

## Principles and Legal Conditions of Confidentiality of Arbitration in International Trade

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### ABSTRACT

Arbiter advantages against governmental justice cause to traders reference to arbiter in themselves pleas at international level . The main question relate to arbiter secrecy based on international trade and commercial arbiter resources. What are delinquency sanction and domain? Comparative study of legal systems show that, they don't have same viewpoint commitment to mentioned existence resources. Really, commitment confirming in lack of clear agreement between contract parties faced with many important problems. In some countries law, this principal or commitment was denied. In current research, we tried to confirm this commitment as a contract implied and implicit condition and determine sanction violation . Also we can say , attendance to plaintiffs is open in justice courts and private and exceptional attendance need to affirmation .

### KEYWORDS

Secrecy , Privacy , Arbiter , Internal law , International trade

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### Introduction

Nowadays, referencing to arbiter for solving differences at the result of commercial a trade contracts are increased in internal law and international trade. Arbiter is one of difference and problem solving base pattern. Arbiter must be has mansuetude and capability. This case has been done with single arbiter or arbiter board in special and institution frame. Arbiters in courts must be cooperated and necessity cause that they do hierarchical works in some cases. Arbiter must be do with dependency and fair and he/she may be adapt, depose or resignation and these cause to creating changes in arbiter court. Arbiter has

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civil liability in internal law, but international institutions do disposition from arbiter. The aim of current research is describing arbiter legal position in different stages and interest to necessary acknowledgment to trader in arbiter selection and also arbiter rules recognition about international peers.

We must be explore arbiter root in governmental justice vacuum. So, arbiter is an only way to problem solving wit facility understanding. In spite of governmental justice referencing providing and go to there for problem solving with common way ; arbiter continue own life and problem parties act towards solve struggles through low expenditure and high speed according to interference selective persons . Mentioned towards and respecting necessity cause to codify valuable proceeding systems and arbiter regulation with more or less accuracy. In Iran international and internal regulations, the nature of mentioned arbiter is clear with certain verdicts and criteria. Civil proceeding 454 article regulation relate to this subject: All of persons with capability in claims can satisfy each other's in struggle and they reference problem avoiding to it expressing or non-expressing at courts or investigation stage to one or some arbiters. Arbiter in mentioned article named contractual arbiter and it is commitment law and rights implementation ( non- contractual legal relation) and contracts don't contain anything and they implement alternatively for justice courts( Justice reference arbiter). (Tome, 1987:7)

### **Arbiter concept investigation:**

#### ***Vocabulary concept***

Arbiter means fair giving, judge, share verdict and everyone who interfere and verdict between people. In Persian dictionary, arbiter means umpire and it includes interference between two or some persons in order to problem investigation and finishing outside court under certain conditions. In Amid Persian dictionary, arbiter means governor, judge verdict and a person who verdict among good and bad subjects or a persons who select for struggle interrupting.

#### ***Legal concept***

Arbiter or umpire relate to enemy and problem solving by persons and claim parties agree with it by wish and volition instead of investigation struggles in valid courts and justice references . Difference and problem solving implement by honest persons.

Dr. Ahmad Matin Daftari ( deceased) regarded arbiter as persons private rights and they submitted to other persons private verdict avoiding to formal reference interfere in problems interrupting and these persons are dependable in esteem , deliverance and technical knowledge and information .

Some of lawmakers believe that arbiter is enemy difference point between one or some persons with separated method and it do by judges and presented definition is summary of previous definition.

#### ***Jurisprudence concept***

Arbiter word has two synonyms in jurisprudence: one of them relate to consolidation and the other relate to consolidator. Consolidation is selecting struggle parties, persons for vote issuing and investigation in certain cases and

consolidator refer to judge. Giving authority to arbiter named consolidation prince in term. Sheikh Toosi (deceased) defined arbiter in this case: "Arbiter is an informal judge that it has been done by consolidator and with the aim of struggle and enemy interrupting. Consolidation judge is a person who consent for arbiter in certain claims and struggles behalf parties in order to accept associational himself viewpoint in difference point and they obligate himself verdict implementation.

### ***Arbiter secrecy concept***

In recent years; arbiter secrecy subject presented in Universities and it pay attention to by international trade arbiter commission (April, 2002) and Asia-Africa legal and law consulting organization . Some of arbiter institution rules relate to regulations about special secrecy cases . In France , England and most of countries with common law ; arbiter secrecy was recognized partially or completely . In France ; arbiter secrecy relate to arbiters consulting for decision making and it don't transmit to secrecy subject. Some of famous lawgivers believe that ; arbiter is secret . (Fouchard , Gaillard , Goldman , 1996 , No 1132) In another countries such as U.S.A , Sweden and Australia ; there is doubt in arbiter secrecy subject . ( Delvove , 1996 .p 375)

### ***International arbiter concept***

There is not unique international arbiter concept in different legal systems ; for example some of arbiter systems have international form when at least one of problem parties was resident outside country such as Swiss. Some of systems named arbiter in international case , when one of parties was resident outside country and in foreign country or trade place of parties is outside or foreign country is place of important part of commitment implementation , such as Australia .

In France , arbiter has international form ; when it supervise international trade subjects and tools ( 1504 article of new civil law regulation ) and it's aim relate to every operations that contain good transaction , services or payment beyond frontiers and relate to two countries economy at least and refer international trade interests and it's claim was at the result of international claims and struggles and also arbiter is an international case .

### ***Arbiter secrecy and privacy conditions***

If we accept secrecy , we will pay attention to it's secrecy effect and secrecy condition present in main contract . This question present that , is mentioned condition transfer to arbiter contract? If answer be positive ; is secrecy commitment effect on arbiter contracts flow in next stages? Are arbiter and institutions regard and respect parties interest specially in secrets maintain?

If arbiter secrecy accept ; is understand arbiter secrecy principle from main commitment? For obtaining this result ; the next question relate to contracts that they have main role in creating and flowing arbiter such as arbiter with specially meaning ( reference condition to arbiter or arbiter agreement) between parties , consolidation arbiter contracts such as arbiter between arbiters and parties or organized arbiter contracts between arbiter institute and parties .

It is clear that ; maintaining secrecy commitment don't created at the result of private nature , but it allows to describing prevention from third persons presence in arbiter holding place . Investigation sessions are held in private place and entrance isn't free for public. This reality don't use for third persons entering to investigation sessions in the case of information and documents secrecy maintaining , investigation session and meeting declaration and issued advice .

Anything hasn't secrecy nature in problem investigation . Job secrets aren't secret nature and they don't create suddenly without reason . secrets maintain have legal origin and they transfer with persons secrets legal commitment . There is commitment in France crime and punishment law similar with Islamic Republic of Iran law . According to 648 article in Islamic retribution law : physicians , surgeons , obstetricians , apothecaries and another related jobs must be maintain secrets . If they disclosure people secrets ; condemn to three months and one day imprisonment or 1500000 Rls to 6000000 Rls pecuniary penalty . This commitment has retribution sanction only for persons who have information because of job , position and mission .

Existence of legal commitment , maintaining of secrecy commitment hasn't another origin expect of contract origin . There isn't obstacle to parties agreement for secrecy information and documents in order to presenting them to arbiter justice . Courts that denied distant secrecy principle , present reasoning based on maintaining secrecy legal commitment and they don't created with implicit form of arbiter contract or it'd dependency .( Australia Supreme court , 1996 )

### ***Investigation of arbiter secrecy commitment violation***

It is said that , arbiter secrecy is one of features of trade encouraging in international level and it solve proceedings problems . According to law field , proving every commitment needs to law and legal resource and present this question from legal viewpoint : How we can impose commitment to arbiter administrators based on legal pattern? In this part , we try to study arbiter secrecy commitment position in international trade arbiter sources .

### ***International trade arbiter sources***

Arbiter is contractual proceeding method . In the other words , arbiter is the basis of volition commanding and contracts freedom principles . Struggle parties accept problems and differences solving by arbiter . So , it is evident that , they can conditioned strictly contracts and struggle parties must be abide own testament and prevent related information disclosure . The main subject relate to secrecy strict condition . Another arbiter administrators such as arbiter and judge must be respect to mentioned condition and maintain arbiter in secrecy form . This condition can anticipate in arbiter contract or another selective arbiter regulation by parties strictly . In many cases , we observed that arbiter secrecy condition don't anticipate in arbiter contract or selective regulation strictly and this subject is difficult . In this pattern , how we can prove commitment ? Can arbiter secrecy prove in arbiter condition as an implicit condition? Accepting of struggles and claims solving need to implicit condition which at the basis of it , parties , arbiter centers allow secrecy case and they prevent disclosure of every related documents and information . More than 3

decades , this subject and question presented between law experts in international level , but there is not certain response for it in many legal systems . In order to clarify this subject , we first study some of organizational or case arbiter regulations in international level , arbiter regulations and then we investigate issued judge verdicts in some of governmental courts and justice . At last , we will investigate related doctrines theory for arbiter . Before studying in current research , we can say international conventions were silent about arbiter secrecy principle anticipation and they didn't expect ant text in mentioned case .

### ***International trade arbiter doctrine theory***

Studying international trade arbiter law and legal expert viewpoints show that , it didn't present main discussion about arbiter secrecy principle to 1990. So , by denying this principle behalf some of governmental and public references ; law experts and international trade arbiter activators criticize verdicts and presented extensive subjects about principle and it's exceptions . In fact , unanimity doctrines confirmed implicit commitment existence . In France , England , U.S.A and Swiss doctrines arbiter secrecy implicit commitment was clear and groups , expert centers studies about arbiter in international level show that secrecy is one of main features for trade arbiter and traders select arbiter for struggles and claims solving based on this feature . In this case . we can refer to London commercial and trade school statistical study at 1992 or affairs of experts by supervising of Professor . Fuschar and pressed articles in international trade magazine in special No. ( Bull , CCI SUPP , 2009 )

Therefore , international trade arbiter law doctrines confirmed implicit condition based on arbiter secrecy . it is evident that , mentioned commitment can not absolute and it disregard in some cases such as existence of opposed explicit condition by parties or creating a legal commitment according to information disclosure which we can say information disclosure about companies claims that , they accepted in exchange . The main question present that , if we accept secrecy in basic form of arbiter features with existence of implicit commitment ; what is basis of this commitment ? For replying to mentioned question , England judges expressed different theories in own viewpoints . In *Hassnch Insurance Company v. case* ; England judge said that arbiter secrecy condition is based on trade efficiency . According to this theory , arbiter agreement needs secrecy implicit condition that it imposed trade efficiency and tradition . But in *Ali Sllipping Corporation v. case* ; another judge said that ; we concluded arbiter secrecy implicit condition based on a legal commitment . In fact , this law imposed mentioned implicit condition . Discussion is about implicit legal commitment that it receive in arbiter contracts . In *Dolling-Baker v. case* ; judge said that ; arbiter privacy aspect cause to imposing secrecy implicit condition . In the other words , according to mentioned theory ; secrecy is an implicit commitment that it created from arbiter private nature . Arbiter private aspect cause to maintaining secrecy in arbiter and related information and documents . Between mentioned theories ; recent theory has more defend and accepting . Trade tradition and efficiency theory accepting cause to creating objection about case judge and are parties attend to tradition or not? Replying is doubtful according to denied judge viewpoint . Also legal implicit commitment theory is weak and it has some disadvantages .

At first trade arbiter can not follow any law ; and how we can say ; there is legal implicit commitment . Secondly ,judge investigation denied legal commitment in some countries . But secrecy theory is as one of arbiter private principles is defensible . Comparative studying of arbiter law in many of countries show accepting approximately legal systems (Also in Australia) and this case refer to arbiter private aspect . Therefore , when struggle parties select problem and difference solving method for arbiter ; really they want to investigated to problems with secrecy and privacy form and parties implicit volition implied mentioned commitment . It is clear that , explicit agreement can express implicit opposition wanting and this case was accepted for one party of struggle , government or public organizations and presented feature will be omit . According to these conditions, arbiter secrecy abort. When a person force to information and documents disclosure based on command rules ; parties implicit or explicit volition in private contracts can't vary with legal imposition . (Hwang& Chuning :2009 . p.43) Committed person according to legal viewpoint has responsibility about related information of arbiter. At last , we can conclude that arbiter secrecy can create at the result of arbiter private aspect and at the basis of this subject ; parties by accepting arbiter as a claim solving problem committed implicitly to respect related information and documents. Also parties implicit agreement or legal imposition can pull over implicit volition and it be a justification for arbiter information disclosure . In the other words , arbiter secrecy implicit commitment isn't absolute and it has some exceptions , Now we must be determine commitment domain after implicit commitment proving for arbiter secrecy aspect maintaining .

### **Studying secrecy and privacy basis**

#### ***Arbiter secrecy and privacy conditions***

If privacy accept , it's effect pay attention to secrecy , an if secrecy condition present in main contract ; this question investigate that ; is transmit mentioned condition to arbiter contract? If response be positive ; do effect secrecy maintaining commitment on contracts which flowing arbiter? Should arbiters and arbiter institutions respect to parties volition about secrets maintaining?

Planning this question and viewpoint difference about arbiter privacy and secrecy and themselves relationship cause to investigate arbiter privacy in first discussion , privacy effect on secrecy in second discussion , privacy in third discussion , privacy exceptions and secrecy in fourth discussion and secrecy commitment violation sanction in the last discussion.

#### ***Privacy effect on secrecy***

maintaining secrecy commitment don't created at the result of private nature , but it allows to describing prevention from third persons presence in arbiter holding place . Investigation sessions are held in private place and entrance isn't free for public. This reality don't use for third persons entering to investigation sessions in the case of information and documents secrecy maintaining , investigation session and meeting declaration and issued advice.

Existence of legal commitment , maintaining of secrecy commitment hasn't another origin expect of contract origin . There isn't obstacle to parties agreement for secrecy information and documents in order to presenting them to arbiter justice . Courts that denied distant secrecy principle , present reasoning

based on maintaining secrecy legal commitment and they don't created with implicit form of arbiter contract or it'd dependency .( Australia Supreme court , 1996 )

### ***Arbiter secrecy basis***

According to written subjects , arbiter has judge contractual nature . Consuler non-proclaim in judge nature view is general pattern that , there is in different trials . Arbiter isn't exceptional from mentioned pattern and consulting is non-proclaim in arbiter decision making . Before investigation finishing in arbiter , parties equality principle and defend right prevent one of arbiters view disclosure about arbiter subject . This case sanction refer to arbiter adapt or himself / herself view and advice nullifying . After investigation terminate , respect to arbiter dependency refer to disclosure one of arbiters position against another arbiters in presented problem solving .

In this case , arbiter view disclosure sanction , secret disclosure arbiter responsibility against arbiter whom his/her view was disclosure. Therefore non-proclaim of consuler for decision making in trials show necessity nature and it don't transmit to trial and it's non-proclaiming . These limitations don't prevent arbiter disclosure in another cases , specially by another persons who they don't have difference and problem.

So , reason of some secrecy retribution and functions accepted in formalized and codified law and they relate to arbiter judge nature . In mentioned position , arbiter secrecy maintaining relate to arbiters and it anticipate usually in judge proceedings regulation by covering arbiters function .

Consulting secrecy principle in arbiter , cause to arbiter court members don't disclosure another arbiters ideas such as arbiter court summing view to issuing view time for parties. Maintaining secrecy commitment of arbiters is originated from parties equality principle , themselves defend right and arbiter dependency .

### ***Arbiter secrecy exception***

Having secrecy commitment in arbiter isn't absolute an future exception imposed on commitment that it has root in parties agreement for some cases and another cases relate to law and judge order . Except of public discipline and order , parties could arbiter secrecy agreement . It is possible that non-proclaim agreement or arbiter disclosure present in next stages . Maybe parties need to arbiter view presenting to insurance institution . In some cases , when condemn party needs to arbiter implementation ; he / she force to reference public forum that cause to view disclosure . Then annihilate order and commands rules requirement specially in secrets disclosure , arbiter contracts secrecy commitment or arbiter organized contract . This verdict is true about public discipline and order arouse arbiter trial and arbiter revision or documenting right about view against third party .

In some cases , justice requirement regarding in court describe current documents disclosure necessity in arbiter pattern. For example , it is possible , we reference to expert or arbiter in judge investigation and expert presented vary view against previous arbiter case and also new report submit arbiter court or judge . In mentioned position , public discipline and private interests

according to arbiter case documents disclosure requirement needs to vary views adaptation for damages evaluation. It has been happened repeatedly judge or arbiter case parties are persons who presence in arbiter court before and they document to first case in second pattern . When arbiter secrecy principle is accepted , in spite of it issue arbiter case documenting presenting by regarding situations .

### ***Reasons of trade and commercial arbiter secrecy theory***

Proclaiming theory has been attended recent years for trade arbiter secrecy in commercial and corporation circles of some countries . It was patterned as an implicit condition in difference and problem referencing to arbiter . (Clause 1 ) Along this subject , many statutes and trade arbiter organizations rules , anticipated descriptive pattern secrecy. (Clause 2 ) International arbiter judge survey (Clause 3) and different countries internal laws (Clause 4) regard importance of arbiter secrecy and arbiter secrecy rule sanction (Clause 5 ) is the last par of current research before final conclusion .

### ***Secrecy as an implicit condition for problem referencing to arbiter***

London revision court declare in 1990 report that ; arbiter real nature cause to implicit imposition behalf parties and parties must be prevent every information applying and diffusion in arbiter investigation except allowable court order or parties agreement . Stockholm court declare in 10 September 1998 :” Sweden arbiter law or judge hasn’t verdict about arbiter secrecy , but court conclude that , secrecy must be regard as one of basic principles and it accounts as an implicit condition in arbiter contracts. Court documented in arbiter against of justice privacy natural investigation and secrecy possibility is basic concept to selecting parties arbiter . So , secrecy has implementing capability in all of information and we conclude from arbiter investigation that , decided subjects agreed between parties by another issue .

According to Iran legal basis and current traditions in commercial and corporation societies , secrecy is part or function of arbiter contract or testaments refer to part of inside contract , although it don’t express clearly in contract . If parties don’t know tradition ( 365 article of civil law) , mentioned tradition in secrecy can regard non-disclosure implicit condition base in problem and different referencing to arbiter contract.

### ***International arbiter judge survey and arbiter secrecy rule***

International arbiter judge survey is silent by arbiter institutions about themselves secrecy forum . In some cases arbiter secrecy was supported clearly . For example we can refer to arbiter view in October 21 , 1983 about difference between German group and Cameron government in foreign investment that transmitted by German group . Review plea referenced to special committee according to 1965 Washington 52 article convention in order to arbiter transmitting vote and possibility spiritual damages for opposed party .

So . arbiter board focused on secrecy principle validity again . In another case referenced to arbiter according to difference between Indonesia government and Asia Comco company , and company administrators want to press interview or local newspaper in Hong-Kong for extensive describing of arbiter flowing . According to Indonesia requesting , arbiter board force to plaintiff company in

aggravated disagreement in temporary order ( 47 article of Washington convention) and it want to prevent any advertisement against investment in Indonesia . Secrecy nature of Indonesia document was determined with arbiter , but arbiter board accepted secrecy rule . In December 9 , 1983 vote declared that ; plaintiff company transmitted article can not enter actually damage to Indonesia government specially in transmitting of arbiter positions describing in many newspapers and article by official persons .

### ***Internal rights and trade arbiter secrecy rule***

According to 657 civil proceedings rule:” Arbiters don’t follow trial principles for investigation , but they must be regard arbiter contract conditions .” One of principles refer to courts investigation meetings in pro-claiming , except of interfering public disciplines or violate faith moral , and court can order meeting non-proclaiming time holding . ( 136 article , 1318 civil law proceedings ) So , arbiter isn’t function of trials pro-claiming regard.

If arbiter implementing and method didn’t anticipate by regarding function of proceedings proclaiming before contract referencing to arbiter , or it didn’t determine after parties agreement , survey will be administrate arbiter board criteria and every defection will be indispensable . Arbiter board decision about secrecy may be done one of disagreement parties demand or board issue defect directly. This defection is implemented according to disagreement subject and necessity to personal , family , job secrets maintaining and sum of conditions , related directions in case to investigate antagonism action and facility to associational contention resolving .

Therefore , if arbiters prevent claim parties from documents that , they are deleterious for one party or prevent arbiter news transmitting for a time ; this decision will be indispensable .

Some of subjects that may be limit arbiter secrecy relate to third person entering to arbiter . According to 26 article of international trade arbiter law issued 1376 , we can say : “ If third person has dependent right in arbiter subject or one of parties interest in right , he/she can enter arbiter to non- declaring investigation terminate by accepting arbiter regulation agreement and this case relate to entering arbiter and exceptional pattern without happening it behalf non of parties .: Although mentioned text was criticized by some of writers , but some of researchers tried to describe multipurpose arbiter possibility . Interest of this rule cause to weaken arbiter privacy as an antagonism resolving way , when arbiter secrecy was not documented . Then , we can understand that , entered third person function is disagreement . Because it is necessary to third person agreement about arbiter , so every arbiter secrecy or agreement about arbiter vote and view transmitting and alliance presence in mentioned arbiter meetings must be accepted by third person to recognize he/she entering to arbiter .

### ***Arbiter secrecy concept revolution in common law judge procedure***

1- Dolling-Baker , 1991 view :

This case plaintiff was insurer by documenting arbiter condition in insurance contract and disagreement referenced against insurer and reliance insurance company . Reliance insure company refuse insurance contract

presenting by documenting secrecy case , but plaintiff want to justice invite defendants for declaring all of documents related to insurance contract between plaintiffs and they accepted by arbiter board and primitive court , but revision court nullify themselves regards . Revision court reasoning was divided in two parts for arbiter according to presented documents and they include :

Documents that were adjusted only for arbiter ( plea , exchanged bills , arbiter record , witness audition and at last arbiter vote )

Documents that , they had before arbiter and they presented in proceeding as an evident . The first group documents have not privileged only with relation to arbiter and also themselves nature won't regard secrecy because of job or industrial reasons and they are secret . According to court view , in order to recognize one document secrecy , we must be reference arbiter complete privacy and don't document to implicit duty of claim part in instrument proceeding of another case . Revision court verdict has implicit imposition in arbiter nature for every assertive and they didn't right of disclosure or documenting to presented reasons in arbiter for another patterns , exceptional another party consent or it will be allowable through justice , So , secrecy present based on arbiter privacy .

2- Hassneh Insurance v.Mew , 1993 view :

This claim presented by Mew insurance institute against of Hassneh reliance insurance company and it terminate arbiter vote issuing for paying part of insurer damage . Condemn person auctioned against insurance company in justice again by documenting arbiter view that he/she was interest . ( Because arbiter contract was not anticipated .) Reliance insure company was disagree with documents disclosure and presenting . Plaintiff claim that , although arbiter documents are secrecy , but they have not deterrence for mentioned person interests safeguard reasonably . According to Colman judge , an implicit imposition is understood from arbiter and it is secrecy subject. Document privacy that created in arbiter is only disagreement referencing requirement . In previous documents , privacy relate to them legal application for same case and this rule must be regard in arbiter and England law . According to arbiter privacy rule based on implicit imposition , there are some exceptions such as commercial and trade necessities. In mentioned vote , it was accepted validity beyond exception inclusion more than extensive of reasonable necessity in previous vote and view .

3- Insurance Co.v,Lloyd's , 1995 , view :

Mentioned vote was issued in London Supreme court by Colman chairman by disclosure arbiter duress vote . The main subject relate to range of exceptions in privacy rule . Should be document arbiter vote for personal rights maintaining? Is it possible based on claim pattern? Court accepted mentioned assumption recently and declared that arbiter view and vote disclosure isn't acceptable only to another reasons consolidation.

4- Ali Shipping v. Shipyard Trogin , 1997 , view:

London revision court focused on vote in mentioned case according to arbiter privacy rule .In this vote ; 3 main subjects were discussed : Firstly implicit condition nature in arbiter vote reference to privacy , secondly third persons position in arbiter and thirdly necessity exceptions for arbiter vote and

view disclosure . In first case and privacy implicit condition nature of arbiter ; court was refer to The Eastern Saga famous vote , that it was recognized by arbiter nature as a special instrument for differences and disagreements resolving and presence of third persons aren't acceptable in arbiter hearing meetings or cases combining and claims relationship.

Second subject relate to third persons , and Potter judge allowed arbiter vote or documents only for claim parties in same case and persons or companies of convinced group can not document to arbiter vote in another cases .

Third subject is about reasonable necessity as an exception in arbiter secrecy principle and court believe that plaintiff claim has study capability for paying part of damages in arbiter vote against another shareholders and it subject is faced with two obstacles : The first case relate to arbiter board action against justice trials without parties agreement right and because of non-issuing verdict ; plaintiff of case account in third arbiter pattern . Second subject was created for documenting during arbiter flowing and it contains privacy rule and we can not regard it without parties agreement . However , arbiter privacy rule exceptions in England law are unique for arbiter related allowable instruments , information and documents and they were divided by 4 parts : Rule an law order , Public interest , legal imposition against another persons and maintaining legal interests against another persons .

So , in England judge procedure , an independent theory was developed and revolution about arbiter secrecy and apparently another Anglo saxon family members followed separate legal forms . Australia supported from arbiter non-proclaiming subject and U.S.A. law presented documents secrecy in arbiter as a part of Discovery providing rule and it means to defendant coercion to reason disclosure . According to discussing trade and commercial secrecy rule extensively , it is necessary to investigate sanction .

### ***Sanction of non-regarding arbiter secrecy rule***

Generally , we can name 3 sanction for arbiter secrecy rule delinquency , that they will study in next parts :

#### **A: Arbiter agreement nullifying**

Some of justice trials in European countries declared that , every disclosure in obtained decisions and arbiter votes & views and another information during proceeding without disclosure survey and it's span are the most important arbiter rules to violation and they cause to difference and disagreement contract nullity in arbiter . At the basis of mentioned trials , vote according to issued agreement is revocation and null. Criticism of this arbiter nullifying not only present in explicit text with legal reason and lack of sanction , but also it cause to public and common people conclude that arbiter is a dangerous resolving . Because arbiter secrecy rule delinquency may be regard as demand note for aggression and inattention in arbiter agreement . So , arbiter nullifying by documenting to secrecy rule violation not only has negative effects for claim parties , but it will be deleterious in arbiter system during long-term. How we can hold aggression of action without declaring explicitly in law as a legal imposition for arbiter agreement in silence between parties and regard it as an arbiter nullifying reason. Difference of current viewpoint cause to creating

new complaint and claim presenting in justice about arbiter vote validity or non-validity .

#### B. Entered damage compensation

All of lawgivers and trials believe that , the best case for sanction of arbiter secrecy rule violation is presenting entered damage to a party whom damaged in arbiter at the result of secrecy information disclosure. May be parties anticipated damages payment amount in spite of arbiter secrecy violation or they determined conditions in arbiter contract . ( Delinquency condition damage) Also , it is possible to arbiter board determine damage of arbiter disclosure directly and it conceive wrongdoer to compensation and justice clear entered damage of arbiter vote after disclosure at the result of arbiter secrecy rule violation . Damage compensation amount includes material and spiritual cases based on general rules of civil liability .

#### C . Disciplinary or retribution penalties

In some of arbiter internal centers regulation declared that , every related information disclosure depend on arbiter flow an it cause to job responsibility and official duties delinquency and they presented for official trespasses boards to determine disciplinary retributions such as trespass employee discharge , pendency and reproaching . Also experts trespass or another persons according to job cause to available of secrecy information during arbiter period. If arbiter and secrecy disclosure cases relate to country internal or external decisions for persons who have not availability competency by learned and purposely patterns ; these persons will conceive to legal retribution .

### Conclusion

Nowadays secrecy or adversely trade arbiter disclosure in recent years changed to challenge subjects in legal associations and different countries trial. One of arbiter advantages against justice courts investigation is privacy and closed feature . It means that parties opposed with proclaim select disagreement resolving in justice courts and sometimes arbiters select this action . So , there is close relationship between claim parties and arbiter board members .

In this case , hearing meetings and arbiter board investigation is private and usually persons allow to presence that claim parties agreed for mentioned subject . Many researchers believe that trade arbiter imposed non- closure public subject for disagreement parties , arbiters , experts and another persons who arrange in arbiter circuit . They are bound to prevent arbiter news tool , presented documents and issued vote or view transmitting .

There is another theory that deny mentioned imposition and it regard trade arbiter implicitly case as a principle . They believe that claim parties struggle resolving in arbiter must be combine with trials proclaim by regarding traditional rules in proceeding . This subject cause to parties interests and equalities maintaining. Of course in some cases with special reasons for existence sensitive and secret information in arbiter ; parties can agree for secrecy maintaining of partial or complete arbiter circuit and it is necessary to two parties agreement and one party can not present claim and partial or complete secrecy causes from trade arbiter and he/she force another party or third persons to accepting subject .

Also , proceeding proclaiming and it's issued verdict can to cause misuse of some persons about issued verdicts against of defendant , even plaintiff. It is horrific to presence in court and response to judge and magistrate questions about themselves life secrets and most of defend subjects for some persons . Trust and acceptable arbiters presence can say untold subjects and expressing necessity preamble in order to arbiter clarifying specially these subjects don't insert in any place against of courts meetings and they will be occult presented subjects among arbiters because of themselves confidant and honesty . these subjects don't present outside arbiter place . One of subjects and problems that may be limit arbiter secrecy is third person entering to arbiter . and 26 article of international trade arbiter law declared that : “ If third person have dependent right in arbiter subject or one of parties were interest ; he /she can enter arbiter without investigation terminate. The condition of this case relate to accepting agreement and arbiter proceeding and there is not any exception behalf parties . “

Secrecy article cause to presenting question from arbiter and finally we can say third person entering to arbiter needs claim main parties agreement and this agreement requirement is parties consent , presenting all of current information and documents for entered third person difference and disagreement. So , each condition of arbiter secrecy or agreement about arbiter vote and view transmitting and alliance presence in arbiter meetings must be mention and they should be accepted previous by third person to recognize third person entering for arbiter.

Secrecy is one of international trade arbiter features that cause to selecting proceeding survey through claim parties . Basis of mentioned feature relate to parties implicit volition in lack of explicit condition and it is approvable by contractual implicit condition . This commitment not only impose to claim parties ; but also it imposed to another administrators such as arbiter and arbiter centers. Denying this commitment by some of governmental justice administrators and references cause to express arbiter explicitly in some of arbiter rules in different legal systems accompanying with arbiter secrecy implicit condition . Mentioned commitment isn't absolute , but it is possible to annihilate legal justification or part of it by contract parties consent . Lack of regarding mentioned commitment by promised persons without justification can follow retribution and civil sanctions based on cases.

### **Recommendation**

1- We must say common institutions transfer affairs management and implementation to legal persons and it is regarded duties and authorities mention in an agreement by the name of “contract”. Government has common and general power to duty implementation that lawgiver gave it to institution. It is possible that public institutions faced with difference to private persons for applying power . Therefore , mentioned difference and disagreement mus not delay to public affair implementation.

2- Arbiter is one of mechanisms that named disagreement and difference resolving reference in governmental contracts. This institution has important role ; because difference and disagreement resolving and investigation implement with more speed , accuracy and validity against public references. In

53 article , contract general conditions mentioned in this valuable institution and technical supreme council named reference antagonism as righteous word.

3- Arbiter in technical supreme council and mentioned contracts needs to institution place recognizing and we concluded by created institution and it's definition ; there are some limitations in disagreement reference at the result of contract such as 139 principle of constitution and 457 article of civil proceeding law that they cause to close arbiter hand for this circuit . Also , we pointed to arbiter condition during consent for contract general document and arbiter creating survey and we expressed 53 article in mentioned condition.

4- In addition to , it was better contractor had role in disagreement as a party for appointed person determination in technical supreme council. At last we pointed to arbiter declining by recourse civil proceeding law articles . A suggestion that presented in this case ; relate to arbiter declining in contract general conditions to prevent contractor ambiguity and amazing ; because it is possible to face with institution declining after arbiter stages pass and we need to reference public organs to disagreement resolving and it cause reduplicate disagreement resolving prorogation.

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