

Ten Non-Arbitrable Subject Matters: the Case of Ethiopia

Description

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A case is non-arbitrable means the subject matter of the dispute falls outside the scope of being resolved by arbitration. Thus non-arbitrability precludes a tribunal from exercising jurisdiction over certain cases. Had an arbitration panel exercised jurisdiction on non-arbitrable subject matters, the resulting award may be set aside or denied recognition and enforcement.

The governing legislation in Arbitration as of April 2021 is the **Arbitration and Conciliation Working Procedure Proclamation No 1237/2021(the Proclamation)**.

Hence non-arbitrable subject matters are identified and listed in non-exhaustive way in Article 7 of the Proclamation. The ten non-arbitrable cases are the following: **1/ Divorce, adoption, guardianship, tutorship and succession cases; 2/ Criminal cases; 3/ Tax cases; 4/ Judgment on bankruptcy; 5/ Decisions on dissolution of business organizations; 6/ All land cases including lease; 7/ Administrative contract, except where it is permitted by law; 8/ Trade competition and consumers protection; 9/ Administrative disputes falling under the powers given to relevant administrative organs by law; 10/ other cases that are termed not arbitrable under the law.**

The arbitrability and non-arbitrability of cases used to be governed by provisions of the Civil Code, Civil Procedure Code and other laws of Ethiopia. However Article 78 of the Proclamation repealed Article 3325-3346 of the Civil Code that deals with Arbitral Submission. In addition to that, Civil Procedure Code Articles 315 to 319(Arbitration), 350,352,355-357 (Appeal on arbitral awards)and 461 (Enforcement of foreign arbitral award) are repealed. Nonetheless Articles 351,353,and 354 of the Civil Procedure Code are left un-repealed. Any other laws that are inconsistent with respect to matters provided in the Proclamation are also repealed.

To sum up, the controversies in determining what cases are arbitrable and what cases are non-arbitrable are settled for the most part by Arbitration and Conciliation Working Procedure Proclamation No 1237/2021.

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