under Ethiopian law is declaration. To be recognized and enforce the award the parties agreement must be fully accepted beyond declaration.

Beside the above problem under Ethiopian law foreign award has to recognize and enforce in Ethiopian court the precondition laid down under article 461 of the civil procedure code must be satisfied. To be executed, an application for the recognition and enforcement of international commercial arbitral award should be in writing to an Ethiopian court accompanied by a certified copy of the award to be enforced, [36] and also a certificate as to its finality and enforceability signed by the president of the arbitration tribunal.[37]

An Ethiopian court, in which an application for execution of a foreign judgment is filed, is required to enable the party against whom the

judgment is liable to be executed to present his observation within such time as the court shall fix. [38]

The high court shall execute the execution of foreign judgments on the basis of the application as though the judgment was rendered by an Ethiopian court.[39]The code provides that those provisions that are applicable in relation to the execution of foreign judgments are also applicable to enforcement of foreign arbitral awards. “Reciprocity” must be ensured so that an Ethiopian arbitral award would be recognized in that country, and the award must have been made following a regular arbitration agreement or other legal act in the country were made,[40] The parties must have had equal rights in a appointing arbitrators and must summoned to attend the proceedings. The arbitration tribunal must have been regularly constituted and the award is not contrary to public order or morals.[41]

Chapter Three Endnote

1. Allan Redfern.M. Hnter, Law and Practice of International Commercial Arbitration. Published by Sweet and Maxwell London, (1991) PP. 10-11
2. Supra note 1.p. 13
3. D. Paul Emod, Commercial Dispute Resolution, Alternative to litigation. Published in Canada law book inc. (1989) PP 93
4. Electronic Resource Guide http: //www.asil.org/resource/arb1. htm1/(2) 2008.
5. Michale and Swart, Altenative dispute Rsolution, Published as by A.Spatore, Inc. (2004)PP. 96
6. supra note 1 P448-49
7. Civil Procedure Code of Ethiopia Negarit Gazeta, Decree No. 52 of 1965 .
8. Supra note 1
9. Ibid
10. Ibid
11. Ibid
12. UNICTRAL ,Article 19(1) 1985.
13. Supra note 1, P.815
14. Supra note 4
15. Supra note 4
16. Ibid
17. Assefa Ali, Recognition and Enforcement of international Arbitral Awards under the 1958 New york convention, 20/8/99, (un published), St. marry University college) PP.2-3
18. Rene David, Arbitration in International Trade, (1906) PP 70
19. Supra note 3. P.13

20. Supra note 15, Article 20(f)(2)
21. New York convention Article II (3) 1958, Model law Article 8.
22. Ibid
23. Supra note 15, Article 22
24. Supra note 15 Article 28 (1)Supra note 15 Article 28 (1)
25. Ibid
26. The Lex Moratoria in National Com. Article 1985.
27. Supra note 15, Art 28(4)
28. Supra note 15
29. I birhum Endires, Journal of International Trade Law, vol 6 No 16 Published by trade law serious, (2001),PP.35
30. Supra note 4
31. Supra note 9
32. Supra note 16.
33. Super note P. 457
34. Bezawork Shimelash, law, the formation, content and effect of an arbitral submission under Ethiopian law, Journal Vol. 17 (1994) PP.70
35. Ibid
36. Supra note 7, Article 457 (a)
37. Supra note 7, Article 456(2)
38. Supra note 7, Article 4460(3)
39. Supra note 7, Article 461(1)
40. Supra note 7, Article 458 (1) and 461 (1)(a)
41. Ibid

Conclusion

Arbitration is a process in which a neutral third party decides the out come of a dispute after hearing evidence from both sides. The parties choose arbitrators and have some control over the procedures.

International commercial arbitration is not the same as domestic arbitration because it always involves at least two legal systems and consequently raises conflict of law issues. Commercial arbitration and most other alternative dispute resolution methods are widely known methods of dispute settlement in Ethiopia. But, the legal framework for commercial arbitration is adequate and has a standard comparable to frameworks, in legal systems where such methods are put to rigorous use.

The lack of practice in the field has affected on its development the law put in place, which are 'like' replica of those in countries experienced with the method, are not put to the test making it harder to develop the area to a system more suited to Ethiopian users.

Among the types of ADR mechanisms, arbitration process has vital importance because this is the most favored means of settling disputes for trade companies and enterprises use this method for the good will of business transactions. Arbitration has appeared to be the best way to settle dispute.

Arbitration is a favored method of resolving international commercial disputes. For the same reason that is appealing on domestic front such as speedy low cost, privacy, expertise of the decision maker and procedural flexibility since at the international level arbitration has

additional advantages which include avoiding the unknown is a foreign court room and obtaining jurisdiction over foreign parties.

Commercial arbitration has a bright future where it can make possible, the use of legal professionals outside the court system in support of the formal courts and at the same time provide an efficient dispute resolution mechanism for the commercial sector.
Finally to avoid the problem of the applicable law, the jurisdiction of the court, the language of the arbitration to enforce the arbitral award, Ethiopian contracting party with other party need bilateral or multilateral agreement and reciprocity mechanism. In addition to this enact domestic laws for adequate way of dispute resolution.

In order to facilitate the recognition and enforcement of international commercial arbitral award in another signatory states where the parties assets one located to avoid unacceptable legal rules the parties may with to adopt the 1958 New York Convention.

Recommendation

Arbitration is one of the methods of solving dispute out of court. It has wide similarity with adjudication process. It needs to pass through procedural principle to give valid arbitral award, the arbitrators face to deal with procedural and substantive rule principle to pass a valid binding award. In cases of arbitration concerned with procedural principles, rules of conducting hearing, credibility and admissibility of evidence are important. The arbitrator is in the best position to determine the question of credibility, since it is he who saw and heard witnesses to testify. In view of this the writer of this paper to formulate remedy measures for those problems on top of this certain recommendation to be forwarded. The following could be recommended.

As we know informal process outside courts have reduced the courts load and sometimes are more preferable to disputants, ADR rules of the institution should be drafted by lawyers and mostly commercial ones has to be based on UNCITRAL arbitration rule, the international chamber of commerce (ICC) and other international and regional arbitration institutions to facilitate settlement of disputes agreed upon by the parties.

The mechanisms of dispute settlement in which, arbitration has able to handle by the professional for service need to be proposed by the government may be law practitioner, bar association, law school and NGOS based on legal and using services should be provide service.

The alternative dispute resolution such as arbitration and others should be institutionalized and clear jurisdictional power should be conferred in order to recognize and enforce the arbitral awards.

To save time and money for litigants and to ease the load from the over burden of court systems, to resolve dispute by less costly and time saving techniques arbitration has be formed by institutionalize and design to work with under the supervision of the supreme court.

The recognition and enforcement mechanism of out of court dispute settlement should be developed, and Ethiopia should accede to treaties of international arbitration conventions, and also enact domestic laws.

BIBLIOGRAPHY

1. Allan Redfern.M.Hnter, Law and Practice of International Commercial Arbitration, Published by Sweet and Max Well London, 1991.
2. Bezawork Shimelash, Arbitral Submission under Ethiopian Law, Journal of Ethiopia Law, Vol.17 No1. 1994 .
3. Black's Law Dictionary 8thed, West Publishing Co. 1990.
4. Civil Code the Empire of Ethiopia; Negarit Gazeta, Procamtion No. 165, Published in Berhanena Selam Printig Enterprise 1960.
5. Civil Procedure Code of Ethiopia, Negarit Gazta, Decree No. 52 ,Published in Berhanena Selam Printig Enterprise 1965.
6. D.paul Emond, Commercial Dispute Resolution, Published in Canda Law book Inc. 1989.
7. Edward Brant, Altermative Dispute Resolution the Advocates Perspective, 2nd ed, MICHTEL Law Publisher charlottes ville Virginia 1997.
8. Harlod Crowter, Introduction to Arbitration, Published in LLP Reference London Hong Kong. 1998.
9. ICC Rule 1998.
10. International Trade Law Center, Arbitration and Alternative Dispute Resolution, Published by Trade Law Series Geneva, 2001.
11. Jacqueline M.nolan Haley, Alternative Dispute Reolution in a Nut Shall, West publishing Co. 1992.
12. Jain, D.P, Mercantile Law, Konark Publisher PVT LTD, Delhill 0092, 1992.
13. Jarome T.BARRETT, A History of Alternative Dispute Resolution, Published in Affiliation the Association for Conflict Resolution, 2004.

14. Jhon Wiley and Sons, A History of Alternative Dispute Resolution, Published in Canada 2004.
15. Jhon W(Same) Kelter, The Mangement of Struggle Elements of Dispute Reolution through Negotation, Mediation and Arbitration, Published in the united states of America, Hampton, Press, 2001.
16. M.C kachhal, Mercantile Law, Published by Vikas publishing housee, 1999.
17. Michale E. Swartz, Alternative Dispute Resolution, Published by A. Spatore. Inc. 2004.
18. P.P.S Gogna, A Text Book of Mercantile Law, Published by S. Chand and Company LTD. 3rd ed, 2005.
19. Rene David, Arbitration in International Trade, Published by Kluwer Law and Taxation, 1906.
20. Robert Allen sedler, Ethiopian Civil Procedure, Published by the Facwty of Law Hailes Sellsie I University Addis Ababa, 1968.
21. Professor Jan Rombers, ICC Guide to Incoterms, Published in by ICC Publishing S.A. 2000.
22. Steven T. Stem, Introduction to Civil Litigation,Published in Canda, 1997.
23. Roy Good, Commercial Law, 2nd ed, Published by the Penguin group, 1995.
24. Tilahun Teshome, Ethiopian Bar Review, Published by the Ethiopian Bar Assocation Vol. 1 No. 2 . 2007.
25. UNICTRAL 1985.

Website

26. WWW.addis chamber. Com
27. WWW.eac. Com. et
28. http: // WWW. Asil.org/ resource/arbt. Htm.

29. ® Encarta ® Reference library 2004 © 1993, 2003 Miscorpration.