International Contracts and Global Developments

Sayed Reza Naghavi[1*], D. Ahmad Asadi[2], D. Meysam Eslami[3]
1* IslMic Azad University, Tehran, Iran, vankover@yahoo.com
2 IslMic Azad University, Tehran, Iran, ahmadasadi110@yahoo.com
3 IslMic Azad University, Tehran, Iran, meysameslami73@yahoo.com

ABSTRACT

in This article, international conventions and global developments were investigated. Of course, the first problem that is going to happen is how laws and regulations govern these relationships. The terms of the trader's party or the contractor in terms of economic risk and the ability to perform the contract, as well as the scope of the implementation of the contract, according to the internal rules of the other party after the rule of law, is important, the manner of formulation and content of the contract is important, so that each contract from the crossroad The element of suggestion and acceptance is obtained. Proposing and accepting two basic and fundamental pillars for each contract. Therefore, the legal effects arising from the types of international contracts and the incentive for foreign investment in this area are very important given the removal of obstacles to the conclusion of international contracts for the provision of services and their implementation. Considering the adoption of the barriers and problems mentioned in the national laws and the impact of sanctions originating from other countries and risks in the field of international trade, a new issue is raised which the impact of the provision of services based on domestic law, contractual risks and pressures from international sanctions Concluding and executing international services? Or, in the absence of the appropriate context, with what tools and facilities could the incentive to contract be made on the external side, and, finally, the sale of services and the development and flourishing of the country's economic and productive cycles by attracting foreign capital and presenting the world's modern technology?

Keywords: international contracts. Procedures for the conclusion of a contract, the implementation of the contract, the effects of international sanctions and barriers to the implementation of international agreements

Received 15/04/2018
Approved 10/06/2018

Revista Publicando, 5 No 15. (2). 2018, 352-372. ISSN 1390-9304

1. INTRODUCTION

Currently, one of the most important issues in international trade is the regulation and conclusion of international commercial contracts, and more importantly, how these contracts are implemented, whether in the international sale or purchase of goods, especially services, which billions of dollars of goods and services are annually transferring Between countries, through the conclusion of international contracts for the exchange of services. In the present study, international agreements and global developments are examined. Contrary to domestic trading, it was not easy to trust or trade in international trade. Moreover, the world of business is a world of interconnected with speed and ease. A businessman cannot confine himself to the difficulty of civil rights. Business transactions are bored and fit to accurately document and possibly register them in the official bodies and determine all the terms and conditions of the transaction. It was not a matter of aligning unified rules to support international agreements. Particularly in international trading in the purchase and sale of goods and services, there were serious problems. To solve such a problem, governments have made themselves obligated to observe the same laws, but international trading is firm, and on the other hand, it creates a fair order in the world of commerce. On this basis, the need for such rules is felt more in international circulation, until finally, Unidroit was formed to provide the necessary preconditions for designing a unified law for this purpose. This was assigned to the committees. The first draft of the Committee was prepared in early 1934 and was presented to the community of nations in order to study the views of member states. Therefore, considering the above-mentioned explanations, in the first stage, we try to understand the international agreements and, finally, the obstacles and problems that govern the implementation of the contracts, and then, considering the adoption of the barriers and problems mentioned in the national laws and the impact of the sanctions arising from other countries and existing risks In the international trade area, is a new issue that has the effect of providing services on the basis of internal law, contractual risks and pressures from international sanctions on the conclusion and implementation of international agreements? Or, in the absence of suitable means, with what tools and facilities could the incentive to contract be made on the external side and, consequently, the sale of services and the development and flourishing of the country's economic and productive cycles by attracting foreign capital and presenting the modern technology of

Received 15/04/2018
Approved 10/06/2018

Revista Publicando, 5 No 15. (2). 2018, 352-372. ISSN 1390-9304

the world? Here, we try to investigate these issues. Considering the above issues and examining the governing law, which is one of the important pillars for setting up international commercial contracts for the purchase and sale of goods and services, we look at how international conventions are set up and enforced. And after examining how international contracts are made, it is time to look at barriers and international business services.

2. STATEMENT OF THE PROBLEMS

International contracts are of great importance. Because in case of insufficient accuracy in the subject matter and terms of the contract, it causes the occurrence of irreparable losses, and this vagueness and disregard for the constraints, terms of the contract and the non-transparent and non-formal writing of the text of the contract, suspend the execution of the contract and file a lawsuit against The parties to the contract. Therefore, the effect of the obligations arising from international agreements will not be the result of the obligation of the parties to enforce the provisions of the contract. Due to the principle of the will, the implementation of international agreements is left to the parties themselves and limited to their will and the law governing the contract that is the choice of the parties, and if there is a problem in the implementation of the contract, this problem depends on the will of both parties. In this description, the implementation of international agreements should be governed by the law chosen by the parties to the contract. However, the dependence of an international agreement on the legal system of two or more different countries may pose problems for the implementation of the contract.

3. INTERNATIONAL CONTRACT

The contract is equivalent to the English Contract and French Contract, and is agreed upon by two or more parties regarding what constitutes a legal interest. Such a contract can, of course, deal with the identification, creation, modification, resettlement, or transfer of the right. In Iranian law and contracts, they are often synonymous and have both a single concept. Nevertheless, a contract that gives rise to a commitment is a so-called contract, and essentially is a contract. Given that the continuation of this discussion does not directly relate to the subject of this paper, and this brief is also a general identification and determination of its legal status, it has been equally sufficient. Contracts are in the general sense of a particular contract, and they are explicitly referred to in Iranian Civil Code in Articles 10 and 975. International contracts are equivalent to French

Received 15/04/2018
Approved 10/06/2018

Revista Publicando, 5 No 15. (2). 2018, 352-372. ISSN 1390-9304

International Contract and Le Contract International and are relevant to transactions and contracts that are essentially governed by and governed by civil law rules and regulations. Therefore, its international character should not create doubts as to its inclusion in the rules and regulations of civil rights. In other words, both the contract and the title of "international agreement" in terms of their adherence to civil rights and their inclusion in current laws and regulations in the law, the separation of the meaning is that the parties to the contract, have different nationalities or place of performance The contract deals with the subject of the international agreement and has the meaning of an international agreement. This type of contract, despite its international characterization, does not typically link to the sovereignty of states. As a result, it will not dependent to the rules of international public law. Consequently, in spite of the existence of an external element and its international character, the contracts will continue to be subject to civil law (internal). In other words, in the case of an "international agreement", it is related to obligations relating to the transfer of goods or the purchase and sale of persons " Real or legal "or governmental organizations in two different countries, therefore, they are not subject to international public law because they are subject to the civil law of a particular country and do not relate to the sovereignty of the states. For example, a contract for the purchase of goods between an internal company and a foreign company or a contract for the purchase of equipment and supplies from a foreign country, as well as a contract for the use of the services of a private company of a foreign country in another one, which are all among the international conventions. The "International Court of Justice", also in the claim of the Iran-British Petroleum Corporation, dated July 22, 1952, regarding the April 1933 contract between Iran and the Iranian and British oil companies, awarded it a concession agreement between a government (Iran) and a company A private foreign entity (the Iranian and British oil companies), and, insofar as possible, in its general rules of international law, in its general vote, dismissed the United Kingdom's claim that it should be regarded as an international treaty and, consequently, its ruling It was issued by Iran. Therefore, a contract in civil law (civil rights) is not fundamentally and basically different in terms of the nature and quality, as well as the legal effects of an international agreement, and can be read entirely in a legal order and "international" is considered to be in terms of a foreign element such as nationalities Different parties or place of

Received 15/04/2018
Approved 10/06/2018

Revista Publicando, 5 No 15. (2). 2018, 352-372. ISSN 1390-9304

performance, or the subject of a contract that relates to another country, and does not relate to the sovereignty of States, which is the main subject of international law.

4. THE STRUCTURE OF INTERNATIONAL SERVICE CONTRACTS

each contract and business transaction is performed between the two parties and the two buyers and sellers. The smooth running of any current international transaction also requires the conclusion of independent contracts between individuals, which must also be related to each other. Therefore, it can be said that the most important contracts in this field are sales contracts, insurance and transportation.

What is the contract of sale of goods and services?

In a contract for goods or services, matters such as the parties' agreement regarding the transaction, the main terms of the transaction, the subject of the transaction, and the price shall be specified must also specify the rights and duties of the parties. The sales of contract are possible in two ways. Written and oral form, for example, a buyer who offers a buyer a certain amount of goods to the shopkeeper, and the person who sells the goods and say the price to the buyer. The buyer pays the price and receives his own goods. But the international deal has a lot of differences and complexities with internal transactions. An international sales contract, in addition to the items mentioned in the domestic transactions, complies with the general conditions for conducting transactions.

Place of Contract (PLACE OF FULFILMENT) is usually the same place.

The date of the implementation of the(DATA IF FULFILMENT) contract is usually the starting point for the goods to be transported.

Evidence of transaction (EVIDENCE OF FULFILMENT) Usually a signed bill of lading.

EVIDENCE OF COMPLIANCE is usually the same business checklist or inventory. The procedure for resolving disputes, law was determined by the parties in the event of a dispute based on the terms of the contract or, if not specified by the agreement. The specifications and characteristics of the goods, the technical specifications and the quality of the goods must be included in the contract completely. requirements of delivery are determined on the basis of the commercial law, type of goods or agreement between the parties. The conditions for major force events must be specified in the contract. requirements and conditions of payment for transactions must be specified in the contract. the way of obtaining and the type of warranties involved, if necessary, be examined, if

Received 15/04/2018
Approved 10/06/2018

Revista Publicando, 5 No 15. (2). 2018, 352-372. ISSN 1390-9304

required by the terms of the contract. How to perform quantitative and qualitative inspections of goods is also a condition of completing the contract.

Contract of insurance

The insurance contract specifies how insurance cover against the risks is, depending on the requirements of the contract. In commercial transactions, documents are generally used as follows:

Commercial invoice

A commercial checklist is in fact a document issued by the seller of the goods in the name of the buyer and sent along with other documents to the buyer. This document indicates an agreement between the buyer and the seller beside to the particular transaction. Also, this document contains information such as: the name and address of the seller, the origin and intention of the sale, the name and address of the buyer, the type of goods and its specifications, the terms of delivery of the goods for sale, the unit price of the sales, the type and number of packaging of the goods for sale.

Commercial invoice includes:

CERTIFIED invoice: This checklist is invoice approved by a competent authority such as the commercial chamber and it should be noted that if the value of the goods is approved, it is called the CERTIFICATE OF VALUE.

CONSULAR Invoice: There are invoices that must be approved by the consular authorities and allowed to enter the country.

PROFORMA INVOICE: invoice which is issued by the seller before the transaction is made. All product specifications are also included.

CERTIFICATE OF ORGINAL: This certificate is also a document issued by the seller in the country of the manufacturer of the goods and approved by the Chamber of Commerce.

INSPECTION CERTIFICATE: This certificate is issued by the inspectorates and buyers with a view to preventing the loss of the goods' demand, which is one of the important documents in the international trading of these institutions.

PACKING LIST: with regard to packaging goods, packaging is also required because the specifications of the goods and the number of packages are mentioned for facilitation the work of the customs.

Received 15/04/2018
Approved 10/06/2018

Revista Publicando, 5 No 15. (2). 2018, 352-372. ISSN 1390-9304

BILL OF LADING: The most important document is international agreements, and this document includes contract that the forwarding agent carries out after receiving the goods, which is the origin of the place and destination of the carriage.

The most important feature of the bill of lading is that it can be transmitted and considered as a document of ownership, and if this feature is not available, is called the bill of lading or WAYBILL.

The bill of lading also contains the following information:

1- Name and addresses of the sender and recipient of the goods.

2-bill of lading number

3- Transportation operator name, shipping details and flight number.

4- Specifications and package numbers.

5-the name of the origin of the goods and the destination of delivery of the goods.

6- Description of the situation and the dimensions of the goods and ...

5. CONTRACT OF CARRIAG

This agreement is a contract that specifies how the goods are transported. Also, in cases where the seller is liable for the carriage, he will be contracted by the seller, in accordance with the terms of the contract of trading, with the transport operator, and the seller delivers the goods to the buyer at a specified destination. Carrying out a contract depends on the conditions of the purchase, and the requirements of the purchase also specify that the carriage is the responsibility of the buyer or seller, in other words, which of the parties to the transaction must conclude a contract of carriage.

The contract of carriage includes:

The subject of the contract is the carriage of goods by specifying the goods

Specifications of the parties to the contract

Obligations of operator of cariage

Determine Shipping Plan

Obligations of the owner of the goods

How to pay the contract?

Determine transportation plan including the relevant timetable and shipping route

Guarantee of Contract Execution and Warranty Required

Kind of insurance and its amount

Other conditions include force majeure and conflict resolution

Received 15/04/2018
Approved 10/06/2018

Revista Publicando, 5 No 15. (2). 2018, 352-372. ISSN 1390-9304

Duration of the contract

Finally, it can be said that international business transactions that are made up of many rules must be carefully observed so that individuals can easily engage in international activities on the international scene. The exact loading of the bill of lading is of immense importance, so obtaining the lease from the relevant consulates is also important in the conduct of international trading transactions.

The essential conditions for the regulation of international service contracts. In the implementation of international contracts, especially in the area of service sales at the time of the contract, there should be clauses requiring and obliging the foreign party to execute the contract in order to achieve the objectives.

Specifications of the contract parties

The contract always has two parties. Determining the precise specifications of the parties in the contract is legal. In this regard, the following are required in international contracts.

A: The name and address and legal specifications of the Iranian party.

B. Full name and exact details of the representative of the Iranian party.

(Including, the number and date and name of the issuer authorized representative for signing the contract).

C) Name and full details of the foreign party contract based on legal documents.

An external party contract must provide proof of the legality of its position approved by the competent authorities in its country of origin and also certified by the Consulate or the Iranian Embassy in the area.

D) the name and specification of the representative of the signatory and full name of the institution of the foreign party, the contract and the name of the issuer, and the date of the official letter of the representative to be signed.

E) Other specifications of the contract based on the subject as required.

Subject of contract

The exact subject of the contract, the type, quantity, quantitative and qualitative characteristics of the goods and, if necessary, the services after the contract must be clarified in the contract. If the subject of the contract is providing services, the type and location of the service must be clearly identified.

Duration of contract

Received 15/04/2018
Approved 10/06/2018

Revista Publicando, 5 No 15. (2). 2018, 352-372. ISSN 1390-9304

In the text of the contract, the date of resumption and termination of the specified contract and the contractor of the contract subject to the scheduled timetable of the steps to complete the work attached to the contract. Also, according to the type of contract, possible changes in the contract period and its conditions are to be predicted.

Carriage of goods procedure

How to package the goods should be determined by considering the sensitivity, quality and specifications of the goods and in accordance with the method of delivery. In addition to complying with international standards and regulations in the type of packaging, the contracting parties' particular points of view should be reflected in the contract text. It is advisable to insert on each package the name and specifications of the organization or the buyer according to the accepted form.

carriage declaration

foreign party of the contract must, at the expected time, declare the goods ready for shipment and loading, as soon as the goods are loaded details of the shipment, such as the name. The vehicle, the date of movement and other necessary specifications to the other party. The type of transmission should be specified in the contract. Several types of transmissions are required if they are discretionary.

6. CARRIAGE DOCUMENT

It is necessary to specify and mention in the text of the contract the documents of the carriage. In contracts where the price of goods transported through credit is paid. Carriage documents include: The signed bill in three copies has been certified by the Chamber of Commerce and the certificate must also be approved by the consulate or the embassy of the Islamic Republic of Iran in that country. An unconditional plan (type of bill of lading, earthly, marine or aerial) The receipts from carriage establishments and warehouse receipt should not be accepted as a bill of lading. The certificate of origin, with the name of the country of origin of the goods in three copies, if it is not possible according to the regulations of some countries of the contracting party to issue a certificate of origin, should replace the certificate of origin with the negotiation of the parties to the transaction, another document indicating the place of manufacture of the goods. Package form (including weight, dimensions, and contents of each package and, if necessary, other specifications) in three versions. Certificate of quality and quantity of goods approved by the selected inspection authority in three copies. If, in addition to the above mentioned

Received 15/04/2018
Approved 10/06/2018

documents, other documents such as health certificate, quarantine, agriculture, factory certificate, shipping inventory, etc. are required by the Iranian party. The document is part of the carriage and if the certificate of some documents by the consulate or the embassy of the Islamic Republic of Iran in the foreign country is an agreement required by the Iranian side, it shall be included in the contract text and the form of the opening of the documentary credit.

7. VEHICLE FOR CARRYING GOODS

Carriage of goods by land, sea and air, or a combination of them, is chosen depending on the type of goods and its sensitivity and durability. In this regard, the following is adhered to and the following is recommended.

(A) Carriage of goods will take place once a day, or several times, and if multiple shipments are carried out, the number of times must be determined.

B) (Transshipment) A change in the way of transportation without the prior permission of the Iranian party is not permitted.

(C) Air and sea cargo transportation shall be carried out by airline or shipping company of the Islamic Republic of Iran or with its stewardship.

Clearance

The method of clearance must be specified in the contract text. In contracts for the purchase of goods, clearance will be contracted by the Iranian party. Temporary admission of sellers and contractors to vendors and contractors will be the responsibility of the vendors and contractors for the relevant warranties. In the case of temporary admission, customs regulations of the country must also be observed.

Warranties

Warranty payment

while in the contract provides the advance payment to the foreign party to be contracted, a guarantee must be obtained at least on the same amount from the foreign contractor.

The prepayment warranties must have the following requirements:

(A) The amount of the guarantee shall not exceed 25% of the value of the contract unless approved by the highest authority of the relevant executive body and approved by the Central Bank of Iran.

B) A guarantee is issued by a bank or credit institution approved by the Central Bank of Iran.

Received 15/04/2018
Approved 10/06/2018

Revista Publicando, 5 No 15. (2). 2018, 352-372. ISSN 1390-9304

(C) The duration of the warranty and, at the request of the Iranian party, the contract may be renewed. If the bank does not or cannot renew the warranty for any reason. Is obligated to pay the guarantee amount to the Iranian party. E) In the guarantee, mention should be made that the renewal and cancellation of the warranty on the written request is contracted through the telex or wireless telegraph of the Iranian party.

And (ii) the amount of the guarantee will be reduced by providing the documents and the written instructions of the Iranian party, or the certificate of performance will be reduced. BANK OF EXPORTERS OF GUARANTEE AT THE END OF TIME The guarantee will be executed in accordance with the written instructions of the Iranian party. The contract will be made to the Iranian party to pay the balance of the guarantee to Iran.

E) to refuse acceptance of the warranties issued as a letter of credit.

(H) In the text of the guarantee, the date, number and subject of the contract, as well as the number and date of the relevant credit document.

The warranty should be based on the currency of the subject.

The executive agencies are required to renew the warranty, record, or cancel the warranty on request, before the maturity date. If the above request is not received, the Iranian Banking Broker is required to renew a warranty period at the expense of Iran, and notify Iran of its terms.

8. GOODNESS OF WORK GUARANTEE

In order to guarantee the satisfaction of fulfillment of the obligations of the foreign party and to provide for the losses caused by the violation, in order to guarantee the quality and quantity of the goods being traded during the contract, according to the type of goods or work required, the guarantee of good conduct of the work an external party will receive a contract. The date and manner of the release of this warranty must be indicated in the contract. The executing agencies, having regard to the type and quality of the goods, and the work and amount of the contract, determine the amount of the guarantee, which is the percentage of the total amount of the contract, to be specified in the contract.

Warranty of work goodness must have the following conditions:

A. In determining the amount of observance of the relevant provisions in the State Treaties of Governmental Organizations, it is mandatory.

B) The guarantee is issued by the bank or credit institution approved by the Iranian banking system.

Received 15/04/2018
Approved 10/06/2018

C) the guarantee is absolutely unconditional and in accordance with the accepted terms of the Iranian banking system.

D) The warranty period is longer and can be renewed at the request of the Iranian party. If the bank does not, or cannot renew the warranty, for any reason, it pledges to pay the guarantee to Iran. E) In the guarantee, should be mention that the renewal, recording or cancellation of the warranty shall be made at the written request by the Iranian parties through telex or telegraph, or by the Iranian bank.

And (b) the amount of the guarantee will be reduced by providing the documents and the written instructions of the contractor or the work certificate. The guarantee issuing bank at the end of the maturity, in line with the written instructions of the Iranian side, will make a contract to pay the balance of the guarantee.

(E) Refrain from accepting letters of guarantee issued as a letter of credit.

H) In the text of the guarantee, the date, number and subject of the contract, as well as the number and date of the relevant credit documents.

The guarantee amount must be the currency of the subject of the contract. Execution systems are required to apply for renewal, recording, or cancellation of the warranty before the due date. If the above request is not received, the Iranian Bank is required to renew a warranty period at the expense of the Iranian side and notify the Iranian authorities.

9. EFFECT OF INTERNATIONAL CONTRACTS IN ORDER TO ACHIEVE LEGAL UNITY IN INTERNATIONAL TRANSACTIONS

We have also been admitted to the sample contracts in our legal system, although these contracts are capable of being implemented in Iran in a manner that is not contrary to good morals and does not disrupt Iran's public order otherwise, they will not be able to be implemented in Iran. It should be noted that the sample contract should not be considered an extension contract because the parties can mutually agree on the terms of the contract, but in an extension contract, the contracting party must either accept the contract in the form presented or, in general, avoid accepting it. These types of contracts are mostly used for monopoly and consumer goods, and the seller's terms are imposed on the buyer. However, if the country wants to benefit from new and advanced industries and new goods and services for its development, it will require that international trade agreements be facilitated and used in accordance with international rules set out in this

Received 15/04/2018
Approved 10/06/2018

Revista Publicando, 5 No 15. (2). 2018, 352-372. ISSN 1390-9304

regard. The shortest route in this regard is the use of sample contracts. This does not mean, however, that it should be attaching to the conventions and treaties, but that adherence to these should be the focus of its work. This leads to the Iranian state showing its commitment to international regulations and the wall of distrust Destroy the country. However, if the country wants to benefit from new and advanced industries and new goods and services for its development, it will require that international trade agreements be facilitated and used in accordance with international rules set out in this regard. The shortest route in this regard is the use of sample contracts. This does not mean, however, that it should be attaching to the conventions and treaties, but that adherence to these should be the focus of its work. This leads to the Iranian state showing its commitment to international regulations and by distrust, Destroy the country. The tribunal cannot enforce the rules of the law in the event of violation of international law or private contracts which is contrary to good morals: Article 975 of the Criminal law, or through bruising of the public's feelings or for any other reason contrary to public order. " This is basically allowed. About the historical background of investment contracts in Iran It is important to note that investment contracts were initially in the form of concessions, including the contract between the Iranian government and Baron Julius Reuter (UK government) Which was signed in 1298 AH. Also, a Darcy contract or license, signed in 1280, in which an oil franchise for a period of 60 years was awarded to a person named William Darcy, are examples of investment contracts, in fact, the above contracts can be classified as Initial steps and practical action on foreign investment in the country. Foreign investments that are admitted under the provisions of the Law on the Promotion and Protection of Foreign Investments of 1381 and enjoy the facilities and protections of this law which are acceptable in two ways:

1 - Foreign direct investment in areas where private sector activity is permitted.

2. Foreign investments in all sectors within the framework of civil, non-reciprocal and construction, operation, and disposal methods, in which the return of capital and the resulting benefits derives solely from the economic performance of the investment plan and depends on the government or bank guarantee or government companies.

Received 15/04/2018
Approved 10/06/2018

Revista Publicando, 5 No 15. (2). 2018, 352-372. ISSN 1390-9304

10. THE EFFECTS OF SANCTIONS ON THE IMPLEMENTATION OF INTERNATIONAL CONTRACTS

(Major Impact on International Trade Contracts). In the remainder of this discussion, we will discuss the effects of the sanctions in the three parts before the conclusion of the contract, the stage of tenders, at the time of the conclusion of the contract, and its effect on the contracting parties and on the implementation of the contract: the effects of Sanctions before the ratification of the contract (time of holding tender). Although the subject of this article is the effect of sanctions on the implementation of international commercial contracts, it is a brief indication of the effect of sanctions before concluding contracts and determining the timing of tenders.

The effects of the sanctions are summarized as follows:

1. The number of tenderers decreases
2. Prices increase.
3. The transparent and competitive space of the tenders will be eliminated.
4. After submitting the request from the party and before the announcement of the tender and acceptance of the claim, if a sanction occurs and the party fails to claim, due to the non-compliance with the claim, compensation is forfeited.
5. Impact on prepayment amounts and guarantees received by the party.
6. If the sanction is a major, in accordance with Article 24 of the Law on Tenders 2004, the Tender will be renewed or canceled.

Effect of sanctions on contracting parties

The effects of the sanctions can be examined in two respects: 1. On the basis of the contracts, 2 - On the implementation of the contracts

Under Article 190 of the Civil Code, the following conditions are essential for the accuracy of any transaction:

1. The intention of the parties and their satisfaction
2. competence of parties
3. Specific subject to be traded
4. Legitimacy of the transaction
5- Review the intention of the parties to the transaction

It is easy to define contractual terms that, in order to create a legal effect, the parties must declare their will, and these two wills are in agreement, so that each one wants something

Received 15/04/2018
Approved 10/06/2018

Revista Publicando, 5 No 15. (2). 2018, 352-372. ISSN 1390-9304

that the other wants. On the other hand, it is the intention of the executor to be healthy and informed by discretion.

To complete each contract, four preconditions are required:

1. Intent
2. Declaration and expression of will
3. Agree two wills
4. security of will

Now, one of the above mentioned may be missing in the conclusion of the contract and the marriage will not be concluded properly. Considering the above, it is possible to consider different assumptions that the sanctions might effect on the parties' intention to conclude the contract. The parties to the transaction collusion with each other to change the title of the deal in order not to be sanctioned. Thus, the two parties may thus conceal the true covenant in concealment of duplicity, and pretend to adhere to another convention; on this assumption, there are two different contracts: one that is in fact demanded and hidden, another is an agreement that is covered by a pact, and the two parties pretend to coexist it. Therefore, one might imagine that the parties would change the title of the contract from buying and selling as a non-sanction to circumvent the sanctions. The US Treasury Department and the Export Control Institute, however, do not leave room for it and cover all contracts under any heading. Now, even if we can make such an assumption, it is still at the expense of the Iranian side. An intermediary contract, in which both parties or one of them interfere with a third party to conceal the truth: as if someone appeared in the name of himself and in secret for a bargain for another and on behalf of him. The labor bill is a clear example of it in business law: the agent trades in his own name, but covertly, it is for another. In an agreement, the question is whether the intermediary should be obliged to enter into a contract or a real party? In such cases, the mediator is a party of contract, and should not face the unwanted person by secretly trading. For example, the American company concludes a contract with a Dubai-based company, unaware that (End User) is an Iranian company. Therefore, the Dubai-based company acts as an intermediary and has circumvented some sort of sanctions, and if it is discovered, although the transaction has been properly executed, it can be voided. Of course, this does not turn out to be in the interest of the Iranian side, because it announces an intermediary contract, which deals with the principal's representation.

Received 15/04/2018
Approved 10/06/2018

Revista Publicando, 5 No 15. (2). 2018, 352-372. ISSN 1390-9304

While the Dubai-based company never mentioned such a thing in the example above, the intention of the American side was, in fact, not to deal with the Iranian side, because if it had already been announced to it, it would never conclude such a contract. You must consider the party who contracts with us and has the right of competence and then to execute the contract. For example, an American company, based on the law of the place of registration, generally has the right to conclude a contract, but the sanctions prohibit the conclusion of any contract by American companies with financial and credit institutions. Therefore, the sanctions here affect the American company's right to conclude and enforce the contract, or does it restrict the freedom and liberty to conclude a contract? Therefore, if it affects an affiliation, lack of competence will cause the transaction to be ineffective, and it does not seem to exist in order to enforce the contract, such as the possibility of referring to agencies such as the Ministry of Foreign Affairs and licensing. It does not seem, therefore, that sanctions can lead to a lack of commitment on the part of the contractor.

- Investigation of the parties' competence:

Since our contracts are concluded between legal parties and if the person who is involved in the contract is in the position of the agency, etc., then, first, the legal personality of the person and, in fact, the beginning of the existence of the legal person should be examined, then it is examined that This legal personality has the authority to conclude and enforce a contract, and subsequently examine the effect that sanctions can have on a person's legal competence.

11. INCEPTION OF EXISTING LEGAL PARTY

Regardless of legal theories, it can be said that the beginning of the existence of the legal personality of public law, including government, government agencies and municipalities, is the time of their formation. These persons, as soon as they are created and without registration, have a legal personality (Article 87), but the beginning of the existence of legal persons of private law is completely different. Business and commercial firms will become legal entities as soon as they are formed, but their character will be complete when they are registered. (The material of 584, 583, 582, 586, etc.), and it can be said that the legislator set up a Criminal Penalty for the registration of companies and placed their managers, that is, the companies created must be registered and the managers responsible for the failure Registration of these legal entities.

Received 15/04/2018
Approved 10/06/2018

Revista Publicando, 5 No 15. (2). 2018, 352-372. ISSN 1390-9304

Competence of legal entity

In the case of real entity, competence means the ability and suitability of a person to possess and exercise the right. This definition also applies to a legal person. There is no doubt that a legal person should have the right to possess and enjoy the right, because a person without competence is an entity that cannot be a party to the right and duty, therefore, the person's ability to possess and Exercise of the right. whether the legal party with whom we contracted have the right to conclude a contract and then to execute the contract or not? For example, an American company, based on the law of the registration place, generally has the right to conclude a contract, but the sanctions prohibit the conclusion of any contract by American companies with financial and credit institutions. Therefore, the sanctions here affect the American company's right to conclude and enforce the contract, or does it restrict the freedom to conclude a contract? Therefore, if it affects competence, lack of competence will cause the transaction to be ineffective, and it does not seem to exist in order to enforce the contract, such as the possibility of referring to agencies such as the Ministry of Foreign Affairs and licensing. It does not seem, therefore, that sanctions can lead to a lack of commitment on the part of the contractor.

Item of transaction

Under Article 214 of the Civil Code, the transaction must be the property or action that each of the parties enters into, the obligation to surrender or to perform it. Also, in accordance with Article 215 of the same law, "the transaction must be existing, and it must have a legitimate rational advantage."

Therefore, the property of the transaction must have these requirements:

1. Predictable
2. Legitimate
3. Have a rational advantage for the creditor.

The effect of sanction on the subject is that it may prohibit the transfer of certain assets, such as: materials used in nuclear programs or binary use, the transfer of which is prohibited, or the transport of equipment The basis of the sanctions is illegitimate or unpractical, such as obtaining export licenses for the transport of binary-use application. For example, paragraph 8 of United Nations Security Council Resolution 1929 against Iran imposes a kind of smart trade sanctions on Iran. Under this section of the statement, direct and indirect sales of any war tanks, martial arts machines, heavy caliber systems,

Received 15/04/2018
Approved 10/06/2018

Revista Publicando, 5 No 15. (2). 2018, 352-372. ISSN 1390-9304

warplanes, offensive helicopters, ships, missiles, or missile systems that are registered in the United Nations (non-nuclear weapons) They are forbidden to Iran. This type of sanction also impedes the entry of equipment related to the above-mentioned weapons, such as spare parts and items designated by the Security Council or the follow-up committee of resolution 1737 (2006).

12. DIRECTION OF TRANSACTION

According to Article 217 of the Civil Code, "it is not necessary in the transaction to be specified, but if specified, it must be legitimate. Otherwise the deal is invalid. " The illegitimate motivation will make the contract invalid if it is either shared between the two parties or both are aware of it. If it turns out that the illegitimate condition is decisive, it must be invalid. Therefore, the effect of the sanction on trading direction is making agreement which is legitimate to be illegitimate. Such as the fact that the purpose of the contract is one of the items became illegitimate with sanctions. Such as the actual purpose and motivation of concluding a contract, helping Iran's nuclear program or facilitating such programs. For example, paragraph 21 of resolution 1929 of all countries seeks to prevent the provision of financial services, including insurance or extension thereof, transferring through their territory to Iran, provided information and services, assets and resources can be used in Extending Iran's sensitive nuclear activities and developing a nuclear-weapon delivery and launch nuclear weapons system. This prohibition may also be imposed by blocking funds and other assets in the territory of those countries or resources that will enter their territory in the future, or blocking sources that are under their jurisdiction or in the future. Also, paragraph 7 of this resolution states: "Iran should not have any interest in trading with other countries involved in the extraction of uranium, the production and use of nuclear materials and technology, in particular uranium enrichment and reprocessing activities, and all heavy water activities or related technologies. With ballistic missiles capable of transporting and launching nuclear weapons. In addition, according to the decision of the Council, all countries in their judicial area should have such investments with Iran, Iranian citizens and institutions established in Iran, or under its sovereignty, with the individuals and entities on their behalf and They operate under their guidance or the institutions that possess and control them. " Therefore, as the text of the resolution states, commercial sanctions against Iran have been designed and limit trade only in areas related to nuclear activities. The

Received 15/04/2018
Approved 10/06/2018

examples above outline what actually affected of the contract and made it illegitimate. Of course, it should be noted that the exemption sanction that is force majeure, and in principle the effect of the force majeure is implemented and does not affect the point of conciliation, ie the effect of force majeure on fulfillment of obligations, and the topic of intent is abandoned. Unless, according to Article 240 of the Civil Code, it has been discovered that at the time of the conclusion of the contract, the intention of the violations was defective, in which case of the discovery and the effect of its repudiation would be raised. So what's said is effective at the implementation stage. The effect of the sanctions on the implementation of the agreement is that the sanction is a major force component and is considered in the absence of it.

In the assumption of force majeure item

Sanctions in the assumption of force majeure can affect the implementation of the contract and cause the suspension or termination of the contract.

13. CANCELLATION OF OBLIGATIONS AND CONTRACTS

if leads to force majeure and impossibility of permanent execution of the contract, it will lead to the cancellation of the contract and the cessation of the commitment. In this case, the Force Majeure will cause its commitment and its exemption from liability, and the obligated party cannot claim damages due to failure to execute the contract. In cases where the Force Majeure event has come to an end, the time has come to fulfill the obligation and the obligee has demanded its implementation. This rule is setting out in French law in accordance with paragraph 2 of Article 1138 and Article 1302 of the Civil Code. However, in Iran's law, it appears that the demand is not conditional on this and, once the time has come for the commitment, the guarantor is obliged to fulfill the obligation and, unless it does so, and it is impossible to execute the obligation due to what is not predictable and not avoidable, unless it is time-determined The fulfillment of the obligation is at the discretion of the obligated party, in which case demand will be required. In the case that the impossibility of implementation is minor, and only includes some of the obligations arising from the contract. In this case, the committed victim will be minor, and his responsibilities will remain in relation to the obligations that may be fulfilled. Of course, in this case, it needs to be clarified whether the commitments that are still in place have sufficient benefits for the engagement and whether the parties' will have been partial in maintaining the contract or not? In the event that the obligations are not

Received 15/04/2018
Approved 10/06/2018

sufficient for the obligee, or if the parties decide, the contract is an integral part, the contract is generally dissolved and all obligations arising from it, will be fallen. If what is predictable and avoidable are one of the reasons for not fulfilling the obligation and the damage, not only its main cause, and the obligation commit one of the causes of damage. In other words, when the force majeure has a minor involvement in the damage and part of the cause, the amount of compensation will be reduced.

14. SUSPENSION OF THE CONTRACT

If the occurrence of an event that makes it impossible to carry out the obligation is temporary, the Force Majeure will suspend the contract and after the removal of the obstacle, the contract will be revived. Provided that its implementation maintains its usefulness and is in accordance with the will of the parties. determination the fact that after the expiration of the suspension period, the contract is in order to maintain its usefulness and its implementation is compatible with the will of the parties, and if the court determines that the nature of the contract has been completely changed and its implementation contrary to the will of the parties at the time of the contract, the ruling will be dissolved. This is usually the case with contracts that have been suspended by the war, and the court must see whether it has benefited from the contract after the war or not? In any event, if the contract is suspended due to force majeure, the sponsor will not be liable for damages resulting from non-execution or delay in the execution during suspension, as the Iran-United States court of arbitration, in its judgment No. 2-49-24 dated August 1, 1362 Has specified. In general, one of the major impact works is indemnity and non-liability, and if the contract is not executed or delayed due to force majeure, the obligee cannot demand compensation for that purpose.

15. CONCLUSION

This article reviews international conventions and global developments. Since some of the risks can be anticipated when international agreements are being negotiated, the government or Iranian businessmen will be in favor of encouraging and willingness of the foreign party to engage in international risk management. Risk management has several stages, including risk identification, assessment, monitoring and control. Therefore, the first step in contract management is identifying them and anticipating their control strategies and guaranteeing their implementation. Therefore, a business that wants to reduce its risks and prevent potential losses in international transactions should try to

Received 15/04/2018
Approved 10/06/2018

follow a series of red lines as follows. Without sufficient knowledge of the foreign party, he will not make any payments. In order to document your business, that is, firstly, do not conduct any deal without setting the contract, so that there is at least a form of contract in the performance of the agreement. Therefore, in contracts that need training individuals, the contract must explicitly state how much the foreign party has obligations for implementation.

16. RESOURCES

Amon and Wanlton, Introduction to French law, 3ed, London, Oxford University press, 1976

Maxwell, & edition, sweet Benjamin's sole of Goods board of editors, 5th London

Maxwell, 1991 & London: Sweet, The Law of Contract, G.H. Treitel.

Kim Richard Nossal, international Sanctions as International (Punishment, International Organization Vo.43, No. 2 (spring, 1989)

Smith, J.C. Smith and Thomas, A Case Book on Contract, 8th. ed. London. Maxwell, 1978, p & Sweet.

Joseph Constantine Steamship Line Let. V. Imperial Smelting Corporation Ltd. 1942, A.C.

Received 15/04/2018
Approved 10/06/2018