



*Master's Thesis:*

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# Enforcement of Arbitration Clause

## Part I Introduction

1.1 This paper is about the Enforcement of Arbitration Clause in the course of litigation. Many cases exist that parties disregard arbitration clause in the contract seeking litigation. Such breach of contract raised many legal issues of enforceability of such contractual clauses. Thus, the purpose of this paper is to tell the reader about some aspects of the enforcement and enforceability of the arbitration clause, and the methods of and how the parties may enforce the arbitration clause.

1.2 Arbitration is alternative dispute resolution method conducted by the qualified specialist of the relevant field. The advantages of this method are that it is fast, cost effective, impartial, and arbitral awards enforceable by many states.<sup>1</sup> Parties may rely on enforceability of arbitral awards as one of the guarantees of sufficient and effective contractual dispute resolution methods. In case of non-compliance with the arbitral award by one or several parties against whom the award was made, the state will enforce the award through the state compulsory execution service. The parties may choose an appropriate method for their contract dispute resolution. In such a contract, parties become directly involved in the process of formation of the arbitration tribunal, may appoint the arbiter(s), negotiate and establish procedure of dispute resolution, outline the scope and the condition upon which the parties may/must arbitrate, etc. Contractual clause to arbitrate disputes provides legal ground for the court to compel arbitration upon the party's motion or even the court may declare itself incompetent. Once parties agree to arbitrate, particular or all disputes arising from the contract, then they are estopped from seeking court litigation. Arbitration agreement is respected at any level of litigation, so the parties have the right to revoke their claims and

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<sup>1</sup> **New York Convention** (1958): Convention on the Recognition and Enforcement of Foreign Arbitral Awards has 142 member states. [http://www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/NYConvention\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html) Armenia ratified the Convention on December 29, 1997; convention went into force on March 29, 1998.

submit the dispute to the arbitration at any time during litigation. Therefore, the law provides legal remedies and protects the right of the party wishing arbitration.<sup>2</sup>

1.3 Underlying public policy, in this respect, is to insure extra-judicial resolution of disputes between businesses if the parties so wish on the contractual bases. Such policy is promoted through the national court<sup>3</sup> of different states<sup>4</sup> to encourage arbitration. That is, states recognize the policy in favor of arbitration as an approved, practical, and inexpensive means of settling dispute and easing court congestion to reduce the number of lawsuits. This means that the state insures the parties' freedom of contract, leaves discretion on parties to agree with the appropriate remedies to apply to their contract, and if one party wishes arbitration the court shall refer both parties to arbitrate as quickly as possible.

1.4 Under Armenian Legal Framework, Part II the following concepts will be discussed:

- 2.1. brief description of the legal norms applicable to the enforcement of arbitration agreement/clause;
- 2.2 discuss the case, ["R" Ltd. v. "AHC" CJSC, Civil Case, EC of RA, 2006](#);
- 2.3 step-by-step analyze of the enforcement of arbitration agreement/clause.

Under International Best practice, Part III, we will discuss:

- 3.1 relevant articles/sections of Arbitration Acts of New Zealand, China, France, and deal with US case law practice

[Central Florida Investment, Inc. v. Parkwest Associate, 40 P3d 599 \(UT, Sup. C, January 12, 2000\)](#),

[Sandata Technologies, Inc.v. CareWatch, Inc., 1-3 US DC OF CONNECTICUT, \(2006\)](#),

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<sup>2</sup> 1. **RA Civil Procedural Code, Article 103(3)**: "there is a consensus between the persons participating in the case on the transfer of the case for the consideration of an intermediate court, and the possibility to apply to an intermediary court exists."

2. **New York Convention (1958), Article II(3)**: "The court of a Contracting State, when seized of an action in a manner in respect of which the parties have made an agreement within the meaning of this article at the request of one of the parties, refer the parties to arbitration unless it finds that the said agreement is null and void, inoperative or incapable of being performed."

<sup>3</sup> [Central Florida Investment, Inc. v. Parkwest Associate, 40 P3d 599 \(UT, Sup. C, January 12, 2000\)](#),

["R" Ltd. v. "AHC" CJSC, Civil Case, EC of RA, 2006](#).

<sup>4</sup> U.S.A., China, France, New Zealand, Armenia, etc. More than 140 states adopted their own Arbitration Acts.

*Lloyd v. HOVENSA, LLC, 369 F.3d 263, 273 (3d Cir. 2004)* ;

3.2 deal with evaluation of case law of Armenia and US, judicial approach to the enforcement of arbitration agreement/clause.

Under Conclusion, Part IV: we will summaries the topic and the analyzed concept.

## **Part II Armenian Legal Framework & Implications**

### ***2.1. What is the Law in Armenia with Respect to this Transaction?***

From the 1998 to 2006, the Law on “Arbitration court and arbitration procedures” of RA regulated the arbitration agreement/clause in Armenia. The Law on Commercial Arbitration of RA, ՀՕ-55-Ն (hereinafter the Law on Arbitration, the Law), replaced the Law on “Arbitration court and arbitration procedures” on December 25, 2006. The Law on Arbitration provides basic principles<sup>5</sup> of arbitration in the RA and the guarantees of recognition and enforcement of foreign arbitral awards in the Republic of Armenia. At the same time, this new Law reflects all guarantees<sup>6</sup> that are provided in New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (*10 JUNE 1958*), to which Armenia is a party. Extensive list of the Law’s dispositive rules provides the rights to agree to submit all or particular dispute to the arbitration, establish the arbitration procedures as agreed by the parties, method of the appointment of the arbiter(s), right to challenge the arbiter(s), stipulate the enforcement of foreign arbitration decisions, state the place and the time of the arbitration, etc. The basic principles established by the law relevant to the enforceability of contractual clause are provided in several articles of the Law on Commercial Arbitration of RA, 2006. The relevant articles are:

Article 7(2):

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<sup>5</sup> RA Law No ՅՕ-55-Ն, on Commercial Arbitration, December 25, 2006, Article I.

<sup>6</sup> New York Convention (1958), Article II(1): 1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration

*“Arbitration agreement must be concluded in the written form ....”<sup>7</sup>*

Thus, to make sure that the parties agree to arbitrate, it is necessary that the parties’ arbitration agreement/clause is concluded in writing. The court will take into account the parties’ submission if it finds that there is an agreement and the agreement is made in written form. The written agreement is to be taken into account by the court while deciding the question before it submitted whether submit the parties for arbitration. Therefore, the agreement to arbitrate shall be made in writing.

The Law stipulates that the court shall leave the petition without consideration upon the motion of the party pursuant to the contractual arbitration clause to submit the dispute to arbitration. Such an obligation established in the Article 8(1), which provides:

*“the court, to whom the petition of the dispute was submitted, to which the parties arbitration agreement exists, upon the motion of the party, which was brought not late than before the party’s first announcement regarding the substance of the dispute, court shall leave the dispute without consideration, ....”<sup>8</sup>*

The Law stipulates the right of the person to object to the litigation if the arbitration agreement/clause exists. Nevertheless, the Law allows proceeding in case the party waives his/her rights to object to the litigation. Article 4(2), provide:

*“if the party in arbitration agreement bring an action against another party before the court by petitioning to make final decision regarding the dispute, which the parties agreed to arbitrate, and another party does not object the litigation before the*

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<sup>7</sup> RA Law No 30-55-Ն, on Commercial Arbitration, December 25, 2006, Article 7 (1);(2): Definition of arbitration agreement, form and duration. ՀՀ օրրնք Առևտրաին Արբիտրաժի մասին, Հոդվաժ 7 (1) Արբիտրաժային համաժայնությունը պայմանագրային կամ ոչ պայմանագրային որոշակի հրավահարաբերության կապակցությաժր կողմերի միջև կնքվաժ համաժայնությունն է՝ առկա կամ հնարավոր բոլոր կամ որոշակի վեժերն արբիտրաժի լուժմանը հանժնելու վերաբերյալ: ... (2) Արբիտրաժային համաժայնությունը կնքվում է գրավոր: ... [www.laws.am](http://www.laws.am)

<sup>8</sup> RA Law No 30-55-Ն, on Commercial Arbitration, December 25, 2006, Article 8: Arbitration Agreement and the petition to the court over the substance of the dispute. ՀՀ օրրնք Առևտրաին Արբիտրաժի մասին, Հոդվաժ 8, Դատարանը, որին հայց է ներկայացվաժ այն վեժի վերաբերյալ, որի շուրջ առկա է արբիտրաժային համաժայնություն, պարտավոր է կողմերից մեկի միջնորդության հիման վրա, որը բերվել է ոչ ուշ, քան վեժի էության շուրջ այդ կողմի առաջին հայտարարության ներկայացումը, հայցը թողնել առանց քննության, բացառությաժր, եթե գտնում է, որ այդ համաժայնությունն առ ոչինչ է, ուժը կորցրել է կամ չի կարող կատարվել: [www.laws.am](http://www.laws.am)

*court upon the existing arbitration agreement, then it counted that the parties abandon the right to arbitrate the dispute”<sup>9</sup>*

In the context of the Article 8(1) the agreement will be considered as null and void if one of the parties at the time of conclusion of the agreement is found by the court acting fraudulent to get the agreement or abuse of the agreement. The court may declare the agreement legally not binding in regard of the duration of such an agreement; or the party invokes the arbitration clause while there is no written agreement existing between them; or one of the parties in the contract dose not agree to the proposal to transfer the dispute from litigation to arbitration court jurisdiction. These and many other issues would arise in course of litigation that in this or other ways would affect the enforceability of contractual clause.

Civil Procedural Law of RA governed the matters regarding to the arbitration issues and provided the right to the parties to arbitrate or the court shall order the parties to arbitrate by the agreement of the parties. RA Civil Code, article 18 provides:

*“A property dispute following from civil legal relations and subject to the jurisdiction of the court, before the ruling is made, by agreement of parties can be transferred for the resolution to the arbitrator. ”<sup>10</sup>*

It is mandatory for the court to leave the case without consideration in case one of the parties invokes arbitration clause and motioned before the court to submit the dispute for the arbitration. RA Civil Code, Article 103(3) provided in part,

“The court leaves the action or application without consideration, if:

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<sup>9</sup> **RA Law No 30-55-Ն, on Commercial Arbitration**, December 25, 2006, Article 4(2): The Right of Objection. ՀՀ օրրնք Առևտրաին Արբիտրաժի մասին, Հոդված 4(2) Եթե արբիտրաժիային համաձայնության կողմը հայցային պահանջ է ներկայացնում համաձայնության մյուս կողմի դեմ դատարան՝ հայցելուվ վերջնական որոշման կայացում այն վեճի վերաբերյալ, որի շուրջ առկա է արբիտրաժային համաձայնություն, և եթե մյուս կողմը չի առարկում դատարանում գործի քննությանը՝ արբիտրաժային համաձայնության առկայության հիմքով, ապա համարվում է, որ կողմերը հրաժարվել են վեճը արբիտրաժի միջոցով կարգավորելու իրենց իրավունքից. [www.laws.am](http://www.laws.am)

<sup>10</sup> **RA Civil Procedural Code**, Article 18: Transfer of the dispute to the arbitration resolution. [www.parliament.am](http://www.parliament.am)

3) *there is an agreement between the persons participating in the case on the transfer of the case for the consideration of an arbitration court, and the possibility to apply to an arbitration court is exists.*<sup>11</sup>

Arbitration agreement concluding in one or separate documents creates legal obligations for the parties to act in compliance with the norms established in that clause. R A Civil Code, Article 347 provides in part:

*“Obligations must be performed in a proper manner in accordance with the terms of the obligation and the requirements of a statute, other legal acts ...”*<sup>12</sup>

## **2.2 Case study.**

In this part of the paper we will discuss the enforcement of arbitration agreement/clause in Armenia, in particular, we will analyze the case [“R” Ltd. v. “AHC” CJSC, Civil Case, EC of RA, 2006.](#) In this case the Plaintiff filed a lawsuit disregarding the arbitration agreement/clause in the contract concluded between the parties. In his motion, to leave the case without consideration, the Defendant argued that the arbitration clause explicitly states that the dispute shall be resolved by the permanent arbitration court in New York, USA and invoked *RA Civil Procedural Code, Article 103*, which states in part:

*“The court leaves the action or application without consideration, if:*

3) *There is a consensus between the persons participating in the case on the transfer of the case for the consideration of an intermediate court, and the opportunity to apply to an intermediary court exists”*<sup>13</sup>

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<sup>11</sup> **RA Civil Procedural Code**, Article 103(3): Grounds for leaving action or complaint without consideration. [www.parliament.am](http://www.parliament.am)

<sup>12</sup> **RA Civil Code**, Article 347: General provisions

<sup>13</sup> **RA Civil Procedural Code**, Article 103: Grounds for leaving action or complaint without consideration

Furthermore, in support of his arguments the defendant invoked *UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1998)*. Article 2 of the Convention, provides in part:

*“1) Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them... .”<sup>14</sup>*

The Defendant stated that there is a valid contract and the arbitration clause is in force. Therefore, Economic Court of RA shall leave the petition without consideration and, as the Convention is required, forward the parties to arbitration.

The court invoked *RA Civil Procedural Code, Article 103* that required the Court to leave the complaint without consideration if the parties have agreed to submit disputes arising from the contract to arbitration and have an opportunity to apply to the Arbitration Court.

In granting the motion the Court stated:

*“it is beyond the doubt that the parties established the body that is authorized to review and solve the dispute between them on the bases of the agreement made in writing.”<sup>15</sup>*

### ***2.3 Step-by-step Analysis of the Transaction***

In this part we aim to illustrate the process of enforcement of arbitration clause in Armenia. The analyses of the procedures will provide the view of what steps are to be taken in order to enforce arbitration clause if one of the contracting party disregarding the arbitration agreement filed a lawsuit.

The following steps to be taken to enforce arbitration clause in accordance with the law of Republic Armenia:

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<sup>14</sup> UNITED NATIONS CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS (NEW YORK, 10 JUNE 1958), Article 1 and 2.

<sup>15</sup> *“R” Ltd. v. “AHC” CJSC, Civil Case, EC of RA, 2006*, page 6, § 6.

- 1) after the judge received the petition, he shall make the decision on acceptance of the complaint for the proceeding in three days.<sup>16</sup>
- 2) the persons participating in the case are notified by court summons about the time and place of the court session or performance of court activities.<sup>17</sup>
- 3) prior to the consideration of the case, the defendant is entitled to send his responses with rejections to the court and other participants, within 15 days from the moment he/she received the summons.<sup>18</sup> If the party did not submit its objections within 15 days after receiving the notification from the court, this would count that the defendant has “abandon his right to arbitrate.”<sup>19</sup> Objections shall be made and submitted to the court in the form of a motion<sup>20</sup> which shall, inter alia, includes:
  - a) arguments on facts that *there is an agreement between the parties to arbitrate all disputes arising from the contract* (cite the contract provision);
  - b) arguments on the law applicable to the arbitration clause that *“the court shall forward the parties to arbitrate the dispute, pursuant to the agreement between them”*<sup>21</sup> and
  - c) submit the motion to the court *to leave the case without consideration.*<sup>22</sup>
- 6) the Court shall make decision to address the motion in writing and the decision shall be reasoned. If the plaintiff disagrees with the decision, he is entitled within three days to apply to the chairman of the court with a request to review the decision. After the three days appeal period, if the plaintiff did not eliminate the

<sup>16</sup> **RA Civil Procedural Code**, Article 90(3): Acceptance of complaints

<sup>17</sup> **RA Civil Procedural Code**, Article 78(1): Court summons.

<sup>18</sup> **RA Civil Procedural Code**, Article 95(1): Response to the complaint.

<sup>19</sup> **The RA Law No 30-55-У, on Commercial Arbitration of**, December 25, 2006, Article 4(2): Refusal from the right of rejection.

<sup>20</sup> **The RA Law No 30-55-У, on Commercial Arbitration of**, December 25, 2006, Article 8(1): The arbitration agreement and the filling the lawsuit with the court.

<sup>21</sup> **RA Civil Procedural Code**, Article 18: Transfer of dispute to intermediate court; **Constitution of RA**, Article 6; and **UN Convention on Recognition and Enforcement of Arbitral Awards** (1958).

<sup>22</sup> **RA Civil Procedural Code**, Article 103(3).

circumstances based on which the action or the application is left without consideration, the decision will acquire binding force for the parties in the action.<sup>23</sup>

Therefore, these are some of the steps, necessary to take in order to enforce arbitration clause under Armenia court jurisdiction.

## **Part III            International best practice**

### ***3.1 How the transaction is Conducted Elsewhere?***

The presumption of arbitrability of contractual disputes is recognized in many states round of the world. The ground of such presumption is the parties` right of freedom of contract. This right the parties are entitled to implement through their contractual arbitration agreement/clause which is based on their free expression of will to decide whether to arbitrate or to litigate their contractual disputes. In order to find out how the foreign states regulate the matter of enforceability of arbitration clause and whether those states recognize the arbitration clause, we will analyze the Arbitration Acts of New Zealand, Arbitration Law of the People's Republic of China, France Code of Civil Procedure.

#### **The New Zealand Arbitration Act 1996 099, Commenced: 1 July 1997, provides:**

*section 7(1) the arbitration agreement could be made orally or in writing...*

*arbitration*

*agreement may be in the form of an arbitration clause in a contract or in the form of a*

*separate agreement;*

*section 8) A court before which proceedings are brought in a matter which is the subject*

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<sup>23</sup> RA Civil Procedural Code, Article 104(3): Procedure and consequences of leaving an action or application without consideration.

*of an arbitration agreement shall ... stay those proceedings and refer the parties to arbitration...<sup>24</sup>*

**Arbitration Law of the People's Republic of China, promulgated by Order No.31, September 1, 1995, provides:**

*“article 4) the parties submission to arbitration to resolve their dispute shall be on the basis of both parties free will and an arbitration agreement reached between them... .*

*article 5) if the parties have concluded an arbitration agreement and one party institutes an action in a peoples court, the peoples court shall not accept the case...*

*article 16) an arbitration agreement shall include arbitration clauses stipulated in the contract and agreements of submission to arbitration that are concluded in other written forms before or after disputes arise.”<sup>25</sup>*

**France Code of Civil Procedure, provides in relevant parts:**

*article 1142) an arbitration clause is an agreement by which parties to a contract undertake to submit to arbitration any disputes that may arise in relation thereto,*

*article 1143) to be valid, an arbitration clause shall be in writing and included in the*

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<sup>24</sup> The New Zealand Arbitration Act 1996, 099, Chapter II, Section7: Form of arbitration agreement and Section 8: 8. Arbitration agreement and substantive claim before court.

<sup>25</sup> Arbitration Law of the People's Republic of China, promulgated by Order No.31, September 1, 1995, Chapter 1: General Provisions, Articles 4, 5 and Chapter 2, Arbitration Agreement, Article 16.

*contract or in a document to which it refers,*  
*article 1458) if a dispute pending before an arbitral tribunal on the basis of an*  
*arbitration agreement is brought before a State court, it shall declare itself*  
*incompetent.*<sup>26</sup>

The analyses of above States Arbitration Acts show that many developed states are insuring the parties' free will to arbitrate the disputes that are existing or would arise in the future. As we see all of those states Arbitration Acts require the parties to conclude arbitration agreement in writing, so the court will in no exception takes it into account. The rules of arbitration clause is so powerful that deprives the court the authority to exercise jurisdiction over the dispute. Thus, the courts of all of these states shall, where the parties' written arbitration agreement exists, refer the parties to arbitration.

In order to demonstrate, in practice, how the parties may enforce the arbitration clause, we will review the case law of U.S. jurisdiction, [\*Central Florida Investment, Inc. v. Parkwest Assosiate\*](#), [\*Sandata Technologies, Inc.v. CareWatch, Inc.\*](#), and [\*Lloyd v. HOVENSA, LLC.\*](#) All these cases are, disregarding the level where the relief is granted, analogous to that of the "[\*R\*](#)" *Ltd.* situation, where Economic Court of RA enforced arbitration clause on the motion of defendant.

[\*Central Florida Investment, Inc. v. Parkwest Assosiate\*](#),

"The parties' contract in the Paragraph 12<sup>th</sup> of Addendum 1, provides in relevant part:

*Any disagreement over the terms of this agreement shall be arbitrated by parties*  
*agreed, upon by both Buyer and Seller. ...*

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<sup>26</sup> Code of Civil Procedure - Book IV - Arbitration In force 14 May 1981, Chapter 1: The Arbitration Clause, Article 1442, 1443; Chapter III, Article 1458.

Disregarding the arbitration clause in the contract, the plaintiff filed lawsuit. The defendant moved a motion before the court to compel arbitration. The Court applied “federal policy favoring arbitration for agreements that fall within the *United States Arbitration Act*, and stated:

“any doubts concerning the scope of arbitration issues should be resolved in favor of arbitration, ....”<sup>27</sup>

The court decided that the parties agreed to arbitrate, and granted the motion.

[Sandata Technologies, Inc.v. CareWatch, Inc.](#)

“The plaintiff instituted the action against the defendant for patent infringement. Plaintiff moved to stay this action and compel arbitration pursuant to the arbitration clause in the License Agreement and in accordance with the Federal Arbitration Act, 9 U.S.C. §§ 3, 4.

Defendant ... arguing that plaintiff’s action is for breach of the License Agreement and ... must be arbitrated pursuant to the terms of that Agreement.

Pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1 et, the court hold in favor to the defendant to compel arbitration.”<sup>28</sup>

[Lloyd v. HOVENSA, LLC, 369 F.3d 263, 273 \(3d Cir. 2004\).](#)

“Lloyd ... brought suit against Appellees. Invoking the provisions of an arbitration agreement entered into as a condition of Lloyd’s application, Appellees filed a motion to compel arbitration of Lloyd’s claims and to stay the proceedings pending arbitration. Lloyd opposed this motion, arguing that the agreement to arbitrate was unenforceable...

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<sup>27</sup> [Central Florida Investment, Inc. v. Parkwest Associate, 40 P3d 599 \(UT, Sup. C, January 12, 2000\)](#), www.fastcase.com

<sup>28</sup> [Sandata Technologies, Inc.v. CareWatch, Inc., US DISTRICT COURT OF CONNECTICUT, Case No. 3:05cv1714 \(JBA\).](#)

*The statute<sup>29</sup> clearly states, without exception, that whenever suit is brought on an arbitrable claim, the Court “shall” upon application stay the litigation until arbitration has been concluded*

The District Court’s order is reversed and remanded with instructions to enter an order compelling arbitration pursuant to the Dispute resolution Agreement, as written, and staying the proceedings in this case pending arbitration.”<sup>30</sup>

### ***3.2 Evaluation of Procedures (Armenia vs. Int`l Best Practice)***

Comparison of legal framework of Armenia and the legislation of above states shows that there are great similarities between Arbitration rules of RA and other states. All these States require that the arbitration agreement be concluded in writing.<sup>31</sup> In the comparative perspectives, the state policy favoring arbitration provides similar ground of enforceability of arbitration agreement/clause. Thus, the court shall upon the motion of the party refer the parties to arbitration or declare itself incompetent.<sup>32</sup> The rules applicable to the recognition and enforcement of the arbitration agreement/clause in Armenia are very similar to those of the other states. Similar treatment of the arbitration agreement called by the ratification of the internationally recognized uniform standards<sup>33</sup> by more than 140 states to harmonize international commercial relationship. The uniform rules of arbitration are established in the UN Convention on Recognition and Enforcement of Arbitral Awards (1958), to which Armenia and the above-mentioned states are the parties. To comply with the international

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<sup>29</sup> **FAA U.S.C. 9 § 3:** If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, ... *shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement*, providing the applicant for the stay is not in default in proceeding with such arbitration

<sup>30</sup> [\*Lloyd v. HOVENSA, LLC, 369 F.3d 263, 273 \(3d Cir. 2004\).\*](#)

<sup>31</sup> RA Law No 30-55-U, on Arbitration, December 25, 2006. Article 7(2); New Zealand Arbitration Act 1996 099, 1197, Section 7(1); China, Arbitration Act, Article 4; France - Code of Civil Procedure, Article 1143.

<sup>32</sup> RA Law No 30-55-U, on Arbitration of, December 25, 2006. Article 8(1); New Zealand Arbitration Act 1996 099, 1197, Section 8; China, Arbitration Act, Article 5; France - Code of Civil Procedure, Article 1158.

<sup>33</sup> UN Convention on Recognition and Enforcement of Foreign Arbitral Awards (1958)

standards, each state adopted its own arbitration act authorizing parties to chose appropriate dispute resolution method on contractual bases.

In this paragraph, the paper provides evaluation of the procedures of enforcement of arbitration agreement in Armenia and U.S. In doing so, we will focus on the procedural steps on the course of litigation under different jurisdiction. These states were chosen with regard of the level of development and also because they are all parties to the UN Convention on Recognition and Enforcement of Arbitral Award, New York, (1958). Comparison of the procedures in U.S. and Armenia shows which steps in those states are required in order to enforce arbitration agreement/clause.

In the United States, pursuant to the arbitration agreement/clause in the contract, the party wishing arbitration moved to motion before the court to stay the proceedings and compel arbitration. By his motion the defendants expresses their opposition to the petition that the plaintiff brought to the court in breach of contractual obligations to arbitrate. The procedures implemented by the motioned parties are conducted in similar steps, like in Armenia. That is, the defendants argued on the facts and the law, and moved to stay litigation and compel arbitration on the base of written contract between parties. The court applied United States Federal Arbitration policy favoring arbitration. In another case the court referred to the Congress's intent that in deciding to move the parties an arbitrable dispute out of the court and into the arbitration the court stated that it shall do so as soon as and as easily as possible.

Similarly, the procedures of the enforcement of arbitration clause is conducted in Armenia. The party (the Plaintiff) sought to litigate disregard arbitration clause. Defendant moved to motion before the court "to leave the petition without consideration." The court found that there is agreement to arbitrate and have an opportunity to apply for arbitration is exists.

To compare procedures of both states, it is necessary to mention that the substances of that procedure are the same: 1) commenced litigation; then 2) followed by the motion to dismiss the petition; 3) court assessment; and 4) final decision. The courts, in both cases, found that there were binding written agreement between the parties and the contracts provided the remedies for the breach, so applied policy-favoring arbitration to enforce arbitration clause. In this respect, we could conclude that in both cases the court sought to apply those legal rules which favor arbitration.

#### **Part IV Conclusion**

It is often said that the parties to a contract make their own law, so the parties are free to agree upon such terms as they may choose. Nevertheless, agreements that are intended to have legal operation create legal rights and duties having a place within a legal system.<sup>34</sup> The favored position afforded arbitration agreements finds its foundation in both the law's respect for parties' right to contract and the strong public policy in favor of arbitration.<sup>35</sup> In considering the parties submission to arbitration the court shall define the framework within which the disputes should be resolved. Thus, in deciding the issue before the court whether the parties shall be referred to arbitration, the court may refuse the motion only if there is no substantial question whether a valid arbitration agreement was made. The framework and analyses set forth in the cases above provides that the direct action of the plaintiff is subject to the arbitration clause and the states policy in favoring arbitration.

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<sup>34</sup> Lord McNair (Former President of the International Court of Justice), *The General Principles of Law Recognized by Civilized Nations*, 33 B.Y.I.L. 1, 7 (1957).

<sup>35</sup> *Enforcement of Foreign Arbitration Agreements and Insurance Coverage Disputes*, By Richard R. Ryan., <http://www.mcandl.com/arbitration.html>

In most cases arbitration clauses in parties contracts function as intended. They provide a resolution of disputes through the arbitration process in a private and/or confidential manner. However, as the contracting parties are legal and economic entities seeking economic gain, they shall consider economic consequence in breaching contractual obligations. The parties, seeking litigation and losing, shall bear the cost of litigation. This measure will contribute to preclude the party from litigation. The states and the courts shall design legal policy on this matter that in such exceptional case where one party is disregarding arbitration clause filling lawsuit shall bear the cost of litigation. In doing so, the state shall consider including relevant provision in the RA Law on State Tax and the petitioner shall be prescript to pay that tax now at the submission to the court.

Nevertheless, the legislative and judicial systems in Armenia have made efforts to encourage arbitration and accommodate the parties chosen method of dispute resolution, including the recognition and enforcement of an arbitration agreement/clause.

## Reference:

### 1. The Law on Commercial Arbitration of RA:

**Article 1(2): Basic principles and the sphere of regulation.** *Հոդված 1(2) կողմերն ազատ են իրենց միջև վեճերի լուծման ընթացակարգի շուրջ համաձայնվելու հարցում, որը ենթակա է միայն օրենքով նախատեսված սահմանափակումների:*

**Article 7(1) and (2): Definition of arbitration agreement, form and duration.** *Հոդված 7 (1) Արբիտրաժային համաձայնությունը պայմանագրային կամ ոչ պայմանագրային որոշակի իրավահարաբերության կապակցությամբ կողմերի միջև կնքված համաձայնությունն է՝ առկա կամ հնարավոր բոլոր կամ որոշակի վեճերն արբիտրաժի լուծմանը հանձնելու վերաբերյալ: ... (2) Արբիտրաժային համաձայնությունը կնքվում է գրավոր: ...*  
[www.laws.am](http://www.laws.am)

**Article 4(2): The Right of Objection.** *Հոդված 4(2) Եթե արբիտրաժային համաձայնության կողմը հայցային պահանջ է ներկայացնում համաձայնության մյուս կողմի դեմ դատարան՝ հայցելով վերջնական որոշման կայացում այն վեճի վերաբերյալ, որի շուրջ առկա է արբիտրաժային համաձայնություն, և եթե մյուս կողմը չի առարկում դատարանում գործի քննությանը՝ արբիտրաժային համաձայնության առկայության հիմքով, ապա համարվում է, որ կողմերը հրաժարվել են վեճը արբիտրաժի միջոցով կարգավորելու իրենց իրավունքից:*  
[www.laws.am](http://www.laws.am)

**Article 8: Arbitration Agreement and the petition to the court over the substance of the dispute.** *Հոդված 8, Դատարանը, որին հայց է ներկայացված այն վեճի վերաբերյալ, որի շուրջ առկա է արբիտրաժային համաձայնություն, պարտավոր է կողմերից մեկի միջնորդության հիման վրա, որը բերվել է ոչ ուշ, քան վեճի էության շուրջ այդ կողմի առաջին հայտարարության ներկայացումը, հայցը թողնել առանց քննության, բացառությամբ, եթե գտնում է, որ այդ համաձայնությունն առ ոչինչ է, ուժը կորցրել է կամ չի կարող կատարվել:*  
[www.laws.am](http://www.laws.am)

### 5. Civil Procedural Code of RA, [www.parliament.am](http://www.parliament.am)

- a) Article 18: Transfer of the dispute to the arbitration resolution.
- b) Article 103(3): Grounds for leaving action or complaint without consideration.

### 6. Civil Code of RA,

- a) Article 347: General provisions

### 7. United Nations Convention on The Recognition And Enforcement Of Foreign Arbitral Awards (NEW YORK, 10 JUNE 1958), Article 1 and 2.

### 8. The New Zealand Arbitration Act 1996, 099, Commenced: 1 July 1997, Articles 7(1) and 8

### 9. Arbitration Law of the People's Republic of China, Articles 4, 5, and 16.

### 10. Code of Civil Procedure - Book IV - Arbitration In force 14 May 1981, Chapter 1: Articles 1442, 1443; Chapter III: Article 1458.

### 11. Federal Arbitration Act, 9 U.S.C. § 3. Stay of proceedings where issue therein referable to arbitration:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has

been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

12. **New York Convention** (1958): Convention on the Recognition and Enforcement of Foreign Arbitral Awards has 142 member states. [http://www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/NYConvention\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html) Armenia ratified the Convention on December 29, 1997; convention went into force on March 29, 1998.
13. *"R" Ltd. v. "AHC" CJSC, Civil Case, EC of RA, № S-2248, 2006.*
14. *Florida Investment, Inc. v. Parkwest Associate, 40 P3d 599 (UT, Sup.C. 2000).* [www.fastcase.com](http://www.fastcase.com)
15. *Sandata Technologies, Inc. v. CareWatch, Inc., 1-3 US DC OF CONNECTICUT, (2006)* [www.findlaw.com](http://www.findlaw.com)
16. *Lloyd v. HOVENSA, LLC, 369 F.3d 263, 273 (3d Cir. 2004).* [www.findlaw.com](http://www.findlaw.com)