

Q.12-12 → Explain the meaning of arbitration agreement. State the main characteristics?

Ans

An arbitration agreement is a written contract in which two or more parties agree to settle a dispute outside of court. The arbitration agreement is ordinarily a clause in a large contract. People are free to agree to use arbitration concerning anything that they could otherwise resolve through legal proceedings.

An Arbitration agreement can be as simple as a provision in a contract stating that by signing that contract you are agreeing to arbitration in the case of ~~specific contract, a claim~~ any future disputes. For example, a business owner can ensure that potential dispute costs remain low by requiring anyone doing business with them to sign an agreement to arbitrate instead of litigate - to settle the matter out of court. In the case of more complicated business matters, a mandatory arbitration clause may be necessary. An arbitration provision in a contract might look like this:

" Upon written request of either Buyer and seller, any controversy or claim between or among the parties hereto including but not limited to those arising out of or relating to the sale, any of the sale documents, or any related agreements or instruments executed in connection with the sale, including any claim based on or arising from alleged tort, shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable) the applicable state law), the Commercial Arbitration Rules of American Arbitration Association, and the "Special Rules" set forth below unless both lender and borrower.

* Characteristics of arbitration: —

(a.) Voluntary: — Parties must expressly agree to arbitrate in writing, or fall within the ambit of legislation that mandates arbitration in a given situation. If the parties have agreed to arbitrate, the court, on the motion of one of the parties to the agreement, will generally require the parties to submit the dispute to arbitration, unless it is found that the arbitration agreement is null and void, inoperative or incapable of being performed.

(b.) Controlled: — The parties and their counsel are able to control procedural aspects of the process, including the choice of neutral, timing and location of the hearing as well as who, other than the parties themselves, may be present.

(c.) Private: → An arbitration is usually conducted in private.

(d.) Informal: → Subject to the CAA, there are no prescribed procedural or evidentiary rules governing an arbitration. The rules of procedure are established by the adoption of existing rules by a negotiated arbitration agreement between the party, or by the parties and the arbitrator.

(e.) Adjudicative: — As in litigation, once a case has been presented by each side, the arbitrator issues a decision. Article 31 of the code requires that an arbitral award shall be in writing, and that reasons be provided unless the parties have agreed that no reasons are required.

(f.) Flexible: — The parties have discretion in choosing an arbitrator and the procedure to be followed in resolving the dispute.

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(g) Binding - Non-Binding: — All Federal arbitration under the Commercial Arbitration Act is binding. Judicial review of an arbitral award is available only on limited grounds such as incapacity of a party, invalidity of an arbitration agreement, or that the award is in violation of law or public policy.

(h) Confidential → Arbitration is generally confidential, if the parties so elect. In the federal context, the restrictions on divulging information and the requirement to disclose information pursuant to the Privacy Act and the Access to Information Act must be complied with. For further information about the application of these Acts, see "Confidentiality Access to Information Act and Privacy Act".

(i) Adversarial: — While the arbitration process is based on the adversarial style of the litigation model, the demeanour and nature of the hearing are determined by the parties, their counsel and the arbitrator.