Construction Arbitration Proceedings: An overview on risk associated and NEC3 arbitration proceedings

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Abstract

Arbitration mechanism is evolving and taking the concern for dispute resolution in the commercial contract especially in the current global market of the constructions companies where the international companies are working in different countries in the Middle East and all over the world as well, where arbitration had proved effectiveness as an alternative dispute resolution mechanism. Compared to litigation the arbitration attracts the disputing parties to avoid lengthy procedure and publicity accompanied with the court processes. The parties to a commercial contract identify arbitration in the original contract as they agree to refer all or some identified disputes to the arbitration in order to give final and binding decision. Many cases were resolved through arbitration and put into the sight some facts which call for deep analysis of the arbitration as an attractive mechanism which provides many advantages, has some disadvantages, and includes some risky points that need careful study.

The arbitration mechanism in different acts, institutions will be reviewed in this paper, in addition to an overview of the arbitration mechanism in the new engineering contract "NEC3" and risk concerns associated with the arbitration mechanism.

Keywords: Arbitration- NEC3- Risk- Egyptian arbitration act 27/1994

1. Introduction

Arbitration is one of the alternative dispute resolution approaches "ADR" which are the processes that implement procedures that intend to reach a resolution between the disputant parties apart from the traditional litigation processes within the courts. Arbitration is based on the mutual consent of the disputants that establishes the processes and procedures to manage the arbitration process; it has proved its advantages in supporting a speedy and cost-effective dispute resolution mechanism. The Arbitration is expected to preserve the continuity of the business processes between the disputants, unlike the courts procedures which may put the business relationships at risk. This paper will review the arbitration processes as an alternative dispute resolution mechanism in different jurisdictions, such as Egyptian arbitration act, AAA, CIARB, discuss the associated risk, with regard to the implementation in the contractual relationship within the standard forms of construction contracts like NEC3.

2. Arbitration as a dispute settlement mechanism

The most public mechanism as an alternative dispute resolution mechanism is the arbitration where a third neutral party is assigned to evaluate and decide the appropriate, final, and binding resolution to the disputed event.

2.1 Definition of "arbitration"

The term arbitration is infrequently defined in the national laws in different countries, for example, the UNICITRAL model law on International Commercial Arbitration (1985) did not consider the definition is necessary, while the Egyptian arbitration law identified the arbitration in article four paragraph no. one and also did the Yemen and Palestinian arbitration laws. In the meantime, the arbitration characteristics were demonstrated in different articles of the national laws and considered the prime characteristics as:

i. Arbitration is an alternative dispute settlement mechanism;
ii. Arbitration is consensual between the disputants and it is a private/tailored procedure;
iii. Arbitration provides a final and binding determination of each party's liability and rights in the dispute.

2.2 The arbitration agreement

The Arbitration Law defines an arbitration agreement as an agreement by which the parties agree to resolve through arbitration mechanism all or part of the dispute which arose or may arise between them which are associated with a certain contractual or another legal relationship. The agreement constitutes the arbitration procedure, scope, and arbitration subject. The arbitrator or the arbitration panel acquires the power and authority from the signed agreement. It is mandatory to be written whether before the dispute evolves as an article in the contractual relationship between the disputants or after the dispute has evolved, in the form of a separate agreement between the parties(submission agreement), which should include more details to avoid being null and void. The submission may include detailed information such as describing the disputed events, disputants, the original contractual relationship if any, identifying the arbitrator, arbitrator power and delegated decisions, applicable law, agreed procedure, and etc. The arbitration agreement can be also considered in the form of referring to an existing arbitration agreement.

3. Arbitration framework in different Jurisdiction

3.1 Egyptian Arbitration Act 27/1994

The Egyptian Arbitration Law No. 27/1994 was promulgated and founded based on the UNCITRAL model law on International Commercial Arbitration. Generally, a national arbitration law applies to arbitrations conducted in the country enacted the law or where the disputants to an international commercial arbitration conducted outside the country select this

national law as the law governing the arbitration procedure[1]. The arbitration case has different particulars and circumstances to be considered international commercial arbitration; mainly the international commercial arbitration is for the subject relates to international trade, inter alia.

3.1.1 Arbitration Proceedings

- **Equity**

  The parties to arbitration have the same position and equal opportunities in the arbitration process. The parties contribute equally in assigning the arbitrators/ arbitral tribunal, choosing the procedure to be applied by the tribunal, agree for the place of arbitration where discussion and consultation, hearing, parties and experts, inspection of documents/goods, and etc. will be carried out. The parties shall also agree for the arbitration language otherwise the tribunal will decide the language and it can request a translation for some documents in some cases. The start date of arbitration proceedings is the day when the respondent party receives the request for a dispute to be referred to arbitration and the arbitration period is to be defined by the disputants, but not more than 12 months as per the Egyptian Arbitration Law No. 27/1994.

- **Arbitral tribunal**

  Arbitration panel is composed of the number agreed by the parties to arbitration, but as the final award shall be decided by a majority, hence the number of arbitrators must be an odd number. In case the parties fail to identify the tribunal number, it should be formed of three arbitrators. The tribunal structure sometimes is truncated when one of the arbitrators quit, discontinue his assignment or refuses to contribute to the discussions during the proceedings, regardless the reason or the action by the arbitrator, whether it is intentionally aiming to injure/damage the panel or the arbitrator cannot continue for significant circumstances, out of his control, in such case an arbitrator shall be appointed as a replacement for the original leaving arbitrator, through the same mechanism applied in appointing the preceding arbitrator. It is critical situation where the resigning arbitrator may intentionally cause significant delay to the proceedings. This action by the resigning arbitrator if deliberately conducted is considered a risk of the arbitration mechanism which is mitigated by the law through ensuring the impartiality and independency of arbitrators. The Egyptian Arbitration Law No. 27/1994 maintained the arbitrator power and protected the arbitrators against challenge unless there are severe uncertainties as to

[1] Bassiouny, M. et al. (2015) the European, Middle Eastern and African Arbitration Review, USA. www.globalarbitrationreview.com, Published by Global Arbitration Review in association with Matouk Bassiouny

affect his impartiality and or independence, provided that the reasons and uncertainties have been known by the challenging party after the assignment of the arbitrator. The tribunal shall decide on any challenge raised by a party, whether to accept or reject the challenge of an arbitrator, it should review the situation deeply and comprehensively to avoid any challenge to the arbitration final decision based on lack of impartiality and or independence for an arbitrator.

- **Legal decisions power for the arbitrator**

The arbitrator/tribunal may decree on its own power, the arbitrator has the power and entitlement to decide for any doubts related to the legitimacy of an arbitration agreement. So in a contractual relationship, if the contract including an article for arbitration agreement it is irrelevant for the contract to become invalid or null and it will not affect the enforceability of the arbitration agreement.
Therefore the contract validity or enforceability is to be considered separate from any included arbitration clause, should the contract become invalid shall not affect the validity of the arbitration clause. Upon a request of a party, the tribunal may order interim measures to be taken by a party.

- **Procedural law**

The parties to arbitration deserve the rights to choose the applicable procedural law to be implemented by the arbitral tribunal; they may decide to apply free arbitration or institutional arbitration that follows the rules of any selected institute such as Cairo Regional Centre for International Commercial Arbitration (CRCICA), Chartered Institute of Arbitration in London CIARB, international chamber of commerce in Paris ICC, or American Arbitration Association AAA. Falling by the parties to mutually agree for the procedural law, the tribunal shall select the applicable procedural law.

- **Courts involvement in arbitral proceedings**

The Egyptian Arbitration Law No. 27/1994 seeks the competent court to intervene in the proceeding in some definite occasions, such as; ordering a provisional or conservatory actions which may be required promptly to avoid losses or change of facts in the circumstances need prompt and emergency decision , other several events may call for the decision by the competent court especially in the circumstances when the disputants fail to agree for a part of the proceedings and the most common decision by the court is the enforcement of the arbitral award and putting the award into effect.

3.1.2 Challenging the Arbitrators and the procedure

In order to avoid the challenge for integrity, impartiality, credibility, and independency, the nominated arbitrator shall reveal any conditions may affect his role and the requirements of impartiality, credibility, and independency, early as soon as he becomes aware of his potential appointment, he should inform the parties with all circumstances that may affect the nomination and ensure they become aware and agree for the nomination in written, although they get aware of the revealed information provided by the nominated arbitrator.

3.1.3 Risk in arbitration mechanism

Actually, these cases provide the basis of the risks implied in the arbitration mechanism. As it is apparent that the complete proceeding needs competent experts to manage and the arbitrators must possess seasoned experience to avoid wasting time and expenses through providing an award that can be challenged and set aside. Another fertile area for the challenge of the arbitration award is the arbitrator impartiality, credibility, and independency, these concerns should be critically managed by the arbitrator to ensure safe and unchallenged award. For instance the arbitrator should reveal his relationship if any, with any of the parties to the arbitration, in the same context the dependency is impacted by any business relation between the arbitrator and any of the disputing parties, consequently the arbitrators should disclose such relationship whether existing or being former from the day of nomination to the closeout of the arbitration procedure.

The financial risk in arbitration expenses is viable in the case of challenging the arbitrator for integrity, impartiality or dependency as it is common practice to pay the full payment to the arbitrators before completing the proceedings, so unsuccessful award or challenging an arbitrator will cost additional payment to the new arbitrator and additional time for new arbitration proceedings.

An arbitral award shall be accepted as final and binding through the request to the fit court, shall be imposed and put into effect, unless a party proofs to the competent court that some sort of defaults exist such as those mentioned above in paragraph 3.1.2, a party was under incapacity, other risky situations, etc.

3.1.4 Arbitration award

A prime advantage of the arbitration mechanism is the finality of the award. The award shall be in writing and to be final and binding where the dispute is concluded and closed between the disputing parties, who shall proceed in implementing the award promptly. The arbitral tribunal applies the rules of law agreed by the parties and finally gives its decision considering the contract in place between the parties and satisfying industry requirements related to the dispute particulars. The award shall be decided by the majority of tribunal members and the party who has opposed opinion shall include his contend in the award and each party shall receive a signed copy of the award.

Even though the arbitration award is considered final and binding, any party may elect to challenge the award and the award may be set aside, for instance; if the appellant party provides the evidences that a party to the arbitration agreement was under incapacity, or it is concluded that the arbitration agreement is invalid, or the appellant did not receive the proper notice of the arbitrator appointment or hadn't the chance to present his case claim/ response; also some arbitrators may include in the award their decision for some items out of the arbitration scope. It is also possible that the award may become invalid if the tribunal composition or the arbitral procedure was not as per the arbitration agreement.

3.2 **Great Britain Arbitration Acts**

The Arbitration process had evolved in the recent history in regular developing steps. The Arbitration Act 1996 of Great Britain has featured module for the development of an Arbitration Act that can manage successfully the Arbitration practice. The development of the Arbitration Act 1996 was developing and ever-changing; the development of the Act is summarized in table 1. Shown below:

Table 1: Developments in Arbitration Acts- Britain

No.	Arbitration Act- Issue Year	Description	Remarks
• Statutes were gradually regulating Arbitration and the Arbitrators role and authorities. • The courts were supporting to develop the Arbitration Law			
1	1698	The English Parliament and courts were involved in the inputs of the first arbitration act, 1698, it considered the parties might agree to make their submission agreement a rule of court, and the party who withdrew should be subject to be in prison.	The parties continued revoking the authority of the arbitrator before an award was made
2	1850	The award may be sent back to the Arbitrator for remedies and to issue the first correct award	The Arbitrator duty to issue a valid award
3	1854	The Common Law Procedure Act of 1854 provided; any agreement of submission to arbitration by consent could be made a rule of court, unless the parties expressly agreed to the contrary[2].	
4	1889	The Arbitration Act concluded the effectiveness of the agreements. Disputes may be voluntarily referred to arbitration.	The disputes are existing events or future disputes.
5	1934	Law Reform- some miscellaneous provisions- Act empowered courts	No mention to allow Arbitrator to award interest on the payment of late debts

[2] Lorenzen, Ernest G., "Commercial Arbitration -- International and Interstate Aspects" (1934). Faculty Scholarship Series. Paper 4588.http://digitalcommons.law.yale.edu/fss_papers/4588

6	1950	Arbitration Acts 1934 and 1889 were consolidated into the Act 1950	Courts to stay actions in case of applicable Arbitration agreement is in place – the court can appoint the Arbitrator
7	1956	The Act enacted the New York convention on recognition and enforcement of the foreign arbitral award	
8	1979	Organizing power of court to review an Arbitration award	Determine question of law related to the Arbitration
9	1996	A different Act[3] "write it yourself" Act, it is currently used in Britain	It was passed to replace the existing 3 Acts. 1950-75-79

The Arbitration mechanism in Great Britain is a common practice as an alternative dispute resolution approach and the chartered instate of arbitration is considered one of the most accredited arbitration bodies in the world with its significant prestigious membership and fellowship that provided to the arbitration experts through rigorous accreditation route.

4. Institutional Construction arbitration mechanism

Almost all Reputable Arbitration organizations follow pre-defined procedure and each institution has some featured mechanisms, in this paper the mechanism applied in the American Association of Arbitration (AAA) will be discussed in the following.

The parties shall utilize the Rules of the "AAA" as a part of their arbitration agreement whenever they have provided for arbitration of a construction dispute pursuant to the "AAA" [4]. The large complex disputes procedure applies all cases in which the disclosed claim or counterclaim of any party is not less than $1,000,000, net without considering any claimed interest, attorneys' and/or Arbitration fees. The agreement between the parties shall identify the authorities and duties of the AAA. The claimant shall, within the contractual specified period, file with the AAA a demand for arbitration along with the filing fees, a copy of the arbitration agreement between the parties, and a statement demonstrating the nature of the claim and its amount, concurrently, the claimant shall provide the respondent party with a copy of the demand. The respondent may file an answering statement and or a counter claim with the AAA within 14 days from the demand, along with the counterclaim filing fees, with a copy to the claimant and all Arbitration parties. It is worthy considered by the "AAA" that if the arbitrator considers the contract is invalid shall not render the arbitration clause to be void. In some circumstances, the arbitrator may decree a

[3] Valentine, D., (2006), Arbitration: Law, Practice and procedure, Part 2, Chartered Institute of Arbitrators, 2nd Ed.
[4] AAA. Alternative Dispute Resolution (ADR) for Construction Contracts, www.adr.org/construction, July 1, 2015

preliminary matter as a partial/emergency decision which will be integrated as part of the final award. In the AAA procedure, the parties have to appoint an arbitrator or they have to provide any method of appointment, in case of failure to appoint the arbitrators; the AAA shall send to the parties a list of 10 names of individuals from the National Construction Panel to select an arbitrator. In a three-arbitrator case, the disputing parties have to agree first on the professional backgrounds of the composition of the panel. Should the parties does not set an agreed decision, then the AAA will consider the preferences stated by the parties to determine the professional composition of the panel. The appointed arbitrators, if authorized shall appoint the chairperson within a specified time; otherwise, it is to be appointed by the AAA. One arbitrator is the default to hear the dispute, the "AAA" my direct to appoint three arbitrators; any of the disputing parties may request three arbitrators in the demand or answer. In order to avoid disqualifying the arbitrators, all parties are obligated to disclose as soon as practicable any information, whether past or present that may affect the impartiality or independence of the arbitrators. Exchange of information during the arbitration proceedings shall be considered at the discretion of the arbitrator/s, 7 days prior to the hearing; the parties shall exchange copies of all documents they are going to demonstrate at the hearing, where only persons have direct concern in the arbitration is allowed to attend the hearings, the arbitrator is authorized to identify who to attend the hearing other than a party and its representative. The arbitration procedure is conducted when the claimant presents the evidence and the respondent provides his answer and the challenging evidence to support its defense, the arbitrator's requests and questions will be responded by the witnesses for each party. Each party has the right to be heard and to demonstrate its case in a fair and equal opportunity, including different ways for demonstration such as video conference, voice calls/ conference, with equal opportunity for all parties, while in some circumstances the parties may agree to waive oral hearings. The arbitrator then proceeds with inspection and investigation, whether on site or offsite, the site visit should be attended by the arbitrator/s and the parties as well, except in the case the arbitration is carried in the absence of a party. The arbitration award shall be given by the arbitrator/s with the majority of the panel, in the form and manner required by law, no later than 30 days from the date of closing the hearing or final statement date in the case when the oral hearings have been waived. The award should include a brief written commercial breakdown of any the monetary awards and a line item nature for every non-commercial claim or counterclaim. Eventually, the award is delivered to the parties who shall accept as notice and delivery of the award, through the mail addressed to the parties or their representatives, personal or electronic or any manner permitted by law. The institutional procedure is usually considered more costly because of the administrative fees added to the arbitrator's cost, this is right from the direct cost point of view but when we consider the cost risk associated with improbable award or challenged arbitrators or proceedings, I would recommend exploiting the experience available in the arbitration institutions and centers.

5. Construction Arbitration in Standard forms of Contracts

Standard form of contracts set out the Arbitration clause as the alternative dispute resolution mechanism; this paper will review and discuss the construction Arbitration in the new Engineering and Construction Contract NEC3ECC 2005[5].

5.1 Arbitration in NEC3ECC

The organizers/coordinators of NEC3 contracts, the Institution of Civil Engineers "ICE", have been one of the leaders of evolvement of dispute resolution mechanisms. In 1983 the ICE announced its own arbitration procedure and it presented the conciliation mechanism to be included in standard form of conditions of contract in 1988. The first version of NEC was published in 1991 and it adopted the approach to prioritize the adjudication as the principal mechanism to be used in the construction contracts for disputes resolution.

However, although NEC has developed its adjudication proceedings NEC3 adopted the way of development of structured mechanisms for dispute resolution including clauses for continuous negotiations for all disputes of the contract implementation, conciliation, expert determination, dispute resolution boards, adjudication, and ending with arbitration or litigation, it is to be noted that NEC3 does not provide for mediation. The Engineering and Construction Contract "NEC3"is considered to have anti-dispute nature and this makes its reputation, in addition, the NEC3 set of contracts discourage litigation, this interprets the narrow amount of pertinent case law.

5.1.1 Prior Arbitration in NEC3ECC

Clause W1.1, referral to adjudication requires that a contractual dispute arising 'under or in connection with' the contract shall be referred to and decided by the adjudicator. Under clause W.1.3(9) work will be progressing as there is no any dispute and under clause W.1.4(1) requires the parties not to refer the dispute to a tribunal such as arbitration or litigation unless they complete the adjudication procedure, so from the two mentioned clauses the dispute should be referred to adjudication in order to be considered an existing dispute.

There is no a conventional arbitration clause in NEC3 whether in Options W1 or option W2. The two options referred to a note indicating "review by the tribunal" for some assembled provisions which means, as identified in Options W1 and option W2, settlement of the dispute by the tribunal. The tribunal meaning in NEC3 is probable to indicate for either arbitration or litigation, in case the contract data fixed the identification of the tribunal, the data prevails but if the contract data fails to state anything, litigation will apply. Consequently NEC3 contract data must identify the tribunal as arbitration procedure should the parties choose to apply arbitration rather than litigation after adjudication. The arbitration tribunal will not review the adjudication

[5] Eggleston, B. (2006) The NEC 3 Engineering and Construction Contract, A Commentary, Second Edition. Blackwell Science Ltd, 9600 Garsington Road, Oxford OX4 2DQ, UK

proceedings or the adjudicator decision and in arbitration proceedings, the claimant retains the burden of proof.

5.1.2 Arbitration clauses in NEC3ECC

Clauses W1.4(1) and W2.4(1) – referral to the tribunal, these clauses, indicates that a contract party should not refer any dispute under or in conjunction with the contract to the tribunal before the dispute has been decided by the adjudicator as a condition precedent to tribunal proceedings as per the contract provisions. The clauses can be interpreted with the following notes:

- There is existing adjudicator's decision;
- The clauses do not resolve situations when there are no decisions.
- The 'dispute' is referred to the tribunal, not the adjudicator's decision.

Clauses W1.4 (4) and W2.4 (3), powers of the tribunal, these clauses, provides the following:

- the tribunal settles the disputes referred to it;
- the tribunal has the power to review the actions taken by the project manager connected to the dispute, it also has the power to reconsider any decision of the adjudicator which might have been taken prior the tribunal proceedings.
- A party may present to the tribunal additional information, evidence, and arguments rather than those were put to the adjudicator.

5.1.3 Arbitration proceedings in NEC3ECC

Clauses W1.4(5) and W2.4(4) – are for arbitration proceedings, it provides the application where the contract data includes that the tribunal is to be arbitration and complete information is stated in the data for the arbitration procedure, the place of arbitration and the technique of selecting the arbitrator/s. Hence the information required to proceed with arbitration can be extracted from those information as stated in the contract data.

Time barring clause, clause W1.4 (3) which appears in option W1 demonstrate the period allowed for the adjudication to be completed and it indicates the following:

- In case of late decision, should the adjudicator does not report the decision within the stipulated time in the contract either party may notify the other party to the dispute that it intends to refer the dispute to the tribunal (arbitration) as per the contract data.

- The party's notification should be within four weeks of the date by which the adjudicator should have issued his decision i.e. the time bar is 4 weeks.

The same apply for another time bare clause, clause W1.4 (2) which stipulates also four weeks time bar if the given decision is not satisfying the parties and the decision is disputed. Conditional precedent of the adjudication to take place prior referring the dispute to tribunal/arbitration in addition to the 4 weeks' time bar constitutes a high probability and high impact risk that if occurs may waive the right of the claimant to complete the dispute resolution through the arbitration proceedings. Prudent parties should be aware of the dispute resolution

procedure and it is highly recommended to seek legal advice when dealing with the NEC3 dispute resolution events.

6. Arbitration advantages and disadvantages

Although arbitration is known as a more flexible and effective alternative dispute resolution mechanism "ADR" mechanism than litigation, some shortfalls in the arbitration may add risks to the procedure and can be concluded as disadvantages, although it includes many advantages in general, the advantages and disadvantages are summarized in the following points:

6.1 Arbitration advantages

6.1.1 Time and cost

The arbitrator's fees and the institutional administrative fees can be of high amount compared to the litigation direct cost, in the meantime, if we consider the benefits of confidentiality and the cost of the disclosing the dispute in the business market it will tend towards the effective cost of arbitration. Arbitration is usually considered fast process if we compare it to litigation, in some cases, it was recorded that without proper control on the time, arbitration duration may become long and takes more time like litigation, special in the case of a successful challenge of the final award.

6.1.2 Evidence

Simple and flexible rules for disclosure are used in the arbitration proceedings. It starts by the claimant to disclose supporting documents to the submitted claim and the defendant is required to provide his replay on the submitted documents by the claimant. This simple process provides also a less costly disclosure process. The confrontational inherent with the arbitration is less that in litigation which supports to keep the relationship and business relationships between the parties.

6.1.3 Neutrality

Litigation procedure is not favored in the international commercial relationships as the parties are reluctant to submit its disputes and cases to the national courts in the foreign countries because of the uncertainty of the unfairness. The mitigation and remedy to the uncertainty are the neutrality provided through the arbitration mechanism. The granted neutrality in arbitration procedure gained the parties confidence and they prioritize the arbitration as a dispute resolution mechanism in the domain of organizations contracting for business internationally.

6.1.4 Confidentiality

Confidentiality is a prime concern and of high importance within the international commercial contracts, the publicity associated with the litigation can cause damages to both disputing parties. It prioritized to resolve the business dispute in a confidential procedure which is granted in the arbitration proceedings, particularly in the public projects that impact large number of stakeholders. Confidentiality must be agreed upon in the arbitration agreement to and explicitly specifies the limited discovery and level of confidentiality.

6.1.5 **Flexibility**

The parties to the arbitration establish and consensually agree for the all process, places, discovery, rules, time, and etc. in order to facilitate the whole proceedings in a flexible manner which is not available in the litigation. The flexibility also allows the parties to choose the arbitrators with desired expertise, language, and any institutional rules.

6.1.6 **Finality and Enforcement of the award**

The arbitration award may be challenged in some few circumstances as discussed in article 3.1.4; generally, it is often considered final and binding where the parties should put into effect promptly as it is enforceable. The challenge of the award may cause additional time and cost, so it is recommended to achieve consistent and organized proceedings and award to avoid and justified challenge as it is risk event with significant risk score in case of improper proceedings have been adopted.

6.2 **Arbitration disadvantages**

Although different advantages are apparent in the arbitration, some weak points are featured in the mechanism, including the following points:

i. Limited right of appeal although the arbitrator may undertake a default of fact or law.
ii. Limited right of discovery unless otherwise, the parties agree for discovery and or the arbitrator tolerates for discovery.
iii. Cost and time are not often controlled and may expand.
iv. Risk in competency of the arbitrator may cause extended cost and time
v. The arbitration agreement should be signed otherwise it will not be valid.
vi. Some arbitrators are eager to apply compromise to evaluation i.e. split the baby
vii. Based on the disputing parties' agreement, the tribunal may make the award in conjunction with values of equity and justice, not on the rules of law or provided evidences.

7. Conclusion

The alternative dispute resolution mechanisms are frequently used in lieu of the litigation procedure for different disputes or different causes, including time, cost effectiveness and confidentiality concerns. The arbitration mechanism as a prime approach in the series of ADR methods was reviewed and analyzed in this paper. The arbitration proceedings in different acts were discussed to demonstrate the arbitration components, particulars, and types. The institutional arbitration was discussed through the American Arbitration Association "AAA" procedure. The arbitration in the slandered form of contracts was discussed in conjunction with the NEC3, 2005. In addition, the paper demonstrated the risk event associated with the arbitration proceedings in case of incomplete planning and control for the integrated mechanism, including the arbitrator competency, arbitration duration, written agreement, and Etc. Finally, a brief list of the advantages and disadvantages of the arbitration mechanism was provided to

highlight the main concerns driving choosing arbitration as an alternative dispute resolution mechanism.

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