

ARBITRATION IN MARITIME TRANSPORT CONTRACTS

in the Egyptian maritime commercial law No. 8/1990.

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The maritime commercial law No. 8 / 1990 in its Articles 246, 247, states that arbitration as a legal discipline settles the disputes resulting from the contract of maritime transport of goods beside the national justice. The maritime legislator organized in these Articles two problems: the place of arbitration and the applicable law on the dispute topic .

How will the place of Arbitration be chosen ?

The maritime commercial law, Article 246 states that arbitration may be performed according to the plaintiff choice at one of the following places:

- a. At the circuit of the court wherein the port of charge or the port of discharge lies.
- b. At the residence of the defendant.
- c. At the place where the contract was concluded, provided the defendant has in this place a headquarter, a branch or an agency.

- d. At the place stated in the arbitration agreement .
- e. At the circuit of the court wherein the port that the ship is detained lies.

Therefore , the Maritime commercial law renders the choice of arbitration place in the disputes of the maritime transport only to the will of the plaintiff , and opens before him many choices , of which is the place they had agreed upon in the arbitration clause .

In fact , this attitude of the maritime commercial law towards the definition of the arbitration place , that derives from Hamburg convention 1978 launched a revolution in the method of defining the arbitration place . In the maritime arbitration practice , the arbitration place is defined according to the parties agreement , either directly through defining it in the arbitration agreement , or indirectly through rendering it to an institutional maritime arbitration centre to carry out arbitration in its headquarter or through carrying out arbitration in accordance with maritime arbitration rules to define this place .

The legislator idea of discrepancy in defining the arbitration place in the present maritime arbitration practice only through the plaintiff choice is to take care of the consigner as the weak party in the transport contract .

Thus , the law nullified all agreements precedent to the rise of the dispute decreeing depriving the plaintiff this right or limiting it (Art . 246) . Consequently , in the concept of the discrepant , the plaintiff may , after the dispute arises , agree with the transporter upon any other provisions concerning the location of the arbitration place contradicting the provisions of the maritime commercial law .

What will be the Applicable law to the Dispute topic ?

The maritime commercial law , Article 247 obligated the maritime arbitrator to settle the dispute according to the provisions depicted in this law about the maritime transport contract agreed upon referring the deputes that arise out of it to arbitration .

This obligation of the maritime legislator to the maritime arbitrator to execute the provisions of the law without exception to the dispute topic contradicts also the present maritime arbitration practice , as these practices render the parties free to choose the applicable law to the dispute topic . If the parties fail in defining the law , the whole freedom of choosing it is shifted to the maritime arbitrator .

In fact , the wisdom that cherished the maritime legislator in this respect is the same that cherished him in defining the arbitration place through the lonely will of the plaintiff . This wisdom secures the plaintiff , who is almost the consigner , as he is the weak party in the transport contract . Therefore , the law has nullified all the

agreements precedent to the rise of the dispute depicting relieving the arbitrator from adhering to these provisions (Art.247) .

Consequently, with the concept of discrepancy, the consigner and the transporter may agree upon the execution of any other provisions , concerning the law to be applied to the dispute topic , that contradict the maritime commercial law after the rise of the dispute .

This article provides for a general overview only and must not be relied upon as constituting advice in any specific case. Advice should always be sought before taking steps in proceedings- For Further information pls. Contact Mr. U. Soliman