

*The 1997 Iranian Law on International Commercial Arbitration:
The UNCITRAL Model Law à l'Irannienne,
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The 1997 Iranian International Commercial Arbitration Law: The UNCITRAL Model Law

à L'Iranienne

by HAMID G. GHARAVI*

Could you and I with Fate conspire
To grasp this sorry Scheme of Things
entire Would not we shatter it to bits - and
then Remould it nearer to the Heart's
Desirej¹

THE ISLAMIC Republic of Iran ('Iran') has adopted legislation on international arbitration entitled 'Law on International Commercial Arbitration' (*LICA*). The *LICA* was approved by the Islamic Consultative Assembly - the Iranian Parliament - on 17 September 1997, and ratified by the Guardians Council² on 1 October 1997. The *LICA* entered into force on 5 November 1997 - 15 days after its publication in the Iranian official *Gazette*.³

Iranian authorities claim that the *LICA* closely follows the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration ('Model Law'), and provides Iran with a modern international arbitration legal framework. Study of the history and the evolution of arbitration in Iran, as well as an analysis of the *LICA*, however, demonstrates that the *LICA* - while considerably enhancing Iran's arbitral regime - contains major shortcomings, which (i) place the *LICA* below 'international standards' and (ii) should be remedied through amendments to the *LICA* and ratification of major international arbitration conventions.

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¹ Omar Khayyam, *Rubaiyat*, verse 108 (cd. George F. Maine and trans. Edward Fitzgerald, Collins 1969) (1947). Omar Khayyam was an 11th century Persian poet and philosopher.

² The Guardians Council was constituted in accordance with Article 91 of the Constitution of Iran with a view to safeguard the Islamic ordinances and the Constitution and to examine the compatibility of the legislation passed by the Islamic Consultative Assembly with Islam. All legislation passed by the Islamic Consultative Assembly must be sent to the Guardians Council for review. See Gisbert H. Flanz, *Islamic Republic of Iran*, Articles 91-99, in *Constitutions of the Countries of the World* (Océan 1992).

³ *Official Gazette* No. 15335, 20 October 1997.

I. HISTORY OF ARBITRATION IN IRAN

If ye fear a breach
Between those twain [husband and wife]
Appoint (two) arbiters
One from his family,
And the other from hers;
If they wish for pence.
Allah will make them of one mind ...
[Koran, IV, 351]

O ye who believe! Obey Allah, and
obey the messenger and those of you
who are in authority; and if ye have
a dispute concerning any matter,
refer it to Allah and the messenger
if ye are believers in Allah and the
last day. This is better ...
(Koran, IV, 59)

As the above citations from the *Koran* demonstrate, alternative dispute settlement mechanisms to court litigation are deeply rooted in Islam - a fact evidenced by many historical events:

The Prophet Muhammad was appointed as an arbitrator before Islam by the Meccans, and after Islam by the Treaty of Medina. He was confirmed by the Holy Koran (S IV, 65)⁴ as the natural arbitrator in all disputes relating to Muslims. He himself resorted to arbitration in his conflict with the Tribe of Banu Qurayza. Muslim rulers followed this practice in many instances, the most famous of which was the arbitration agreement concluded in the year 657 AD 137 HI between Caliph Ali and Mu'awiya after the battle of Siffin.⁵

In Iran - a non-Arab Islamic State - arbitration has always been among the preferred domestic and international public⁶ and private dispute settlement mechanisms. In fact, in most isolated Iranian villages, recourse to the *Katkhoda* - i.e., the wise man or headman of the village - for the resolution of disputes was the only feasible and rational dispute settlement mechanism.⁷ As stated by one commentator, the popularity of arbitration never weakened:

The 1997 Iranian International Commercial Arbitration Law 87

Even after the advent of constitutional government and the attendant efforts at modernization and reform of the legal system along European lines this tradition [to resort to arbitration] persisted. In fact, as strict law increased in complexity and as court procedures proved dilatory, the confidence of the general community gave the extra judicial methods new life.

⁴ But nay, by thy Lord, they will not believe (in truth) until they make thee judge of what is in dispute between them and find within themselves no dislike of that which thou decidest, and submit with full submission.' Sec Koran, IV, 65.

⁵ Dr Sobhi Mahmassani, *Liamco v. Libya* award of 12 April 1977, (1981) 6 YB Comm. Arb. 96.

⁶ See e.g. *The Goldsmith Award of 1872* rendered by Sir Frederick Goldsmith in 1872 with respect to the water of the River of Helmand dispute between Afghanistan and Inn. Sec B.R. Chauchan, *Seulement of International Water Law Disputes in International Drainage Basins* (1981) 343. Also, there are a number of international treaties entered into by Iran containing arbitration provisions. See e.g. Article 6 of the *International Border and Good Neighborly Relations Treaty* concluded between Iran and Iraq in Baghdad on 13 June 1975, (1975) 14 ILM 1133.

⁷ David Suraigu, *Arbitration in the Iranian Legal System* (1965) 20 Arb. J 144

The creators of the modernized legal system did not seek in any way to do away with this tradition, and indeed the earliest codes and legislation gave official recognition and status to arbitration.⁸

Indeed, the original Iranian Code of Civil Procedure of 1911 recognized the validity of a *compromis* providing for settlement of existing disputes by arbitration.⁹ The 1928 revisions to the code further reinforced arbitration by permitting either disputing party - notwithstanding the absence of an arbitration clause or *compromis* - to refer their disputes to arbitration, even where these disputes were pending before a national court.¹⁰ This was intended to (i) encourage speedy settlements; (ii) 'take weight off' the shoulders of the newly established judiciary; and (iii) overcome foreign businessmen's 'reservations' with respect to Iranian courts.¹¹ A year later, however, a new law was enacted (i) prohibiting arbitration of disputes over matrimonial rights and bankruptcy and (ii) requiring consent of disputing parties for settlement of certain types of disputes - e.g., those with a commercial character - by arbitration.¹² The law of 1935 restored to the fullest extent the basic 'mutual consent' requirement for referral of disputes to arbitration.¹³

The basic principles of the Iranian law on arbitration were finally incorporated in Articles 632 *et seq.* of the Iranian Code of Civil Procedure (ICCP) of 17 September 1939,¹⁴ minor amendments to which were made in 1983.¹⁵ At the time, arbitration provisions of the ICCP were some of the most advanced worldwide. The provisions include adequate enforcement and annulment grounds and principles such as the separability of the arbitration clause and the impossibility to appeal the award on the merits of the case.¹⁶ Article 649 of the ICCP even addresses the problem of truncated arbitral tribunals - which remains unsettled in most modern international arbitration statutes - by providing '[w]here one of the party-appointed arbitrators resigns during the last third part of the period of arbitration his resignation shall be treated as null and void and he shall be regarded as abstaining'.¹⁷ The ICCP continues to govern domestic arbitration proceedings¹⁸ i.e. where all disputing parties are, at the time of the conclusion of the arbitration agreement, Iranian nationals under Iranian law.¹⁹

Iran has not, as of this date, acceded to any of the international arbitration conventions,²⁰ nor entered into any bilateral treaties providing for the enforcement of foreign arbitral awards. The 1955 Treaty of Amity, Economic Relations and Consular Rights concluded with the USA²¹ merely discusses the possibility of enforcement of foreign arbitral awards:

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid. at p.145

¹¹ Ibid.

¹² Ibid.

¹³ Ibid. at p. 146

¹⁴ See e.g., Dr Jalal Abdoh, 'Iran' in (1979) 4 *YB Comm. Arb.* 82.

¹⁵ See e.g. S. Hassan Amin, 'Changes to the Law of Arbitration in Iran' in (1988) 8 *Islamic and Comp. LQ* 1

¹⁶ For a detailed analysis of the Iranian domestic arbitration law, see Adoh, *supra* n. 14

¹⁷ ICC, Article 649

¹⁸ See e.g. Shirin O. Entezari 'Iranian Arbitration Proceedings' in (1997) 14.1. *Int'l Arb.* 4 at p. 53.

¹⁹ See Article 1 (b) of the L.I.C.A, according to which '[i]nternational arbitration means that one party is not, at the time of the conclusion of the arbitration agreement, an Iranian national under Iranian law'.

²⁰ The Iranian Government. submitted a Bill concerning accession to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ('New York Convention') to the Iranian Parliament before the 1979 Iranian revolution. The Bill, however, was never approved.

²¹ 7 UST 1839.

The private settlement of disputes of a civil nature, involving nationals and companies of either High Contracting Party, shall not be discouraged within the territories of the Other High Contracting Party. and in case of such settlement by arbitration, neither the alienage of the arbitrators nor the foreign nationals of the arbitration proceedings shall of themselves be a bar to the enforceability of awards duly resulting therefrom.²²

Iranian law does not contain any provisions on the enforcement of foreign arbitral awards. Awards rendered outside Iran must therefore be enforced in Iran as foreign judgments pursuant to Article 169 of the Civil Judgments Act of 1977, which provides:

The civil judgement rendered by foreign courts are, subject to the following conditions, enforceable in Iran unless a different arrangement is made in respect thereon by a law:

- (a) The judgement is issued by (the courts of a country where, in accordance with the laws, treaties and agreements of such countries, judgments issued by Iranian courts are enforceable or- where reciprocal enforcement of judgments is granted;
- (b) Its substance is not contrary to the laws of Iran relating to public policy and good morals;
- (c) The enforcement of such foreign judgement is not in violation of any international treaty to which Iran is a party or any specific laws of Iran;
- (d) Such foreign judgement is final and enforceable in the country where issued;
- (e) No judgement has been issued by the courts of Iran which is contrary to the judgement sought to be enforced;
- (f) Adjudication of the case in accordance with the laws of Iran is not within the exclusive jurisdiction of the Iranian courts;
- (g) The judgement is not rendered with respect to immovable property situated in Iran and rights connected therewith; and
- (h) The enforcement order of such judgement is issued by the competent authorities of the country where such judgement has been issued.²³

The foreign award must therefore first be declared enforceable by the courts of the country where rendered before enforcement is obtained in Iran²⁴, leading to a 'double exequatur' - subject to

²² 1993 Treaty of Amip. Economic Relations and Consulat Rights between the United States and Iran, Article 111(3).

²³ Cited by Abdoh. supra n. at 102

²⁴ According to Jalal Abdoh, if no leave for enforcement has been obtained in the country where the award was rendered, the award can be treated as a 'document' made abroad and fall under the scope of s. 1295 of the Iranian Civil code, which provides:

Iranian courts will give to documents drawn up in foreign countries the same credit as the said documents possess in accordance with the laws of the country in which they have been drawn up, provided that:

First, they have not lost their validity for any legal reason;

secondly, their contents are not in contradiction with the laws related with public policy and good morals in Iran;

thirdly, the country in which the documents have been drawn up gives credit to documents drawn up in Iran, in accordance with its laws or treaties; and

fourthly, the Iranian diplomatic or consular representative accredited to the country where the document has been drawn up, or the diplomat or consular representative of that country in Iran, has verified that the document has been drawn up according to the local laws. See Abdoh, supra n. 14, at p. 103. See also S. Hassan Amin, 'Enforcement of Foreign Awards in Iran' in (1996) 11 Mealeys Int. Arb. Rep. 6 at pp. 24-25. Recognition of an award as a document, however, is not the equivalent to enforcement - but seems merely to enable the prevailing party to pursue the case in a legal action for breach of contract before Iranian courts.

the above extensive grounds,. Unfortunately, the LICA, as discussed below, has not in any way enhanced Iran's enforcement legal framework.

II. THE LICA

(a) Principles Common to the LICA and Model Law

According to Iranian authorities, the LICA closely follows the Model Law. There is no doubt that similarities exist between the two rules both structurally and substantively. The LICA recognizes the validity of both (i) the arbitration clause and the submission agreement (Article 1(c)) and (ii) *ad hoc* and institutional arbitration (Article 3), and incorporates internationally accepted arbitration principles contained in the Model Law such as the (i) autonomy of the parties to organize the arbitral proceedings (Article 19) and select the rules governing the substance of the dispute (Article 27); (ii) separability of the arbitration clause (Article 16); (iii) competence of the arbitral tribunal to rule on its jurisdiction (Article 16); (iv) power of the arbitral tribunal to order interim measures (Article 17); (v) limited supervision and appropriate assistance of local courts in the arbitral process; (vi) equal treatment of the parties (Article 18); and (vii) exclusivity of the 'setting aside' recourse against the award.

(b) LICA 's Steps Beyond the Model Law

The LICA, contains modern and comprehensible provisions, non-existent in the Model Law, on multiparty arbitrations (Article 11(6)) and joinder of third parties

(Article 26), which further enhance Iran's international arbitration framework. Also the LICA incorporates a few Iranian arbitration particularities which date from the period where Iranian parties were in a vulnerable bargaining position and are not prejudicial to the arbitral process, such as the impossibility, for the Iranian party as long as the dispute has not arisen, to agree on the selection of any arbitrator that is a national of its counter-party's country (Article 11(1)).

(c) LIA 's Modifications to the Model Law

The LICA, however, has made such fundamental changes to the Model Law that any assertion that the former is modeled on the latter may be misleading. At best, the LICA may be considered as the Model Law *à l'Irannienne*. The most important modifications concern the scope of the law and the grounds for setting aside and refusing enforcement of the award.

(d) The Scope of the LICA

(i) International commercial arbitration

The LICA applies to international commercial arbitration. As suggested in the Model Law, the term 'commercial' is broadly defined to include 'the sale and purchase of goods and services, transportation, insurance, financial matters, consulting services, investment, technical cooperation, representation, agency, contractual and similar activities' (Article 2(1)). 'International arbitration', however, is narrowly defined by the LICA, according to which '[i]nternational arbitration that one party is not, at the time of the conclusion of the

arbitration agreement an Iranian national under Iranian law' (Article I (b)).²⁵ Such definition is a significant departure from Article 1(3) of the Model 12w, which provides:

- (1) An arbitration is international if:
- (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
 - (b) one of the following places is outside the State in which the parties have their places of business;
 - (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
 - (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
 - (c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.²⁶
- (ii) *Non-application of the LICA to arbitrations held outside Iran and to foreign arbitral awards*

At first glance, some provisions of the LICA may appear, like those of the Model Law, also applicable to arbitrations held outside Iran and to enforcement of foreign arbitral awards.²⁷ However, such is not - or at least does not seem to be - the case for the following four reasons:

- Article 35 of the LICA on enforcement of awards provides - unlike Article 35 of the Model Law - that '[i]n case of written application to the [Iranian] court mentioned in Article (6) [the courts in the provincial capitals where the seat of arbitration is located], the arrangements for enforcement of [Iranian] court verdicts shall be executed'.²⁸
- The LICA does not contain any equivalent provision to Article 1(2) of the Model Law which provides that Articles 35 and 36 of the Model Law - i.e. the enforcement of award provisions - also apply if the place of arbitration is in the territory of this State.²⁹
- Article 35 of the LICA does not contain the Article 36(1) of the Model Law reference to enforcement of an award 'irrespective of the country in which it is made'.³⁰
- According to Article 2(d) of LICA, '[c]ourt means one of the courts of justice in the Islamic Republic of Iran', as opposed to 'a body or organ of the judicial system of a State' as defined in Article 2(c) of the Model Law.

²⁵ Under Iranian law, a foreign owned company incorporated in Iran is considered as an Iranian company.

²⁶ Model Law, Article 1(3). For a broader definition of 'international arbitration', see e.g., Article 1492 of the French Code of Civil Procedure, which provides that '[a]rbitration is international if it implicates international commercial interests'.

²⁷ See Article 1(2) of the Model Law, which provides that '[t]he provisions of this Law, except Articles 8 [arbitration agreement and substantive claim before court], 9 [arbitration agreement and interim measures by court], 35 [recognition and enforcement] and 36 [grounds for refusing recognition and enforcement], apply only if the place of arbitration is in the territory of this State'.

²⁸ LICA. Article 35(1).

²⁹ Article 1(2) of the Model Law provides that '[t]he provisions of this law, except Articles 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of this State'.

³⁰ Article 36 of the Model law provides [t]hat recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only ...'.

The absence of any equivalent provisions in the LICA to Articles 1(2) and 36(1) of the Model Law and the fact that Article 35 of the LICA requires a written application to the 'Iranian' court 'at the seat of arbitration' for arrangements for enforcement of 'Iranian' court verdicts to be executed leaves little doubt that the LICA applies only to arbitrations held in Iran and does not provide for the enforcement of foreign arbitral awards, which must therefore be sought in accordance with the mechanism described above for the enforcement of foreign judgments. It is regrettable that the LICA does not at least expressly state that it only applies to arbitrations held in Iran.³¹

(e) The Grounds for Setting Aside and Refusal of Enforcement of Awards

The LICA contains the same grounds for both the setting aside and refusal of enforcement of arbitral awards. The following grounds, any of which will lead to the annulment or refusal of enforcement of the award, must be raised by the party seeking annulment or resisting enforcement of the award (Article 33(1)):

- (1) A party to the arbitration agreement was under some incapacity. (Article 33(1)(a));
- (2) The arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the Iranian law. (Article 33(1)(b));
- (3) The provisions of the LICA concerning the proper notice of the appointment of an arbitrator or arbitration request are not observed. (Article 33(1)(c));
- (4) The party resisting enforcement or seeking annulment of the award was - due to reasons beyond his control - unable to present his case. (Article 33(1)(d));
- (5) The arbitrator rendered an award beyond the scope of his authority. Should the decisions on matters submitted to arbitration be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration will be set aside or refused enforcement. (Article 33(1)(e));
- (6) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties and/or in the silence of or failing such agreement, was not in accordance with the LICA. (Article 33(1)(f));
- (7) The arbitration award includes the affirmative view of the arbitrator whose replacement has been accepted by the court located in the provincial capital where the seat of arbitration is located. (Article 33(1)(g));
- (8) If the award of the arbitral tribunal relies on a document which, according to a final judgment, was falsified. (Article 33(1)(h));
- (9) A document is found, after the issuance of the award, proving the rightfulness of the party resisting enforcement or seeking annulment of the award and which is proven to have been or caused to have been concealed by the other party. (Article 33(1)(i))

³¹ See e.g. Article 1 of the 1994 Egyptian Law on International Commercial Arbitration, which provides that if provisions shall apply to 'any international arbitration that takes place in the Republic, unless the two parties thereto have agreed to submit the arbitration to another law' and 'to any international arbitration that takes place outside the Republic, provided that the two parties thereto agreed to submit the arbitration provisions of this law'.

The following grounds, any of which will lead to the annulment or refusal of enforcement of the award, must be raised *ex-officio* by the judge (Article 34):

- (10) The subject matter of the dispute is not capable of settlement by arbitration under Iranian law. (Article 33(1))
- (11) The award is in conflict with the Iranian public policy or good morals and/or the mandatory provisions of the LICA. (Article 33(2))
- (12) The arbitral tribunal's award with respect to immovable properties located in Iran is in contradiction with laws of Iran and/or valid notarial documents, unless the arbitral tribunal has the authority to- compromise in the case of the latter. (Article 33(3))

Grounds 7, 8, 9 and 12 are not contained in the Model Law while others have been expanded such as ground 11, which in addition to public policy also contains 'good morals' and the 'mandatory provisions' of the LICA.³²

(f) Capacity of the Iranian State to Enter into an Arbitration Agreement

The LICA does not directly address the question of whether the Iranian State or agencies and instrumentalities thereof ('Iranian State') may enter into an arbitration agreement. The LICA merely provides that it shall have no impact on other regulations of the Islamic Republic of Iran on the basis of which certain disputes cannot be referred to arbitration' (Article 36(2)) and that an award shall be annulled if 'the subject matter of the dispute is not capable of settlement by arbitration under Iranian law' (Article 33(1)). An answer to this question, however, is provided in Articles 77 and 139 of the Iranian Constitution, which provide:

International treaties, protocols, contracts and agreements must be approved by the Islamic Consultative Assembly.³³

The settlement of claims relating to public and state property or the referral thereof to arbitration is in every case dependent on the approval of the Council of Ministers, and the Assembly must be informed of these matters. In cases where one party to the dispute is a foreigner, as well as in important cases that are purely domestic, the approval of the Assembly must also be obtained. Law will specify the important cases intended here.³⁴

Investors wishing to settle disputes arising out of contracts entered into with the Iranian State by arbitration must therefore (i) obtain the Iranian Parliament's approval, which has often been sought and obtained in the past,³⁵ (ii) qualify as an

³² Article 35(2) of the LICA provides that if an application for setting aside of the arbitrator's award is made to a court referred to in Article 6 of this Law by one of the parties and the other party has applied for its recognition and enforcement, the court may, on the application of the party claiming recognition and enforcement of the award, order the other party to provide appropriate guarantee Iranian Constitution, Article 77.

³³ Iranian Constitution, Article 77.

³⁴ Iranian Constitution, Article 139.

³⁵ See e.g. 14 January 1981 authorization granted to the Iranian Government to submit to arbitration its financial and legal disputes with the Government of the United States; 10 August 1981 authorization granted to Iran's Central Bank to submit to arbitration its disputes with Philip Brothers; 26 August 1981 authorization granted to

'Investor' under a bilateral investment treaty entered into by Iran providing for the settlement of 'investment disputes' between a contracting party and an investor of the other contracting party by arbitration;³⁶ or (iii) fall within the scope of the arbitration provisions contained in the Foreign Investment Law ('Bill') currently under consideration by the Iranian Parliament,³⁷ and which provides that 'the foreign investor's claim to the rights granted to him under this law, including his claim for compensation for loss incurred, which compensation has been guaranteed by the government, shall be referred to an Iranian arbitration. forum for consideration and in case of agreement, to an international arbitration forum.'³⁸

Another possibility for investors would be to take the risk of entering into an arbitration agreement with the Iranian State notwithstanding the Iranian constitutional requirement. This option may be considered if Iranian courts are unlikely to interfere in the arbitral process, i.e. where the venue of the arbitration is outside Iran and enforcement of the resulting award is unlikely to be sought in Iran. A number of international arbitral tribunals and national courts have held that the Iranian State cannot rely on its international law to invalidate an arbitration agreement it has entered into. In ICC award No. 3481 of 1986,³⁹ an Iranian public entity argued that it was not bound by the arbitration agreement it had entered into since the formalities required by the Iranian constitution were not observed.⁴⁰ The arbitral tribunal held that international public order strongly prohibits a state entity dealing with foreigners to enter openly and knowingly into an arbitration agreement upon which the foreign party relies, and thereafter attempt to invalidate the arbitral agreement based on the invalidity of its own promise under its own law.⁴¹ In *Soci t  Gatoil v. National Iranian Oil Company*;⁴² the French Court of Appeals refused to permit the National Iranian Oil Company to rely on its Constitution to invalidate the arbitration agreement it had entered into.⁴³ The Court stated that the National Iranian Oil Company's position violated international public order.

the Iranian Government to submit to arbitration its disputes with Eshkovada Export, a Czechoslovak company. Cited by S. H. Amin, *supra* n. 15, at pp. 42-43.

³⁶ See Agreements on Reciprocal Promotion and Protection of Investments Between the Government of Iran and the (i) Government of the Republic of Belarus signed on 14 July 1995; (ii) Government of Sazakstan signed on 16 January 1996; and (iii) Government of Pakistan signed on 8 November 1995 and approved by the Iranian Parliament on 24 May 1997 (collectively 'Treaties'). The term investor is defined in the Treaties as (i) 'natural persons who according to the laws and regulations of that Contracting Party, are considered to be its nationals' and (ii) 'juridical persona which are established under the laws and regulations of that Contracting Party and have their seat together with their real economic activities in the territory of that Contracting Party' See Article 1(2) of the Treaties. Article 11 of the Treaties provides for *ad hoc* arbitration under the *UNCITRAL*. Rules 'of any dispute arising between a Contracting Party and one or more investors of the other Contracting Party relating to an investment'.

³⁷ The Bill, if approved, will replace the existing law concerning the Attraction and Protection of Foreign Investment in Iran of 28 November 1955.

³⁸ The Bill, Article 12.

³⁹ *1986-1990 Collection al' ICC awards* 263.

⁴⁰ *ibtd* at p. 267.

⁴¹ Moreover, the arbitral tribunal stated that the Iranian public entity failed to accomplish its duty to disclose the requirements of Iranian law concerning the execution of contracts by Iranian public entities. Finally the arbitral tribunal concluded that the incapacity of the state entity to enter into arbitration was ineffective because such principle was inconsistent. with international public order which Iranian law could not conclude.

⁴² Ct. App. of Paris, 17 December 1990 (1993) *Rev. de !'Arb* 280

⁴³ Iranian law governed the contract *ibid* at 28..

III. THE NEED FOR FURTHER REFORM

The fact that Iran has not acceded to any of the major international arbitration conventions and the LICA does not provide for the enforcement of foreign arbitral awards may discourage foreign investments in Iran and trade with Iranian parties. Assuming that such is not the case, foreign investors in Iran and foreign trade partners of Iranian parties are likely to refuse arbitration of their disputes in Iran against Iranian parties, since, in the event of a favorable award, they (i) would subject themselves to a recourse for annulment of the award by the Iranian party before Iranian courts based on LICA's extensive annulment grounds and (ii) given Iran's non-accession to the New York Convention, would be unable to enforce the award pursuant to the New York Convention in countries which have made the reciprocity reservation under the Convention, according to which only awards rendered in Convention countries benefit from the enforcement provisions of the Convention. The latter reason will also discourage parties from neighboring countries - particularly Central Asian countries with which Iran has strong historical and cultural ties - which may consider selecting Iran as the neutral arbitral forum for the settlement of their disputes, from so doing.

The LICA, while considerably improving Iran's legal framework for arbitration, remains, therefore, unsatisfactory. Although it is not uncommon for States to make regrettable modifications to the Model Law,⁴⁴ one would expect a country such as Iran, where arbitration is so deeply rooted and which (i) is no longer in a vulnerable bargaining position in international business' relations; (ii) has developed significant expertise in this field as a result of the Iran-US-Claims Tribunal; and (iii) has the potential of emerging as the leading arbitration forum of the region, to enact legislation even more favorable to arbitration than the Model Law rather than adopting an inadequate version at the end of the 20th century.

Iranian authorities should consider further reform to enhance Iran national arbitration legal framework. This may be achieved by the following:

- Acceding to the New York Convention. In so doing, Iran will not incur any risk. The New York Convention does not provide for the automatic enforcement of foreign arbitral awards. In fact, the New York Convention's vague and uncertain grounds make its proper application solely contingent on the goodwill of the enforcing authorities. For example, Article V(2)(h) of the New York Convention provides that recognition and enforcement of the award may be refused if the competent authority in the country where recognition and enforcement is sought finds that 'the recognition and enforcement of the award would be contrary to the public policy of the country'. No further guidelines or limitations are provided as regards to 'public policy', therefore putting the party seeking enforcement at the mercy of the enforcement authorities - which may explain why over one hundred countries have ratified the New York Convention;
- Acceding to the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States;
- Adopting bilateral treaties - with countries with which Iran has privileged relations -

⁴⁴ See e.g., Pieter Sanders, 'Unity and Diversity in the Adoption of the Model Law' in (1995) 11 *Arbitration International* 1 at p. 1.

providing for more favorable grounds for enforcement than those contained in the New York Convention;

- Modifying the LICA - such as reducing the grounds for setting aside arbitral awards and broadening the definition of 'international arbitration';
- Clarifying the LICA - such as expressly indicating which of its provisions are mandatory;
- Providing additional flexibility to non-Iranian parties wishing to arbitrate in Iran by allowing (similarly to Swiss⁴⁵ and Tunisian⁴⁶ laws) the parties to waive their rights to recourse in Iran with respect to any or all of the grounds for setting aside an award if neither party has its domicile or its habitual residence or place of business in Iran;
- Addressing current problems in international arbitration such as the 'truncated tribunal' dilemma - 'settled' in the ICCP,⁴⁷ the International Arbitration Rules of the American Arbitration Association⁴⁸ and the Arbitration Rules of the World Intellectual Property Organization;⁴⁹ and
- Selecting an exclusive court composed of judges specialized in international arbitration to hear international arbitration matters in order to reduce the possibility of erroneous and inconsistent decisions so often reached in complex arbitration cases by national courts, including those of industrialized nations.⁵⁰

It is with these measures and continued improvement of the Iranian 'environment'⁵¹ that Iranian authorities will further encourage (i) investments in Iran; (ii) trade with Iranian parties; and (iii) the selection of Iran as the international arbitral forum.

⁴⁵ See Switzerland's Federal Statute on Private International Law, Article 192. See Tunisian Arbitration Code, Article 78(2)(6).

⁴⁶ See Tunisian Arbitration Code, Article 78(2)(6)

⁴⁷ See supra n. 17

⁴⁸ International Arbitration Rules of the American Arbitration Association, Article 11.

⁴⁹ Arbitration Rules of the World Intellectual Property Organization, Article 35.

⁵⁰ See e.g., *In the Matter of the Arbitration of Certain Controversies between Chromalloy Aeroservices and the Arab Republic of Egypt* 939 F. Supp. 907 (DDC 1996) (enforcing on 'doubtful' grounds an award set aside in Egypt). See Hamid G. Gharavi, *The Legal Inconsistencies of Chromalloy* in (1997) 12 *Mealey's Int. Arb. Rep.* 5; See also Ct. App. of Paris, Ch. 1 s. C, 1st July 1997 (setting aside an award - for violation of the composition of the arbitral tribunal - rendered by a 'truncated tribunal' where one of the three arbitrators resigned after having participated in deliberations).

⁵¹ Independent of their political tendencies, those who have traveled to Iran during recent years are unanimous about the positive changes. Citizen's civil liberties are increasingly respected, exiles are invited to return, energy is once again concentrated on economic growth, foreign investments are facilitated, and foreign relations are progressively improving with all countries and existing ties reinforced.