Arbitration and Mediation
in the Southern Mediterranean Countries
Gardens are tranquil spaces to think and reflect; to plant seeds of ideas and watch them grow; to discover different varieties carried over from other landscapes; to explore new paths; and to harvest solutions.

Global Trends in Dispute Resolution offers readers a garden rich in ideas and insights into contemporary dispute resolution principles, processes, and practices. The series leads the way in first-class debate and analysis of dispute resolution trends across our rapidly globalizing world. More particularly, it analyzes dispute resolution developments in various geographical regions around the world and in relation to diverse transnational practice areas. These practice areas include not only well-established legal categories such as intellectual property, construction, and resources law, but also emerging dispute resolution developments ranging from dispute systems design to cross-border mediation in private and public law.

Volume 1, Global Trends in Mediation (2006), planted the first seeds for the series with its analysis of contemporary mediation developments in 14 primary ‘mediating’ jurisdictions across four continents. In addition to up-to-date descriptions of mediation laws, initiatives, and practices in the respective countries, it offered valuable insights into global patterns emerging in the world of alternative dispute resolution (ADR). It also highlighted the extent to which legal traditions and frameworks shape dispute resolution policy and practice – essential knowledge for practitioners working across borders.

With a particular focus on new initiatives and ADR practices, the Global Trends in Dispute Resolution series aims to provide practitioners, scholars, policy-makers, and ‘pracademics’ (that elusive yet rapidly emerging category of practical academics and academically-oriented practitioners – you know who you are) with the resources both to cultivate the dispute resolution gardens of the world and to explore new paths within and beyond them.
Arbitration and Mediation
in the Southern Mediterranean Countries

Edited by
Giuseppe De Palo and Mary B. Trevor

Series Editor
Nadja Alexander
‘Knowledge is a treasure, but practice is the key to it’
Ibn Khaldun – Al Muqadimma

To a splendid group of people from five continents, and the very patient group of people we each have at home, who made this book possible.
(GDP, MBT)
Table of Contents

3.5.1. Investments in Algeria .................................................. 9
3.5.2. Settlement of Disputes Between the Government and
Foreign Investors .......................................................... 9
3.6. Arbitration Award .......................................................... 10
  3.6.1. Implementation of the Arbitration Award ................. 10
  3.6.1.1. Voluntary Enforcement .................................. 10
  3.6.1.2. Enforcement of the Judgment by Exequatur ........ 10
3.6.2. Appeals from the Arbitration Award Enforcement .... 11
  3.6.2.1. Appeal .......................................................... 11
  3.6.2.2. Motion for Annulment ................................... 11
  3.6.2.3. Permissible Bases for an Appeal or an
Application for Annulment ........................................ 11
3.7. Arbitrators ................................................................. 12
  3.7.1. Constitution of the Arbitration Tribunal ............... 12
  3.7.2. Requirements for an Arbitrator ........................... 12
  3.7.3. Nomination Procedure ...................................... 13
    3.7.3.1. Nomination of the Arbitrators for Ad Hoc
Arbitration .......................................................... 13
    3.7.3.2. Nomination of Arbitrators in Institutional
Arbitration .......................................................... 13
3.8. Parties’ Choices ........................................................... 13
    3.8.1.1. Domestic Law ............................................. 13
    3.8.1.2. International Law ....................................... 14
  3.8.2. The Choice of the Law Applicable to the Dispute .... 14
4. Mediation ................................................................. 14
  4.1. Definition .............................................................. 14
  4.2. Needs for the Mediation ........................................... 15
  4.3. Mediation Center in Algeria ...................................... 15
  4.4. The Mediator ........................................................... 16
  4.5. Decisions Resulting from the Mediation .................... 16
  4.6. Lack of Government Support .................................... 16

CHAPTER 2 EGYPT ................................................................. 17

1. Introduction ................................................................. 17
2. Commercial Disputes .................................................... 18
  2.1. Introduction ........................................................... 18
  2.2. Commercial Disputes .............................................. 19
    2.2.1. Introduction ................................................... 19
    2.2.2. Definition ..................................................... 19
    2.2.3. Impact on Trade and Business Activities ............ 20
Table of Contents

2.3. Investment Disputes ............................................................... 22
  2.3.1. Investment Treaties ..................................................... 22
  2.3.2. Investment Law .......................................................... 22
2.4. Dispute Resolution Techniques ............................................. 23
  2.4.1. Commercial Courts ..................................................... 23
    2.4.1.1. Description ................................................... 24
    2.4.1.2. Jurisdiction ................................................... 24
  2.4.2. Other Techniques ........................................................ 25
3. Arbitration ......................................................................................... 25
  3.1. Overview ........................................................................... 25
  3.2. Role of Arbitration ............................................................... 25
  3.3. Arbitration under Islamic Sharia' ........................................ 26
  3.4. Egyptian Arbitration Law ...................................................... 26
    3.4.1. Pre-1994 ..................................................................... 26
    3.4.2. The New Arbitration Law ........................................ 26
      3.4.2.1. Scope of Applicability .................................. 27
      3.4.2.2. Definition of Arbitration ............................... 28
      3.4.2.3. Definition of International ............................ 28
      3.4.2.4. Definition of Commercial ............................... 29
      3.4.2.5. Arbitration Clause ........................................ 30
      3.4.2.6. Appointment of Arbitrators .......................... 30
      3.4.2.7. Nullity Provisions ......................................... 32
  3.5. Ad Hoc vs. Institutional Arbitration in Egypt ..................... 33
    3.5.1. Introduction ............................................................. 33
    3.5.2. Active Institutions ..................................................... 34
      3.5.3. The Cairo Regional Center for International
            Commercial Arbitration (‘CRCICA’) ................. 34
        3.5.3.1. Establishment ........................................... 34
        3.5.3.2. Role .......................................................... 34
        3.5.3.3. Rules ......................................................... 34
        3.5.3.4. Arbitration Proceedings ............................ 34
  3.6. Role of Local Courts .............................................................. 36
    3.6.1. Witnesses .............................................................. 36
    3.6.2. Appointment of Arbitrators .................................... 37
    3.6.3. Extent of Interference ............................................. 37
  3.7. Enforcement of Awards ......................................................... 38
    3.7.1. Foreign Awards ....................................................... 38
    3.7.2. Domestic Awards ..................................................... 38
4. Mediation .......................................................................................... 40
  4.1. Introduction ........................................................................... 40
  4.2. Mediation Service Providers in Egypt ................................... 41
  4.3. Mediation Among the Corporate Community in Egypt .......... 43
  4.4. Raising Awareness and Promoting Mediation ....................... 44
Table of Contents

4.5. Public Awareness of Mediation ............................................. 62
  4.5.1. Legal Professionals ..................................................... 62
  4.5.2. The Business Community ........................................... 62
  4.5.4. Law Students .............................................................. 63
4.6. Mediation Outcomes and Enforcement of Agreements .......... 63
4.7. Community Mediation ........................................................... 64
5. Other ADR Mechanisms ........................................................ 65
6. Concluding Observations ...................................................... 66
  6.1. ADR in Higher Education ................................................ 66
  6.2. Suggested Strategies for Promoting Use of Mediation and Other ADR Processes ............................................. 67
    6.2.1. Increasing Awareness Through Campaigns and Education ............................................................ 67
    6.2.2. Improvement of Service Quality ................................ 67
    6.2.3. Research .................................................................... 68
  6.3. Conclusion ............................................................................. 68

CHAPTER 4 JORDAN ................................................................. 69
  1. Introduction ....................................................................................... 69
  2. Commercial Disputes ................................................................. 70
    2.1. Economic, Judicial, and Legislative Background .............. 70
    2.1.1. Economy ..................................................................... 70
    2.1.2. The Judicial and Legislative Aspect ........................... 71
    2.2. Commercial Disputes in Courts ............................................. 74
  3. Arbitration ......................................................................................... 76
    3.1. Domestic Ad Hoc and Institutional Arbitration .............. 76
    3.1.1. Appointment of Arbitrators ........................................ 78
    3.1.2. Confidentiality ........................................................... 79
    3.2. International Arbitration ..................................................... 79
    3.3. Enforcement of the Arbitral Award ................................. 80
    3.3.1. Domestic Awards ....................................................... 80
    3.3.2. International Awards .................................................. 81
    3.4. Costs of Enforcement ......................................................... 82
    3.5. Conclusion ............................................................................. 83
  4. Mediation ......................................................................................... 83
    4.1. General Insight: Formal Mediation .................................... 83
    4.2. Mediation in Specific Instances ................................. 86
    4.3. Conclusion ............................................................................. 87
  5. Other ADR Mechanisms ............................................................... 87
Table of Contents

CHAPTER 5 LEBANON ................................................................................................. 89

1. Introduction ........................................................................................................ 89
2. Commercial Disputes ........................................................................................ 90
   2.1. Introduction .................................................................................................. 90
   2.2. Commercial Disputes ................................................................................ 90
      2.2.1. Overview .................................................................................................. 90
      2.2.2. Commercial Disputes ............................................................................ 91
      2.2.2.1. Definition of Commercial Disputes ....................................................... 91
      2.2.2.2. Commercial Dispute Resolution Overview ........................................ 92
      2.2.2.3. Legal Limitations on Arbitration: Commercial Representation Agreements ................................................................. 94
2.3. Dispute Resolution Techniques ...................................................................... 95
   2.3.1. Mediation and Arbitration in Labor Laws ............................................ 95
   2.3.2. Mediation and Arbitration in Consumer Protection Law .................... 96
3. Arbitration .......................................................................................................... 97
   3.1. Regulations Governing Arbitration in Lebanon – The Lebanese Code of Civil Procedure ................................................................. 97
      3.1.1. The Rules in the LCCP Governing Local Arbitration ......................... 97
         3.1.1.1. The Definition of Local Arbitration ...................................................... 98
         3.1.1.2. The Arbitration Clause ..................................................................... 98
         3.1.1.3. The Arbitration Agreement ................................................................. 99
         3.1.1.4. The Nature of the Arbitration ............................................................. 99
         3.1.1.5. The Rules for the Nomination of Arbitrators .................................... 100
         3.1.1.6. The Involvement of the Judiciary ....................................................... 101
         3.1.1.7. The Suspension of the Arbitration ...................................................... 102
         3.1.1.8. The End of the Arbitration ................................................................. 103
         3.1.1.9. The Arbitration Award .......................................................... 103
         3.1.1.10. The Length of the Arbitration Procedure ...................................... 104
         3.1.1.11. The Recourse Against Local Arbitration Awards ............................ 104
      3.1.2. The Rules in the LCCP Governing International Arbitration .............. 106
         3.1.2.1. The Definition of International Arbitration ........................................ 106
         3.1.2.2. The Rules Governing the Nomination of the Arbitrator(s) ................ 106
         3.1.2.3. The Rules Governing the Arbitration Process ................................. 107
         3.1.2.4. The Enforcement of Arbitral Awards Rendered Abroad or in International Arbitrations .................................................. 107
Table of Contents

3.1.2.5. The Recourse Against Arbitral Awards Rendered Abroad or in International Arbitrations ................................. 108

3.2. The International Arbitration Conventions that Lebanon has Ratified and/or Adhered To .................................................. 109
  3.2.1. International Arbitration Conventions Ratified by Lebanon ..................................................................................... 109
  3.2.2. Other International Instruments Designed to Promote Resolution of Disputes through Arbitration (Regional or Otherwise) .................. 109
  3.2.3. Involvement in ICSID Arbitration ........................................ 109

3.3. The Domestic Arbitration Centers ............................................ 109
  3.3.1. Arbitration before the Beirut and Tripoli Chambers of Commerce and Industry ......................................................... 109
    3.3.1.1. The Rules ................................................. 109
    3.3.1.2. The Recourse to the BCCI or the TCCI .................... 109
    3.3.1.3. The Procedure for the Appointment of the Arbitrators ................................................................. 110
    3.3.1.4. The Incompetence and Replacement of the Arbitrator ........................................................................... 110
    3.3.1.5. The Rules Governing the Arbitration Procedure .................................................................................. 111
    3.3.1.6. The Arbitration Award ........................................ 112
    3.3.1.7. The Cost of the Arbitration ...................................... 112
  3.3.2. The Arbitration Proceedings at the Beirut Customs Authority: The Rules of Arbitration of the Customs Law ...................................................... 113
    3.3.2.1. The Conditions Required for Arbitration ......... 113
    3.3.2.2. The Role of the Higher Council of Customs ................................................................. 114
    3.3.2.3. The Involvement of the Judiciary ..................... 114
    3.3.2.4. The Arbitration Process ...................................... 115
    3.3.2.5. The Arbitration Committee’s Decision ............ 115
    3.3.2.6. The Recourse of the Committee’s Decision: Its Annulment ......................................................... 115
    3.3.2.7. The Consequences of the Committee’s Decision for the Parties ......................................................... 116
  3.3.3. Statistics on the Number of Arbitration Cases Each Year .................................................................................. 116

4. Mediation and Other ADR Mechanisms ............................................ 118
  4.1. Cultural Aspects of Mediation in Lebanon ................................. 118
    4.1.1. A Traditional Practice of Mediation ............................... 118

xiii
Table of Contents

4.1.2. A Traditional Conception of the Role and Characteristics of the Mediator ........................................ 118
4.2. Social Awareness of the Scientific Practice of ADR ............. 118
  4.2.1. Within the Legal Profession .................................. 119
  4.2.2. Within the Business Community ............................. 119
  4.2.3. Within Government Circles and Public Agencies .... 119
  4.2.4. Within the Law Student Community ........................ 119
  4.2.5. Within the Construction Industry ............................ 120
4.3. The Legal Framework of Mediation .................................... 120
  4.3.1. Specific Laws ....................................................... 120
    4.3.1.1. Labor Law .................................................. 120
    4.3.1.2. Consumer Protection Law ............................ 121
  4.3.2. Enforceability ................................................... 121
    4.3.2.1. In Compliance With the Specific Laws ...... 121
    4.3.2.2. In Compliance With the Code of Obligations and Contracts .................. 121
  4.3.3. Evaluation of the Legal Framework Opportunities ... 122
4.4. Private Initiatives ................................................................. 122
  4.4.1. Events and Academic Formation .............................. 122
  4.4.2. ADR or Mediation Services Provided in the Country .................................................. 123
4.5. Strategy of Promotion of ADR ............................................ 123
  4.5.1. General Steps ...................................................... 123
  4.5.2. Government Support ............................................. 124
  4.5.3. Foreign Investors’ Interests ..................................... 124

CHAPTER 6 MOROCCO ................................................................. 125

1. Introduction ............................................................................... 125
2. Commercial Disputes ............................................................... 125
  2.1. Commercial Litigation .................................................... 126
    2.1.1. Commerce Code Definition .................................. 126
    2.1.2. Commercial Litigation in the Court System .......... 126
  2.2. Legislative Framework of Commercial Litigation ............. 127
  2.3. International Conventions .............................................. 128
  2.4. Mechanisms for Resolution of Commercial Litigation ...... 129
    2.4.1. The Creation of the Commercial Courts .............. 129
    2.4.2. The Constitution of the Commercial Courts ......... 129
    2.4.3. Competences and Distribution ........................... 129
3. Arbitration .................................................................................. 130
  3.1. Statutes Relating To Arbitration ....................................... 130
    3.1.1. National Sources .............................................. 130
Table of Contents

3.1.1.1. Current Status of Domestic Legal Mechanisms ................................................................. 130
3.1.1.2. Outlines of the New Draft of the Arbitration Code ............................................................. 131
3.1.2. International Sources ............................................................................................................. 132
3.2. Impact of Arbitration in Morocco ............................................................................................ 133
   3.2.1. Arbitration as Regarded by Local Business Community and the Legal Profession .................. 133
   3.2.2. The Current Policy for Promoting Arbitration ...................................................................... 134
3.3. Existing Arbitration Institutions and Their Efficiency ............................................................... 134
   3.3.1. Existing Arbitration Centers: Their Status and Organization .............................................. 134
   3.3.2. Conditions Required to be Appointed as Arbitrator ............................................................. 135
   3.3.3. Statistical Data of Arbitrations Conducted ............................................................................. 136
3.4. Role of the Judge in Arbitration ............................................................................................... 137
   3.4.1. Role of the Judge in the Appointment of Arbitrators ............................................................ 137
   3.4.2. Role of the Judge in Enforcing the Arbitration Awards .......................................................... 138
4. Mediation and Other ADR Mechanisms ...................................................................................... 138
   4.1. Legal Statutes of Conventional Mediation or Comparable Legal Modes / Techniques For Settling Disputes .............................................................................................................. 138
   4.1.1. General Theory ....................................................................................................................... 138
   4.1.1.1. Conditions for Agreements to Mediate .................................................................................... 138
   4.1.1.2. A Bill on Mediation under Discussion in the Parliament .................................................. 139
   4.1.2. Existing Mechanisms: Judicial Conciliation and Compromise ............................................ 140
   4.1.2.1. Judicial Conciliation .............................................................................................................. 140
   4.1.2.2. Compromise ......................................................................................................................... 140
4.2. Institutional Framework of Mediation ....................................................................................... 141
   4.2.1. Institutions ............................................................................................................................... 141
   4.2.2. History, Local Uses, and Customs .......................................................................................... 142
5. Concluding Observations ............................................................................................................. 142
   5.1. Current Situation ....................................................................................................................... 142
   5.2. Obstacles Blocking Recourse to Commercial Mediation ......................................................... 143
   5.3. Proposals to Promote Commercial Mediation in Morocco ....................................................... 144
Table of Contents

CHAPTER 7  SYRIA ................................................................. 145

1. Introduction ........................................................................ 145
2. Commercial Disputes .......................................................... 146
   2.1. General Commercial Disputes ...................................... 146
   2.2. Specific Types of Commercial Disputes ...................... 147
3. Arbitration ........................................................................ 148
   3.1. Issues Not Subject to Arbitration .............................. 149
   3.2. Arbitration Requirements ....................................... 149
      3.2.1. Appointment of Arbitrators .............................. 149
      3.2.2. The Arbitration Process .................................. 150
      3.2.3. The Award .................................................. 150
      3.2.4. The Confidentiality Rule of Arbitration Proceedings 151
      3.2.5. Enforcement of Awards .................................. 151
      3.2.6. Additional Enforcement Procedures and Appeal ..... 152
   3.3. International Conventions ........................................ 153
   3.4. Arbitration Centers in Syria ...................................... 153
   3.5. Other Types of Arbitration ...................................... 154
   3.6. Cost of Arbitration ............................................... 155
   3.7. Number of Arbitrations ......................................... 155
   3.8. Training ............................................................... 155
4. Mediation and Other ADR Mechanisms .............................. 156
   4.1. Traditional Practices ............................................. 156
   4.2. Degree of Awareness of Mediation Generally and in the Legal Community ........................................... 157
   4.3. Amicable Mediation in the Business Community ........ 157
   4.4. Mediation and ADR within the Public Sector ............. 157
   4.5. Regulating ADR .................................................. 158
   4.6. ADR in Certain Areas of Law .................................. 158
   4.7. Conciliation in the Code of Civil Procedure ............... 159
5. Concluding Observations ................................................ 159

CHAPTER 8  TUNISIA ............................................................... 161

1. Introduction ........................................................................ 161
2. Arbitration .......................................................................... 163
   2.2. Overview of the Code .......................................... 163
   2.3. Domestic Arbitration ............................................ 164
      2.3.1. The Arbitration Agreement .............................. 164
         2.3.1.1. Formal Conditions of Validity .................... 164
         2.3.1.2. Substantial Conditions of Validity .............. 165
# Table of Contents

2.3.2. The Arbitrator .................................................. 165  
2.3.2.1. Conditions Required for Appointment as an Arbitrator .................................. 165  
2.3.2.2. Composition of the Arbitration Tribunal .... 166  
2.3.2.3. Revocation of and Challenge to an Arbitrator .................................................. 166  
2.3.3. The Arbitration Tribunal ........................................ 167  
2.3.3.1. The Procedure ........................................ 167  
2.3.3.2. The Law Applicable to the Arbitration Procedure .................................................. 168  
2.3.3.3. Termination of the Arbitration Tribunal .... 168  
2.3.4. The Arbitration Award ........................................ 168  
2.3.4.1. Enforcement of the Arbitration Award .... 168  
2.3.4.2. Modifications to the Original Award ........ 169  
2.3.5. The Right to Challenge the Arbitration Award ...... 169  
2.3.5.1. The Appeal of the Arbitration Award ....... 169  
2.3.5.2. Reversal of the Arbitration Award .......... 170  
2.4. International Arbitration ........................................ 171  
2.4.1. Definition of International Arbitration .......... 171  
2.4.2. International Arbitration Agreement ................. 171  
2.4.3. Rules Concerning the Arbitrator .......................... 172  
2.4.3.1. The Appointment ................................... 172  
2.4.3.2. Revocation Of and Challenge To an Arbitrator .................................................. 173  
2.4.4. Rules of the Arbitration Procedure .................... 174  
2.4.4.1. The Arbitration Tribunal ............................ 174  
2.4.4.2. Overview of the Rules of the Arbitration Procedure .................................................. 174  
2.4.4.3. The Law Applicable to the International Arbitration .................................................. 175  
2.4.5. The Arbitration Award ........................................ 175  
2.4.5.1. The Award .......................................... 175  
2.4.5.2. The Discharge of the Arbitration Award .... 175  
2.4.6. Recognition and Execution of Arbitration Awards ... 176  
2.5. International Conventions and Other Agreements ....... 177  
2.5.1. International Agreements Ratified by Tunisia .... 177  
2.5.2. Other Agreements ............................................ 177  
2.5.3. The Code to Increase Investments ..................... 177  
2.6. The Centers for Arbitration ..................................... 178  
2.6.1. The Center for Conciliation and Arbitration of Tunisia ............................................. 178  
2.6.1.1. The Arbitration Tribunal ............................ 178  
2.6.1.2. The Arbitration Procedure ........................ 179
# Table of Contents

2.6.1.3. The Arbitration Award ............................... 180  
2.6.2. The Center for Internal and International Arbitration – “El Insaf” ............................. 180  
3. Mediation and Conciliation ............................................................. 181  
4. Other ADR Mechanisms ................................................................. 182

## CHAPTER 9 TURKEY ................................................................................... 183

1. Introduction ..................................................................................... 183  
2. Commercial Disputes ...................................................................... 184  
2.1. Importance of Trade and Commercial Disputes in Turkey .. 184  
2.2. Current Commercial Dispute Resolution Mechanisms and Legal Framework ...................... 184  
2.2.1. Commercial Adjudication ......................................... 184  
2.2.2. International / Domestic Commercial Arbitration .... 186  
2.2.3. Mediation .................................................................. 186  
3. Arbitration ....................................................................................... 187  
3.1. International Arbitration ...................................................... 187  
3.1.1. International Arbitration Law ................................... 187  
3.1.2. Introduction of Arbitration in Disputes Related to Concession Contracts ............................. 188  
3.1.3. International Conventions on International Arbitration Ratified by the Republic of Turkey ...... 189  
3.1.4. The Enforcement of Foreign Arbitral Awards in Turkey ........................................ 191  
3.2. Domestic Arbitration .................................................................. 193  
3.2.1. The Legal Framework of Domestic Arbitration in Turkey ......................................................... 193  
3.2.2. The Arbitration Institutions ...................................... 194  
3.2.2.1. Istanbul Chamber of Commerce (ITO) Arbitration ......................................... 194  
3.2.2.2. UCET (TOBB) Arbitration ...................................... 194  
3.2.2.3. Ankara Chamber of Commerce Arbitration 194  
3.2.2.4. IZTO Arbitration ........................................ 195  
3.2.2.5. Union of Turkish Bar Associations Arbitration ......................................................... 195  
3.2.3. Training of Arbitrators ......................................................... 195  
4. Mediation and Other ADR Mechanisms ......................................... 195  
4.1. Institutions and Professionals for ADR ................................ 197  
4.1.1. Alternative Dispute Resolution Providers ............................... 197  
4.1.2. Training in ADR ................................................................. 198  
4.2. Awareness of ADR Mechanisms in Turkey ...................... 198
Table of Contents

4.3. Other ADR Mechanisms ...................................................... 199
5. Concluding Observations .................................................... 199
  5.1. Turkish Culture and ADR .................................................. 199
  5.2. Legislative Framework for ADR in Turkey ....................... 200

CHAPTER 10 THE WEST BANK AND GAZA STRIP .................................. 203
1. Introduction ........................................................................ 203
2. Commercial Disputes .......................................................... 204
  2.1. Economic and Investment Situation .................................. 204
   2.1.1. The Prevailing Economic Situation in Palestine .......... 204
   2.1.2. Constraints Facing the Economic Situation in
           Palestine ................................................................ 205
   2.1.3. The Oslo Accords (Paris Protocol) and Its Effect on
           Local Investment .................................................... 206
   2.1.4. International Trade Agreements ............................... 207
     2.1.4.1. Interim Association Agreement with the
              European Union .............................................. 207
     2.1.4.2. Interim Association Agreement with
              European Free Trade Association ............... 208
     2.1.4.3. Free Trade Agreement with the United
              States of America ....................................... 208
     2.1.4.4. Preferential Trade Agreement with Jordan . 208
     2.1.4.5. Preferential Trade Agreement with Egypt . 209
   2.2. Commercial Disputes in Palestine ................................... 209
     2.2.1. Resolution and Definition of Commercial Disputes
             in Palestine ...................................................... 209
     2.2.2. Mechanisms for Commercial Dispute Resolution .... 210
       2.2.2.1. Commercial Dispute Resolution in the
                 Banking and Insurance Sectors ..................... 210
       2.2.2.2. Commercial Dispute Resolution in the
                 Communications Sector .............................. 210
  3. Arbitration ......................................................................... 210
   3.1. Institutional Arbitration Centers ................................. 210
   3.2. Other Arbitration Centers ......................................... 211
   3.3. Advantages of the Increased Use of Arbitration
        in Palestine ......................................................... 211
     3.3.1. Cost ............................................................... 211
     3.3.2. Confidentiality ................................................. 211
     3.3.3. The Parties’ Freedom to Choose the Arbitration
            Panel ............................................................. 212
Table of Contents

3.3.4. Execution of Decisions and Arbitration Awards ..... 212
3.3.5. A Certain and Transparent System for Conflict Resolution .................................................. 212
3.4. Arbitration Law No. 3 of 2000 .................................................. 212
   3.4.1. Historical Overview of the Arbitration Laws ....... 212
   3.4.2. Introduction of the Palestinian Arbitration Law ...... 212
      3.4.2.1. Types of Arbitration ................................... 231
      3.4.2.2. The Arbitration Agreement ............................ 214
      3.4.2.3. The Arbitration Panel ................................. 215
      3.4.2.4. The Competent Court ................................. 216
      3.4.2.5. The Arbitration Period ................................ 216
      3.4.2.6. Enforcement, Objection, and Revocation ....... 217
      3.4.2.7. Execution of the Award .............................. 217
      3.4.2.8. Implementation and Enforcement of Foreign Awards ............................................. 217
   3.4.3. Constraints on Arbitration in Palestine ............. 218
   3.4.4. Arbitration’s Potential Impact on Foreign Investment ................................................... 219
3.5. University Programs on Arbitration Education in Palestine 219
4. Other Conflict Resolution Methods in Palestine: Mediation and Sulha ........................................ 220
   4.1. Mediation ............................................................ 220
   4.2. ‘Sulha Ashariah’ (Traditional Way to Resolve Disputes) ... 220
5. Concluding Observations and Recommendations ............. 221

APPENDIX COMPARATIVE TABLES .................................................. 223
INDEX ........................................................................................................... 237
Foreword

Nadja Alexander

ADR is increasingly becoming an integral part of legal reform in national, regional, and international arenas around the world; one need merely think of the UNCITRAL Model Law on International Commercial Conciliation (2002), the European efforts to establish a Directive on Mediation, and the US Uniform Mediation Act (2001). A plethora of ADR organizations and regulations are emerging all over the world, largely on an ad hoc basis. The garden is growing rapidly, and overrun paths and overhanging trees obscure the view of the landscape. A gardener's touch is needed.

It is my pleasure to introduce readers to my colleagues, Giuseppe De Palo and Mary Trevor, two highly-experienced gardeners who have cultivated the second volume in the Global Trends garden. Featuring 10 countries in the southern Mediterranean region, *Arbitration and Mediation in the Southern Mediterranean* comprises contributions from leading local practitioners and experts in these fields of alternative dispute resolution.

The editors have done a masterful job of collating and systemizing the knowledge and know-how of 34 authors in 10 national chapters. As in the first volume, an introduction synthesizes the main themes and provides readers with an overview of the national chapters that follow. The editors also offer valuable insights into regional trends and national nuances in ADR developments. They show how, despite variety in terms of practice and even legal tradition, these countries are continuing to embrace internationally attractive dispute resolution options. To this end the countries are clearing the existing paths to arbitration and exploring new paths to mediation and other forms of ADR.

This book differs from the first of the series in two principal ways. It deals with arbitration and mediation, rather than with mediation alone. Moreover, it specifically focuses on commercial applications of these dispute resolution processes from the perspectives of legal-economic reform and the enhancement of cross-border trade and investment. The priority of these themes is highlighted by the European Union funding of the project which formed the basis of this book.

In gardening terms, the co-editors of this volume have cleared the brush from the grove of olive trees in the largely neglected dispute resolution garden of the Mediterranean. I am confident the grove will flourish and bear much fruit.
Acknowledgments

The editors would like to acknowledge and give their most heartfelt thanks to the following people, whose extraordinary skills, coupled with a willingness to help out with even the most mundane of tasks, made this book possible: Penelope Harley, our former colleague, for her initial editing work on the manuscript; Emma Hegger, of ADR Center, for her tireless facilitation and coordination as ADR Center’s emissary for the experts on the ground; Jaime Molbreak, also of ADR Center, for being the only person in Rome without a suntan while this book was being finalized; Vincent Verschoor, Developmental Editor at Kluwer Law International in The Netherlands, for his patience and ability to edit and format with extraordinary speed; Serge Loode, of the Australian Center for Peace and Conflict Studies at the University of Queensland, Australia, for providing moral support, technical expertise, and revising skills whenever the (all too frequent) call went out for help; Beth Honetschlager, of the Hamline University School of Law faculty in Minnesota, for her eagle editing eye and willingness to pitch in at the drop of a hat; Rosica (Rose) Popova, Third Year Student at Hamline University School of Law, for her critical reading skills and ability to focus attention on key issues; and Carrie Skrip, Third Year Student at Hamline University School of Law, for her ability to sort through a maze of legal materials.

No less in need of most heartfelt thanks are the people who put their faith – against common sense and all odds – in the editors: Gwen de Vries, Publishing Director of Kluwer Law International, who originally commissioned this book; Bas Kniphorst and Eleanor Taylor, Acquisition Editors at Kluwer, whose combined efforts helped see the project through; and Nadja Alexander, Series Editor, Director of ADR and Practice at the Australian Center for Peace and Conflict Studies at the University of Queensland, world-renowned ADR professional, and generous collaborator who never failed to offer sage advice or to supply (most gently, of course) needed redirection.

Working on a project like the EC-sponsored ADR MEDA project at a busy dispute resolution organization such as Italy’s ADR Center provides frequent reminders of the benefits of collegiality. We are in fact indebted to countless well-known ADR professionals who have come through the Center’s headquarters on the Spanish Steps, and those we have met around the world, for their advice and insights about our work in the Southern basin of the Mediterranean. Among these people, we would be remiss if we did not particularly thank Christopher Honeyman, ADR Center’s lead external consultant, whose design work on the project proposal was one of the reasons the ADR Center consortium prevailed over the competition for the ADR MEDA
Acknowledgments

Project. We send a special thank you as well to ADR Center’s CEO, Leonardo D’Urso, for his continuing support in the book completion.

Lastly, the editors would like to express their sincere gratitude to the diverse group of talented local experts whose work has made lasting contributions to the project and culminated in these pages. Through their insight into the MEDA countries and, more importantly, their friendship, they have inspired the ADR MEDA Project Team.
Introduction

Giuseppe De Palo  
Mary B. Trevor

In early 2004, the call went out from the European Commission (EC) for proposals on a major project to promote the development of international commercial arbitration and alternative dispute resolution processes (ADR) in the so-called MEDA region, the European Union’s (EU) strategic economic partner, with the ultimate goal of helping those countries in the region attract foreign trade and investment. A consortium of four partner organizations from around Europe – ADR Center in Rome as lead partner, the Centre de Médiation et d’Arbitrage of Paris, IBF International Consulting in Brussels, and the Italian Confartigianato, a large association of small businessmen – chose to answer the call. Virtually all of the other major ADR organizations of the EU, each in partnership with various other entities representing the business and legal communities of the Euro-Mediterranean region, also participated in the ensuing competition.

Mid-2004 found the editors of this volume far from Europe and the shores of the Mediterranean, at the Dispute Resolution Institute of Hamline University School of Law in St. Paul, Minnesota, receiving and meshing submissions from around the globe – where other principals of ADR Center were at the time engaged – which would form the elements of the consortium’s proposal for the EC project.

In early 2005, from among the five pre-qualified bidding consortia, the EC chose the ADR Center-led consortium as the winner. With funding provided initially for 2005-2007, the consortium embarked on the project described below, officially titled ‘Promotion of International Commercial Arbitration and Other Alternative Dispute Resolution Techniques in MEDA Countries’ (the ‘project’). Encouraged by the progress made, the EC later agreed to a proposal to increase the project funding to include additional work. That project would eventually lead to this book.

1 In the terminology of the European Union, the southern Mediterranean region, which includes Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Syria, Tunisia, Turkey, and the West Bank & Gaza Strip, is referred to as the ‘MEDA’ region.

2 This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of the editors and
Introduction

1. The Project Behind the Book

As part of its economic partnership with the MEDA region, the EU seeks to promote effective mechanisms of development through increased industrial cooperation, with the ultimate goal of creating a Euro-Mediterranean area of shared prosperity.

One of the obstacles preventing enhanced trade and investment in the MEDA countries, particularly for Small and Medium Enterprises (‘SMEs’), is the lack of an efficient, effective, and reliable infrastructure to manage trade and investment disputes. Inadequately drafted contracts, insufficient legal advice, and defective functioning of judicial systems are hallmarks of the unsatisfactory protection afforded EU-MEDA transactions. SMEs are likely to suffer the most, since even when the judicial system functions effectively their access to domestic courts is severely limited. In addition, they are largely unfamiliar with alternative systems of preventing and managing commercial disputes.

A country benefits from the confidence of international investors if its delivery of justice is perceived as generally fair and reliable, relatively quick and inexpensive, and generally free of onerous procedural formalities. Arbitration and ADR processes are recognized for several advantages in dealing with commercial disputes, including reduced expense, procedural flexibility, efficiency, confidentiality, and finality.

As a result of these benefits, arbitration and ADR, and mediation in particular, have been steadily becoming more popular worldwide. These techniques are especially useful in the context of international business as a way of bypassing the judicial barriers that impede trade and development. There is no doubt that the availability of functioning commercial arbitration and mediation systems in the MEDA countries would help them to attract foreign contributors named herein, and can in no way be taken to reflect the views of the European Union. On a personal level, the project team would like to include a note of sincere gratitude to Patrick McClay, Trade Economist at the European Commission Delegation in Amman, without whose constant guidance and patience as project manager, the project could never have gone as smoothly as it did, nor could we have achieved as much as we did.

Trade with the ten MEDA countries represents 7.79% of total EU imports and 9.23% of total EU exports. In 2002, 0.47% of EU (EU15) inflows came from MED10, while 2.5% of the EU outflows went to MED10 (source: EC Dg Trade). The MEDA region is 3.81% of the total world area and 3.98% of the world population, yet its GDP was EUR 583 billion in 2002, which represents only 1.68% of the world total (source: EC Dg Trade).

The toll paid by the region in this respect is significant. EU-based businesses may prefer to conduct comparable transactions with countries that are less convenient logistically, but that do provide at least one internationally accepted forum to deal with commercial disputes.
Introduction

trade and investment. Because of the dominance of SMEs in business throughout the region, the EC project goals and the ADR Center consortium’s work have aimed particularly at enhancing the business environment for these firms, with the ultimate object of facilitating international trade and foreign investment in the region. Specifically, the project has focused on raising awareness, acceptance, and application of arbitration and ADR, in the hope of generating an enhanced trans-Mediterranean commercial dispute resolution infrastructure capable of matching the required level of investor confidence.

More specifically, the project activities have centered on three main goals: (1) diffusion of information on dispute settlement techniques within the legal and business community; (2) training of specialists; and (3) technical assistance to MEDA intermediary institutions, such as chambers of commerce, federations of industry, and trade promotion agencies. Each of these activities has focused not only on legal aspects of arbitration and mediation, but also on promoting these processes as instruments for resolving commercial disputes. Indeed, without a broad perspective on the roles of arbitration and mediation in the MEDA countries, the prospective users (business people), their principal advisors (lawyers, but also intermediary associations), and those called upon to enforce either arbitration awards or mediated settlements (judges) are unlikely to cooperate in promoting a modern culture and practice of dispute resolution.

Specific project activities have included seminars and panels on international contracts and dispute settlement for various business constituencies in the region, e-learning and web site development, training of mediators and arbitrators, the provision of technical assistance to mediation and arbitration centers in the region, and the organization of a large-scale Euro-Mediterranean conference. Much of the project work has included the involvement of local experts from each country of the region, in addition to experts from different EU countries.

While the extensive project work in the countries has been an important first step in the facilitation of international trade and foreign investment in the MEDA region, the editors and the entire project team realized that this work was only a starting point, and that more needs to be done to continue the efforts of the dedicated people in the region who contributed to this project. Therefore, the editors turned once again to the local experts to ask their help in the next step – moving beyond the confines of the MEDA region to promote outside awareness of the project. In response, the local experts have invested considerable time and effort in producing country-by-country reports about local commercial dispute resolution. We are fortunate to be able to edit them and present these unique resources here.
Introduction

2. OVERVIEW OF THIS VOLUME

The chapters in this book have been written by local practitioners in the respective countries: people who have the day-to-day experience of dealing with the local court systems, the local legal community, the local business community, and the local people. Theirs are highly practical and concrete perspectives on the resolution of commercial disputes in their respective countries. The following overview covers the common themes and noteworthy variations reported by these experts in their coverage of commercial disputes in their countries.

Due to geographic proximity and world events, certain common features are reported by the experts from the MEDA countries. In particular, all the countries have an interest in developing and sustaining economic ties to other countries by encouraging and accommodating international business transactions and promoting international investment. Since the latter years of the twentieth century, many of the MEDA countries have engaged in significant economic reforms, both to improve the domestic economic framework and to open up the economy to the wider world.

The MEDA countries have also recognized that a necessary concomitant of this process of economic development and expansion is the development of a sophisticated legal framework that can handle the inevitable consequence of increased commercial activity: increasing numbers of commercial disputes, both on the domestic and international levels. Many countries are therefore currently in the process of developing or revising legislation for the commercial arena.

The reports indicate that the countries fall along a broad spectrum when it comes to commercial legislation and the handling of commercial litigation in the courts. Some of the MEDA countries have long had sophisticated legal systems in place which comprehend both an extensive court system and detailed statutory codes. But others are still in the process of developing their judicial and legislative systems, or have only recently sought to modernize outdated codes. Some court systems have specialized courts to handle commercial disputes. Others may have some type of administrative division or group of judges within the court system to which commercial disputes are channeled. But in such situations, the judges typically move between divisions and lack any training or specialization in commercial disputes. Finally, some court systems simply classify commercial disputes as civil disputes.

Regardless of levels of sophistication and specialization, none of the existing legal systems in this region is equipped to handle the daunting numbers of commercial disputes that clog up the courts and lead to the process of litigation being almost uniformly slow and economically counter-productive for commercial disputants – a problem shared by many other regions of the world. As a consequence, experts in all of the countries included here have recognized
the need for alternative means of resolving commercial disputes. Their reports about the availability of these alternatives, the level of sophistication of these alternatives, and the extent to which disputing parties opt for use of these alternatives indicate a fairly wide variation. All authors agree, however, on the need for additional work to be done to promote alternatives to litigation.

All the countries in the MEDA region now recognize, to some extent, the processes of arbitration and, for the most part, mediation. Some experts within those countries view arbitration as falling within the ADR framework; others view arbitration as a litigation alternative distinct from ADR, which they view as comprehending mediation and other informal methods of dispute resolution. The editors have not imposed a uniform categorization, and therefore the reports below will reflect these varying views.

Of all of the alternatives to litigation, arbitration has the most extensive legal underpinnings in the region. Arbitration in many of the MEDA countries is currently governed by legislation, either through general civil or commercial codes or through specialized arbitration codes. A number of civil and commercial code provisions in the region that apply to arbitration have their roots in French, Swiss, or Anglo-American legal codes, and the law of Islam (Shari‘a) and current Egyptian law have been influential in the region. Many of the codes address arbitration in substantial detail, covering such aspects as the arbitration agreement or clause itself, issues relating to the choice of arbitrator(s), decisions about the arbitration proceedings and the substantive and procedural law to be applied during the proceedings, the nature and execution of the arbitration award, and the role of the courts when problems arise during the arbitration or when a party challenges the validity of an arbitration award. The different countries use varying terminology to refer to the arbitration process – court, panel, or tribunal – but the editors have chosen to use either ‘tribunal’ or ‘panel’ to avoid confusion with judicial courts.\(^5\) It should be noted that, despite the use of collective nouns to refer to the process, a single arbitrator is typically acceptable.

Specialized arbitration codes addressing international arbitration are often modeled after the UNCITRAL (United Nations Commission on International Trade Law) Model Law on International Commercial Arbitration (1985),\(^6\) but the guidelines of the ICC (International Chamber of Commerce)\(^7\)

\(^5\) In the Algeria and Lebanon reports, where the lower level courts are called tribunals, the arbitration process is referred to as the ‘arbitration tribunal.’ This is distinct from the ‘Arbitration Court,’ or the ‘Court,’ under the aegis of the Beirut and Tripoli Chambers of Commerce and Industry discussed in the Lebanon report.

Introduction

and the ICSID (International Center for Settlement of Investment Disputes)\textsuperscript{8} may also come into play.

A number of the MEDA countries are also parties to international conventions and treaties that address the use of arbitration to resolve commercial disputes. The seminal international convention is the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, known as the New York Convention.\textsuperscript{9} Virtually all the MEDA countries, with the exception of the West Bank and Gaza Strip (which lack independent statehood), are parties to this convention. All the MEDA countries, again with the exception of the West Bank and Gaza Strip, are also parties to the 1966 Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which established the ICSID and is also known as the Washington or ICSID Convention.\textsuperscript{10} The expert reports also list a number of bilateral treaties (‘BITs’) to which the countries are parties and which promote the use of arbitration to resolve commercial disputes arising between entities in the two signatory countries.

While the convention, treaty, and legislative underpinnings for arbitration are extensive in the MEDA region, the extent of actual use of arbitration varies quite a bit from country to country. Ad hoc, or privately organized arbitration, happens in most countries, but the availability of institutional arbitration is often limited due to a lack of arbitration centers or people with arbitration training. The inclusion of an arbitration agreement or clause, now standard in many international commercial transactions, often means that arbitration is used more extensively in the international arena than in the domestic arena.

As the experts’ reports reflect, both the legal underpinning and use of arbitration are generally more fully developed than those of mediation in almost every MEDA country. While the use of mediation in some form has historically been an aspect of the culture of almost every MEDA country, its use is limited, if not virtually non-existent, in the realm of commercial dispute resolution. Significant exceptions are Israel, where mediation is used extensively due, in

\textsuperscript{7} The website of the ICC may be found at \texttt{<www.iccwb.org/>} last visited on June 4, 2007.

\textsuperscript{8} The center is also known as the CIRDI – Centre International pour le Règlement des Différends Relatifs aux Investissements. The website of the ICSID may be found at \texttt{<www.worldbank.org/icsid/>} last visited on June 4, 2007.

\textsuperscript{9} For more information about the New York Convention, follow the ‘Texts and Status’ link on the UNCITRAL website at \texttt{<www.uncital.org/>} last visited on June 4, 2007.

\textsuperscript{10} For the text of the convention, see the ICSID website at \texttt{<www.worldbank.org/icsid/basicdoc-archive/9.htm>} last visited on June 4, 2007.
part, to extremely congested courts, and the West Bank and Gaza Strip, where the informality of mediation is sometimes the best option in the face of the disruption of more formal mechanisms for dispute resolution.

Traditional processes of dispute resolution persist in the MEDA countries, such as the Sulh or Sulcha in countries such as Egypt, Israel, Jordan, Syria, and the West Bank and Gaza Strip, or the use of an Amin in countries such as Tunisia, Algeria, and Morocco or the Alim in Turkey. But their use is typically limited to certain, and sometimes isolated, sectors of the society outside the commercial realm.

In broad overview, the experts’ reports for each country cover the nature of the economy and commercial disputes, the resolution of commercial disputes through the court system, the resolution of commercial disputes through arbitration, and the resolution of disputes through mediation and other processes, where applicable. For the reader’s convenience, each chapter starts with a brief overview of some basic information about the country, culled from generally available sources. Some chapters conclude with the local experts’ suggestions for the promotion of alternatives to litigation in their country. A brief overview of each country’s report follows.

Since its government’s conversion from Socialism in 1989 to a republic, the country of Algeria has made substantial changes to its economy and laws to promote trade and investment. It does not have specialized commercial courts, but it does have a commercial section for its lower courts. Arbitration is governed in part by the Algerian Civil Code, modified in 1993 to encourage the use of arbitration for both domestic and international disputes, and, for foreign investments, by CIRDI arbitration rules and international agreements. Arbitration is used for commercial disputes in Algeria, but disputing parties still tend to prefer recourse to the courts. While there is a center in Algeria that offers mediation services, use of mediation in Algeria for commercial disputes lacks government or legislative support and is rare.

The Arab Republic of Egypt has a long-established and sophisticated legal system originally based on European, especially French, models, but also with a basis in Shari’a. Its courts are not currently specialized for commercial disputes, but an Arbitration Law governs both domestic and international disputes. There are several centers that offer arbitration services, and arbitration is preferred over litigation for commercial disputes. While mediation is the option typically chosen to resolve political disputes, and the corporate community favors the use of mediation, the limited availability of mediation services limits the use of mediation for commercial disputes in Egypt.

The State of Israel, like Egypt, has a long-established and sophisticated legal system, but it is based on Anglo-American rather than French law. Also as in Egypt, Israel does not have specialized commercial courts but does have an Arbitration Law. Although Israel lacks a public arbitration center, many private entities provide arbitration services and disputing parties often opt for arbitration
Introduction

rather than litigation for commercial disputes. Recent years have also seen an impressive rise in the use of mediation to resolve commercial disputes, due in part to its promotion by the judiciary and the Ministry of Justice, and in part to the availability of multiple private service providers.

The Hashemite Kingdom of Jordan has been engaged in substantial economic, legislative, and judicial reform since an economic crisis in 1989. Its legal system has evolved from the Code Napoléon. The civil courts have no specialized commercial courts but the system often directs commercial disputes to experienced judges. The Arbitration Law was revised in 2001 to follow the Egyptian model, and a number of new laws incorporate arbitration as a means of resolving disputes. But the use of arbitration still falls below what is needed to ease the burden on the court system. Jordan, unlike many MEDA countries, has a Mediation Law, but use of mediation for commercial disputes is still not extensive due to a number of unresolved problems.

The Lebanese Republic has worked hard to promote a favorable investment climate and the country has both a commercial code and specialized commercial courts. Recently codified and revised sections of the Code of Civil Procedure, inspired in its original version by French legislation, govern arbitration. Because current Lebanese law still accords exclusive jurisdiction to the courts for significant aspects of commercial practice, and legal practitioners are wary of both courts and the arbitration process, commercial cases tend to settle privately. While specific laws and private initiatives have promoted the use of mediation, it is still not widely used for commercial disputes.

The Kingdom of Morocco has been engaged, like many other countries in the region, in modernizing its economic and legal structures since the late 1980s. Like Lebanon, Morocco has both a distinct commercial code and a system of commercial courts that is separate from the civil courts. Arbitration is currently governed by the Code of Civil Procedure, but a draft arbitration code based on the UNCITRAL Model Act and French law, and influenced by the ICC, is under government consideration. Contrary to the perception in most countries, arbitration is seen in Morocco as a slow process, and recognition of, or remedies against, arbitration awards are limited. As a consequence, the main use of arbitration is for international disputes. While a bill addressing mediation is currently before the Moroccan parliament, the use of mediation to resolve commercial disputes appears to be extremely limited.

The Syrian Arab Republic has been involved in both economic and legal reform in recent years, and the Commercial Code, which dates from 1949, is currently under revision. There are no specialized courts for commercial disputes, and arbitration is governed by the Code of Civil Procedure, which is derived from Egyptian law. Although there are no arbitration centers, interest in arbitration is growing due to its perceived benefits for commercial actors. While awareness and use of mediation are limited, mediation is available as an option for dispute resolution in certain areas of the law.
Introduction

Starting in 1987, the Tunisian Republic has made extensive changes to its government, economy, and foreign and domestic policies. Its legal system is based in part on French civil law and in part on Shari’a. It does not have separate courts for commercial disputes. But it does have a well-developed Arbitration Code based in part on the UNCITRAL Model Law and in part on Swiss and Belgian legislation, and arbitration is used extensively for commercial disputes. Mediation, however, is neither well known nor practiced.

The Republic of Turkey, like the other states in the region, has developed its economy through economic reform since the late twentieth century. Turkey is also a member of a number of international organizations from both East and West. Commercial disputes are resolved by courts that also have jurisdiction over civil and criminal cases, although there are some specialized commercial courts in the major cities, and such disputes are governed by the Code of Civil Procedure. Turkey has an International Arbitration Law, modeled upon the UNCITRAL Model Law, while domestic arbitration is governed by articles of the Code of Civil Procedure based on Swiss law. There are a number of arbitration centers in Turkey, although some are new or not in operation yet. While commercial arbitration is fairly active in Turkey, mediation is not used in the commercial setting other than for labor disputes.

Despite continuing strife in the area, the West Bank and Gaza Strip, through the Palestinian National Authority, have entered into a number of bilateral trade agreements in an effort to boost international trade. The same courts govern both civil and commercial disputes, and enforcement of decisions is often difficult. Arbitration is governed by the Arbitration Law, which came into force in 2000. While arbitration is viewed favorably by the business community, many aspects of the current political and economic situation inhibit its development. In contrast, while not regulated by law, mediation appears to be widely used as an alternative to the difficulties encountered in other arenas.

The diversity in the status of ADR in the countries outlined above is reflected in each of the reports, and can be attributed to the special circumstances of each country. What these reports offer the reader is a unique opportunity to gain perspectives on ADR from those who know the respective systems best. We have intentionally retained the diversity in the texts to reflect the variations in the development of ADR and the different legal traditions, and ideally, to give some idea of the flavor of life in these countries, all rich in history and culture. We hope we have provided a coherent panorama of the regional landscape that will serve as a roadmap for scholars and practitioners in the ADR field.
Introduction
About the Editors

Professor Giuseppe De Palo (Hamline University School of Law, Dispute Resolution Institute) is President of Rome-based ADR Center SpA, Italy’s oldest and largest private provider of commercial mediation services (http://www.adrcenter.com), and a mediator of major international business disputes. He is a member of the CPR Panel of International Distinguished Neutrals, the Board of Editorial Advisors of Harvard Law School’s Negotiation Journal, and of the International Committee of the ABA, Dispute Resolution Section. He has published widely in the field of Alternative Dispute Resolution (ADR), teaches courses around the world, and is a frequent conference speaker and organizer.

Professor De Palo began teaching international business transactions and ADR at the University of Urbino, Italy, in 1995, while practicing law in the Brussels office of the firm that is now Wilmer, Cutler, Pickering, Hale & Dorr. He became a full-time ADR practitioner and scholar in 1998, co-founding ADR Center and teaching Negotiation and Mediation courses at the Sapienza Università di Roma where, since 2003, he has been the co-director of the postgraduate course ‘Making and Saving Deals in the Global Business Environment – Negotiating Transactions and Resolving Business Disputes Internationally’ (http://www.makingandsavingdeals.com). In 2004, he served as part of a ten-person working group of experts charged by the European Commission to draft the European Code of Conduct for Mediators. In 2005, Professor De Palo led ADR Center to win the EC-funded, three-year ‘ADR MEDA’ project (over USD 2 million) to promote international commercial arbitration and mediation in ten Southern Mediterranean countries, where he has been leading a team of over 40 people whose mission is to teach ADR mechanisms to judicial bodies, the bar and business communities, and provide governmental technical assistance. In 2006, Professor De Palo was one of the driving forces for the establishment of MEDAL - the alliance of leading international commercial mediation and conflict management service providers (http://www.medal-mediation.com).

Professor De Palo holds a J.D. (‘Laurea in Giurisprudenza’), maxima cum laude, from the University of Bologna, a Degree in Political Sciences (‘Laurea in Scienze Politiche’), maxima cum laude, from the University of Urbino, and an LL.M. from the University of California at Berkeley. He can be reached at giuseppe.depalo@adrcenter.it.
Mary B. Trevor began her career in law as a business litigator at the firm of Leonard, Street and Deinard in Minneapolis, Minnesota. After leaving practice, she taught Legal Research and Writing at the University of Minnesota and at William Mitchell College of Law in St. Paul, Minnesota. She also was a Legal Writing Tutor at William Mitchell. She first taught Legal Research and Writing at Hamline University School of Law in St. Paul, Minnesota briefly in the early nineties and returned to that position in 1998, where she remains today. In the 2007-08 school year, she will be serving as Interim Director of the Legal Research and Writing Department at Hamline. She also teaches ‘Writing to Communicate and Persuade’ for the Dispute Resolution Institute at Hamline, a course that looks at how writing skills can be used in the ADR context.

In addition to teaching skills in the writing field, Instructor Trevor has taught Civil Litigation and Trial Practice at the Minnesota Legal Assistant Institute, has served as an Academic Success Tutor at Hamline, and has been a trainer on a pro bono basis for the Minnesota Legal Services Coalition. In addition, she served as the Associate Editor for the Journal of Alternative Dispute Resolution in Employment. Currently, she acts as a Writing Coach for new associates at Leonard, Street and Deinard in addition to her teaching duties. Ms. Trevor has recently published ‘Revealing Skills: Remembrance of Things Not Long Past,’ August 2005, Vol. 20, No. 1, The Second Draft: Bulletin of the Legal Writing Institute.

Mary Trevor earned her J.D. from Yale Law School, and her B.A. from Bryn Mawr College, graduating summa cum laude. She can be reached at mtrevor@hamline.edu.
About the Contributors

1. **ALGERIA**

   **Souad Djeddou** is a lawyer admitted to practice before the Algerian Court of Appeal since 1999. He also has a degree in Economics. He is a member of the Haroun & Associés law firm and specializes in trademark law and forgery law.

   **Lyria Mosteghanemi** (Algiers Bar, 1999) has worked in four law offices, of which the last specializes in business law. She also advises in a financial engineering and institutional development office which is a leader in finance in Algeria. In addition, she has taken part in the constitution and implementation of foreign banks and financial establishments in Algeria.

   **Mohamed Toukal** is member of the Haroun & Associés law firm and specializes in social law, criminal law, and commercial law. He also consults extensively. He has participated in several seminars on mediation and arbitration and recently took part in a spring 2007 training course on the practice of commercial arbitration in Algeria.

   **Nabiha Zerigui** (Algiers Bar, 2002) is an Associate Lawyer at the Samir Hamouda law firm. She specializes in business law, corporate law, contract law, privatization and liberalization of the market, foreign investments, commercial and financial international relations, company and project financing, joint ventures (with significant expertise in negotiating partnership agreements), shares acquisition, and merger-acquisition operations.

2. **EGYPT**

   **May El-Batouti** (Egyptian Bar Association) is an associate at Hafez, an arbitration practice, and reads law at the Sorbonne and Cairo University. She took a certificate in Claims and Disputes in the Construction Industry at the American University in Cairo (AUC) and in International Commercial Mediation and Arbitration. She is currently pursuing an LLM Program in ‘International and Comparative Law’ at the AUC. She is a member of the Egyptian Arbitration Forum (EAF) and the Egyptian Corporate Lawyers Association (ECLA).

   **Karim El Helaly** has an LLB (University of Cairo) and an LLM with specialization in IP and technology (Franklin Pierce Law Center, Concord, New Hampshire, USA). His main fields of specialization are corporate, commercial,
About the Contributors

and intellectual property law, with a particular focus on technology-based industries. His work involves counseling, licensing, enforcement, and effective management of IP assets. He is a certified mediator for commercial and intellectual property disputes.

**Said Hanafi** earned a Bachelor of Law degree from the Faculty of Law of Cairo University in 2001, where he graduated third in a class of 3,000 students. Mr. Hanafi is an associate with Mena Associates Law Firm, where he divides his time between Cairo and a sister firm in Munich, both focusing on civil and commercial law. He has worked on a number of legal publications, and also serves as an assistant to a Member of the Faculty of Law at Cairo University.

**Heba Osman** (Egyptian Bar) has an LLB (Cairo University, Egypt) and an LLM (Maastricht University, the Netherlands). She specializes in construction law and arbitration. She has practiced in Cairo at the Sarwat A. Shahid law firm and is currently an associate at Masons Galadari, Dubai, UAE.

3. **ISRAEL**

**Noam Ebner** is an attorney-mediator based in Jerusalem, Israel, where he co-directs Tachlit Mediation and Negotiation Training. Noam is a Visiting Professor in Conflict Resolution, International Law, International Peace Studies, and MBA programs at Sabanci University, Turkey, and at the UN’s University for Peace in Costa Rica. Noam trains mediators for the court system and performs corporate and executive training in negotiation. In addition, Noam is a trainer, practitioner, and researcher in the field of online negotiation and dispute resolution.

An attorney-mediator, **Yael Efron** specializes in mediation and negotiation training. She co-directs a private mediation center and teaches conflict resolution and law in several academic and private institutions in Israel. She provides consulting services to the Ministry of Justice, private firms, and community mediation centers. She has published several articles on negotiation, mediation, and other legal topics, and is currently pursuing her PhD at the Faculty of Law at Hebrew University in Jerusalem.

**Galit Manobla-Landman** (Israel Bar Association, 1998). After joining the law offices of Gilat, Barakat and Partners in 2000, she worked in the fields of commercial law and intellectual property, and as an ongoing consultant for international firms in Israel and abroad in the fields of intellectual property, investment agreements, and partnership contracts. Since 2003 Galit has worked in a commercial law firm, serving as legal counsel to Kibbutz communities regarding both business and community affairs.
Yifat Winkler is a criminal defense attorney in private practice in Jerusalem, Israel. Specializing in criminal records, she is a leading expert in the areas of presidential pardon, privacy of criminal records, and rehabilitation of former offenders. She is also an accredited mediator and an experienced mediation trainer.

4. JORDAN

Tariq Hammouri has an LLB (University of Jordan), an LLM (University of Edinburgh/UK), a PhD in Law (University of Bristol/UK), and a Diploma in Trade Policy and Multi Lateral Trading Systems (WTO/AMF). He is the managing partner of the Hammouri & Partners law firm. He received accredited Mediation Training offered by the American Bar Association. He was selected by the Jordanian Ministry of Industry and Trade as a member of the Jordanian Companies Law Amendment Committee.

Dima A. Khleifat (Jordan Bar) has an LLB (University of Jordan) and an LLM (LSE -University of London). She is an associate partner at Prudence Consulting, mainly specializing in corporate, industrial property, and constitutional law. She has been involved in numerous arbitrations and mediations in addition to representing her clients in court.

Qais A. Mahafzah has a Masters in international commercial law (University of Aberdeen/UK), a PhD in maritime law (University of Durham/UK), and a Diploma in trade policy and multilateral trading systems (WTO/AMF). He is a partner at Gedara for Legal Services & Arbitration law firm and the Deputy Dean of the Faculty of Law at the University of Jordan. He is involved in various ADR proceedings and his clients include telecommunications and aviation companies in Jordan.

5. LEBANON

Fatima Abdallah (Beirut Bar, 2002) has an LLB (Lebanese University), and a DESS (Diplôme d’Études Supérieures Spécialisées) in litigation, arbitration and ADR and DEA (Diplôme d’Études Approfondies) in internal and international business law (Lebanese University, Faculty of Law - French section). She is Managing Partner at Kouatly & Associates - Attorneys and owns the Abdallah Law Office. She has attended trainings in arbitration, mediation and negotiation organized by Saint Joseph University, ICC Paris, Institute for Training in Mediation & Negotiation (France) and the Yvelines Mediation Center of Versailles (France). She is also a member of the Chartered Institute of Arbitrators – Lebanese Branch since 2006.
About the Contributors

Alexandra Absi (Beirut Bar, 1991) has an LLB (Saint Joseph University, Beirut) and a DESS (Diplôme d’Etudes Supérieures Spécialisées) in litigation, arbitration and ADR (Lebanese University). She has been an Associate Member of the Chartered Institute of Arbitrators – Lebanese Branch since 2003 and is currently working at the Alexandra Absi law office. She has attended trainings in arbitration, mediation, and negotiation organized by Saint Joseph University, ICC Paris, Institute for Training in Mediation & Negotiation (France) and the Yvelines Mediation Center of Versailles (France).

Chadia Salim El Meouchi (New York Bar) has a Business Degree (B. Com., Concordia University) an LLB (University of Montreal), an LLM (Georgetown University), and a Certificate in Arbitration and ADR (Canadian Commercial Arbitration Center). She is the Managing Partner of Badri and Salim El Meouchi law firm. She is a member of the ABA, NYBA, Lebanese Transparency Association (Board member) and the Lebanese Corporate Governance Task Force (Head of Legal & Regulatory Committee). Since 2004, she has been selected as a leading lawyer in Lebanon for corporate and commercial work by the Chambers Global Guide for Leading Lawyers.

Ramy Torbey has a DEA in Banking and Financial Markets Law (Saint-Joseph University, Beirut). He has an MBA (Ecole Supérieure des Affaires in Beirut (ESA) and ESCP-EAP in France). He is currently working on his PhD in Financial Markets Law at Paris II University (Panthéon-Assas). He is the managing associate at the Torbey Law Firm, where he heads the corporate finance and IP/IT departments. He is member of the IT Committee of the Beirut Bar Association.

6. MOROCCO

Yasmine Essakalli has been involved with the MEDA project since its inception, in particular lending support for the trainings on commercial arbitration and mediation that have taken place in the context of the project for the benefit of Moroccan businesspersons and lawyers.

Zineb Idrissia Hamzi (Casablanca Bar, 1996) has a PhD in law and an Advanced Graduate Diploma in the law of land, maritime, and air transportation (Law, Economics and Politics University, Aix-Marseille III). She has been teaching corporate law, social legislation and contract law at the Moroccan Institute of Corporate Law. In addition, she is a Consultant with the General Confederation of Moroccan Companies and the SME Federation.

Reda Oulamine is a lawyer and founder of Oulamine Law Offices in Casablanca, specializing in business and corporate law. She is a member of the bar in both New York, USA and Paris, France. Ms. Oulamine earned her LLM
About the Contributors

from the University of San Diego School of Law in 1998, where she was a Fulbright scholar.

Redouane Taarji has been involved with the MEDA project since 2006, in particular lending support for the trainings on commercial arbitration and mediation that have taken place in the context of the project for the benefit of Moroccan businesspersons and lawyers.

7. **SYRIA**

**Nasim Ahmad Awad** (Syrian Bar, 1995) specializes in Syrian business and commercial law. He was one of the founders of Legality – Lawyers & Consultants (the first registered law firm in Damascus, Syria).

**Mohammed Anas Ghazi** (Syrian Bar, 1995) has an LL.M. with distinction in international legal studies (UK). He specializes in business & corporate law. He was one of the founders of Legality – Lawyers & Consultants (the first registered law firm in Damascus, Syria).

**Mazen Khaddour** (Damascus Bar, 1992) has an LLM in Commercial Law (Aberdeen University, UK). He is the founder of M. Khaddour & Associates law office. He has participated in a number of studies funded by the EU on public procurement, governance, and local Administrative law. Since 2003, he has been selected as a leading lawyer in Syria for corporate and commercial law by Chambers Global Guide for Leading Lawyers.

8. **TUNISIA**

**Sara Carmeli** has an LLM in public law and a PhD in European law from the University of Aix-en-Provence, School of Law. She specializes in international transactions and counsels both public and private companies and public bodies. She has been a lecturer at the University of Paris 1, Panthéon-Sorbonne, Aix-en-Provence School of Law, and the University of Perugia. She has also been an assisting mediator at the Center for Effective Dispute Resolution in London.

**Sophia Feriani** is an attorney specializing in civil and commercial litigation, with extensive experience practicing in Tunisia and Paris. She is a member of both the Tunisia and Paris Bar Associations. The MEDA project Team had the honor of her participation as a representative of Tunisia in the regional seminar for jurists that took place as part of the MEDA project in Morocco in 2005.
9. TURKEY

Murat Bayar has a BA in Economics (Marmara University) and an MBA degree from (Koc University). While working at Chase Manhattan Bank and Is Bank, he earned his second Masters in conflict analysis and resolution from Sabanci University, with a concentration in economic-based conflicts. He is currently working for the ADR Center as a Country Legal Expert.

Çağdaş Evrim Ergün (Ankara Bar 2003) has an LLB (University of Galatasaray) and an LLM in European law (University of Exeter, England). He is currently pursuing his Ph.D. in administrative law at the University of Ankara. He is an associate in Çakmak Avukatlık Burosu, Ankara. He is a member of the Ankara Bar Association and the World Energy Council Turkish National Committee.

Burcu Tuzcu (Istanbul Bar) has an LLB (Ankara University) and an LLM in business law, focusing on international arbitration (Istanbul Bilgi University). She has been working at PricewaterhouseCoopers since 2003. She has been a contributor to the Study Groups of TUSIAD (Turkish Industrialists’ and Businessmen’s Association) and YASED (International Investors’ Association) since 2005.

10. THE WEST BANK AND GAZA STRIP

Omar Rafiq Khader (Palestinian Bar) has a BA in law (Applied Science University, Amman-Jordan) and a Professional Diploma in Legal Skill, Law Institute (Birzeit University, Palestine). He works as a legal assistant at the legal department of the Palestinian Council of Ministers in Ramallah and is experienced in insurance law, administrative law, arbitration, and mediation.

Rana Bahu Toubassi (Palestinian Bar) has a law degree (University of Jordan). She has worked as a legal advisor and consultant at the Arab Insurance Company, the Democracy and Workers Rights Center, and the Ministry of Planning. She was a representative of the Palestinian Legal Group at Amnesty International. She is currently working as a legal coordinator and translator at Seyada – an EU project for Empowering the Palestinian Judiciary.

Ala’Eddin Touquan has been involved with the MEDA project since its inception, in particular lending support for the trainings that have taken place in the context of the project for the benefit of Palestinian businesspersons and lawyers.
Chapter 1
Algeria

Souad Djeddou
Lyria Mosteghanemi
Mohamed Toukal
Nabiha Zerigui

1. INTRODUCTION

Algeria is located in North Africa. It is bordered to the north by the Mediterranean Sea, to the east by Tunisia and Libya, to the west by Morocco, to the south by Niger and Mali, and to the southwest by Mauritania and the Western Sahara. Algeria’s area is 2,381,741 square kilometers, with a 1,200 kilometer coast on the Mediterranean.\(^1\)

The current population of Algeria is 33,333,216 souls (July 2007 estimate). A little more than two-thirds of Algerians live in the northern region; most of the remaining population lives in the desert. The vast majority of the people are Arab/Berber and their religion is Sunni Muslim.

Algeria is a republic, with a President, Prime Minister, and a bicameral parliament. Originally a socialist regime, the change in Algeria’s government at the end of the 1980s has led, among other things, to multiple government efforts to improve the country’s economy. High prices for gas and oil have facilitated government efforts, as has some debt rescheduling. The government has made significant changes in fiscal policy, and it has taken measures to promote international trade and investment, some of which are discussed below.\(^2\)

---

\(^1\) Website of the presidency: <www.el-mouradia.dz>, last visited on June 4, 2007.

\(^2\) The information in this introduction is culled from a variety of sources that provide basic information about countries around the world, including: The Middle East Information Network, Inc. at <www.mideastinfo.com>; The World Factbook at <www.cia.gov>; and <www.wikipedia.org>, all last visited on June 4, 2007.

G. De Palo & M.B. Trevor (eds), \textit{Arbitration and Mediation in the Southern Mediterranean Countries}, 1–16.

2. COMMERCIAL DISPUTES

Starting with its independence and the adoption of the socialist regime in 1962, Algeria’s economy and external commerce for many years were under the State’s monopoly. This situation meant that civil and commercial disputes in Algeria were mostly addressed by the judicial authorities. Arbitration and mediation were the exception to the rule, employed only by some national companies such as Sonatrach, the national oil company, which included an arbitration clause in its international contracts.

The change in Algeria’s regime in 1989 instituted two major principles:

i. freedom of commerce; and
ii. the submission of public companies to private law.

These two principles encouraged private investment and the application of equity among all economic actors, leading in turn to the development of trade inside and outside the country and Algeria’s openness to the economic market.

As a result, commercial exchange between Algeria and foreign countries increased dramatically, as did the volume of commercial disputes.

2.1 Importance of Trade in Algeria, Gateway Between Europe and Africa

Algeria’s positioning in the north of Africa, on the Mediterranean Sea and just a few hours from Europe, has always allowed it to play the role of gateway between the European and African continents. Most trade between these two continents passes through Algerian ports. Having not developed agricultural or light industry because of its focus on heavy industry, Algeria has had to resort to importing agricultural and industrial goods to remedy the lack of these products.

2.2 Commercial Dispute Evolution

The development of trade in the country has inevitably led to the appearance of commercial disputes, whose evolution in turn has tracked trade development. In fact, the more trade grows, the more disputes there are regarding such issues as the execution of contracts, the delivery of goods, ownership of goods, and non-payment for goods.

2.3 Legal Framework of Commercial Disputes

The Algerian judicial system is a multi-level system. Claims are originally brought before tribunals. The decisions of the tribunals may be appealed to an upper level court. Both the tribunals and courts are regulated by the Supreme
Court. The Supreme Court’s regulation ensures unified jurisprudence in the country and respect for the law.

2.3.1 Field of Competence for Commercial Disputes

Except for administrative cases (conflicts between individuals and State organs), which are handled by the administrative courts, there are no specific tribunals and courts assigned to other types of disputes. In other words, a given tribunal or court does not handle a certain type of conflict exclusively. Tribunals and courts are, however, divided into sections, as discussed below. The commercial section is the only one that hears commercial disputes. It is important to note, however, that before the enactment of the financial law for 2003, civil sections heard commercial cases. The 2003 law introduced a different financial tax for the filing of a commercial case than the previous tax (DZD 2,500 per case rather than DZD 500, DZD 3,000 for appeals to courts rather than DZD 700, and DZD 5,000 for matters before the Supreme Court rather than DZD 1,500). Since this financial law was enacted, only commercial sections have been competent to handle commercial cases.

2.3.2 Specific Commercial Disputes: Investments

As detailed below, as part of adopting the free market regime and developing investment laws, Algeria has adhered to and subsequently ratified many international conventions for the protection of investors. By ratifying such conventions related to investment conflicts, Algeria has allowed investors to choose dispute resolution mechanisms other than courts.

2.4 Commercial Dispute Resolution Mechanisms

In Algeria, both the judicial system and private means are available for the resolution of commercial disputes.

2.4.1 Classic Judicial Means: Courts

As noted above, the Algerian legal system is composed of tribunals and courts answering to the Supreme Court. The Tribunal constitutes the basic jurisdiction. It is divided into seven main sections: civil, commercial, criminal, family and civil status, social and labor, real estate, and emergency. One judge rules in all matters except for those where the law stipulates otherwise. Such a stipulation, for example, applies to the social and labor section, where the judge is assisted by two assessors (one representing employers and the other representing employees). Judges do not specialize in certain fields and may be moved from one section to another.
Arbitration and Mediation in the Southern Mediterranean Countries

The commercial section is competent to handle all commercial conflicts such as: commercial lease conflicts, contract interpretation, contractual obligations, commercial claims for non-payment, maritime conflicts, and guarantees related to commercial transactions.

A proposal to modify the organization of the judiciary to institute commercial and maritime courts is currently in discussion at the parliament.

2.4.2 Private Means

There are a couple of centers in Algeria that seek to promote the resolution of commercial disputes through private means. In 2000, the Algerian Chamber for Commerce and Industry (‘CACI’) submitted a request to become a member of the International Chamber of Commerce (‘ICC’), a ‘global business organization’ whose activities include ‘arbitration and dispute resolution.’ The ICC’s acceptance of this request led to the creation of the ‘ICC Algeria.’ Also, a Mediation and Arbitration Center has been created near the CACI. This center aims to sensitize all commercial companies to the use of private means for resolution of their conflicts.

2.4.3 Differences

There are significant differences between judicial means and private means of dispute resolution:

i. Competence: Arbitrators and mediators are chosen strictly for their knowledge of the conflict submitted to them. Judges, however, are not specialized in the conflicts submitted to them because they are subject to change from one section to another.

ii. Rapidity: Arbitration proceedings are faster than judicial proceedings, which can last years.

iii. Confidentiality: Judicial procedures are public, while arbitration and mediation procedures are confidential and conducted only in the presence of the concerned parties.

---

3 For more information about the ICC, see its website: <www.iccwbo.org/id93/index.html>, last visited on June 4, 2007.
3. **Arbitration**

3.1 **The Compromissory Clause**

In Article 106, the Algerian Civil Code stipulates that ‘The convention is the parties’ Law.’ This provision means that all clauses agreed to in a contract are binding on the parties to the contract. In almost all international commercial contracts, a dispute resolution clause submits the conflicts arising from the interpretation or execution of the contract to arbitration. For domestic commercial contracts, recourse to arbitration is not common, but it is growing considerably.

When the parties agree to submit their possible disputes to arbitration, this agreement is called a compromissory clause. The compromissory clause must designate the arbitrators or set out the conditions under which their designation will be made; if not, it will be nullified. The arbitration tribunal may consist of either only one arbitrator or an odd number of arbitrators. The clause may designate the arbitration procedure or provide that the litigation will be subject to the arbitration rules of a specific organization.

The arbitrators produce their award in accordance with legal provisions unless the parties expressly give them the capacity to rule otherwise, such as in equity.

3.2 **Institutional Arbitration vs. Ad Hoc Arbitration**

The recognized freedom for the parties to conclude an arbitration agreement can be implemented by resorting to either an *ad hoc* or institutional arbitration.

3.2.1 **Option in Favor of Ad Hoc Arbitration**

When providing that ‘parties can directly … designate the arbitrator or arbitrators or provide the means of their designation,’ the legislature authorizes contractors to use an *ad hoc* arbitration tribunal, one specially constituted to settle either an existing or likely dispute.

In an *ad hoc* arbitration, the parties themselves must organize the constitution as well as the functioning of the arbitration tribunal. The parties must envisage the entire process of resolving the dispute through arbitration. They have to set a delay between the amicable settlement and the litigation stage, choose a mode to designate arbitrators and the president of the arbitration tribunal, determine a subsidiary organ to designate an arbitrator or the president of the arbitration tribunal should the parties fail to do so or disagree, locate the seat of this jurisdiction, determine the applicable law for the point at issue as well as the procedural law or give competence to the arbitration tribunal to...
Arbitration and Mediation in the Southern Mediterranean Countries

resolve the question and, finally, specify the deliberation terms and the means of enforcement for the arbitration award.

3.2.2 Option in Favor of Institutional Arbitration

By giving the parties the freedom to make ‘reference to an arbitration regulation’ (Article 458 bis 2, Chapter 1) the legislature authorizes them to have recourse to institutional arbitration to settle their conflict. Institutional arbitration proceeds in accordance with rules and regulations implemented by a permanent arbitration center, such as the International Center for the Settlement of Investment Disputes (‘ICSID’ in English or ‘CIRDI’ in French), the International Chamber of Commerce (‘ICC’), or the Euro-Arab Chamber of Commerce.4

The essential advantage of this method of settling disputes derives from the fact that the parties can simply make reference to pre-determined arbitration regulations by means of their compromissory clause. As long as this clause has been well drafted, they need not be concerned with the organization of this arbitration. In addition, the permanent center they have chosen normally has the competence to institute and supervise the arbitration and, if needed, resolve any difficulties that may occur either during the institutional stage of the process or during its execution.

3.3 Arbitration Under Algerian law

3.3.1 Civil Procedure Code

3.3.1.1 The Civil Procedure Code in 1966

The original Algerian Civil Procedure Code mentioned arbitration in its Articles 442 to 454, which were wholly inspired by the French Civil Procedure Code. In 1966, a new long Article 442 bis (Ordinance 66-154 of June 8, 1966) gave national companies, each supervised by a branch of the State government, the right to arbitrate disputes. When the disputing companies were under the supervision of the same government branch, then that authority arbitrated the disagreement. When they were under different branches of the State, the usual procedure was then implemented: each party chose its own arbitrator and the two arbitrators chose the third one. These three were necessarily nominated from amongst the State’s agents. This new procedure, unnecessarily complicated by a

---

5 For more information, see <www.law.berkeley.edu/faculty/ddcaron/Documents/RPID%20Documents/rp04054.html>, last visited on June 4, 2007.
Algeria

legislature restrained by the necessity to respect socialist principles, was not very successful: examples of disputes settled by this procedure are rare.

The 1966 Code did not expressly devote a single article to international trade arbitration. However, the demands of the trade relationships between the local companies and the foreign ones had, in practice, imposed compromissory clauses that Algerian companies were forced to accept.

As noted above, by opting for a free market economy, the constitution of 1989 introduced the principles of freedom of trade and protection of private ownership. Consequences of this change, as noted, have been the end of the monopoly on foreign trade, the encouragement of private investment, and the submission of public companies to private law. Algerian public and private enterprises legally became solely responsible for their future. In particular, they now negotiate their own international contracts. Among the most important clauses they have to negotiate concern the settlement of possible commercial litigation.

3.3.1.2 Modification of the Civil Procedure Code in 1993

The modification of the Civil Procedure Code by Decree No. 93-09 of April 25, 1993 gave unequivocal permission to both public and private companies to use domestic and international arbitration to settle their economic and commercial disputes. For the first time in Algeria, the decree instituted international arbitration as a preferred process to settle disputes between local and foreign partners. This reform was made by the insertion of a Chapter IV called ‘Particular Disposals to International Commercial Arbitration’ in the Civil Procedure Code.

Chapter IV, in particular, abrogated and replaced article 442 of CCP with the following provisions:

‘A person can compromise on the rights under that person’s disposal. A person cannot compromise on food obligations, law of succession, housing and clothing, nor concerning public order, condition or people’s capacities.’

and

‘Moral Entities of public law cannot compromise, except in their international commercial relationships.’

This second provision thus allowed public entities to use arbitration – in their international commercial relationships – which was innovative.

Chapter IV also updated some of its provisions about international arbitration. Article 458 bis defined arbitration, for purposes of the chapter, as:
Arbitration and Mediation in the Southern Mediterranean Countries

‘arbitration which addresses disputes related to international commerce interests, in which at least one of the parties has its headquarters or its location in a foreign country.’

This text is in line with the reform policy of that time.

3.3.2 Other Codes Addressing Arbitration

The Civil Procedure Code, the Investments Code, and several International Agreements have elements that address arbitration.

3.4 International Conventions Related to Arbitration and Entry of Algeria


iv. Other conventions:
   − Algerian-French economic cooperation protocol concluded June 21, 1982;
   − Algerian-French arbitration rules and regulations of March 27, 1983;
   − Ratification of the convention related to the Arab Organization of Investments Guarantee (GIAO) (Ruling No. 72-16 of June 7, 1972 – JORA 1972, page 654); and

v. Several bilateral agreements with several countries, among them:
   − United States of America, Presidential Decree No. 90-319 of October 17, 1990;
   − Belgian-Luxembourg Economic Union, Presidential Decree No. 91-345 of October 5, 1991;
   − Italy, Presidential Decree No. 91-346 of October 5, 1991;
   − France, Presidential Decree No. 94-01 of January 24, 1994;
Algeria

− Romania, Presidential Decree No. 94-328 of October 22, 1994; and
− Spain, Presidential Decree No. 95-88 of March 25, 1995.

3.5 CIRDI Arbitration

3.5.1 Investments in Algeria

Investment in Algeria is governed by the new code addressing investment development instituted by Ordinance No. 01-03 of August 20, 2001, and modified and completed by Ordinance No. 06-08 of July 15, 2006. The code covers a variety of areas for investment, including production of goods and provision of services.

3.5.2 Settlement of Disputes Between the Government and Foreign Investors

Two types of conflicts are envisaged: interpretation or implementation of agreements involving two states (bilateral agreements) and interpretation or implementation of agreements between one of these countries and a foreign investor.

With regard to disputes arising under bilateral agreements, diplomatic settlement is naturally preferred. But if the dispute cannot be settled amicably in three or six months from the time it has been raised, the more diligent party can submit the dispute to an ad hoc arbitration tribunal of international public law.

Resolution of the dispute starts with the designation of an arbitrator by each government; these two arbitrators then choose by common agreement a third person – a citizen of a different country – who is then officially appointed by the two governments as president of the arbitration tribunal. If this arbitration tribunal is not constituted within the specified time, the United Nations Secretary General, the CIRDI, or the President of the International Court of Justice is called in to nominate an arbitrator or the president of the arbitration tribunal.

Concerning the substantive law to be applied to the dispute, bilateral agreements refer either to international law or to conventional rules. Concerning procedural law, all the aforementioned agreements for the promotion and protection of investments give freedom to the arbitration tribunal to establish the applicable procedural rules and regulations.

When there is a dispute between the hosting country and a foreign investor, and this dispute cannot be resolved through amicable settlement within six months from being raised, the party making the claim has several options. For example, sometimes, the more diligent party has a choice between the competent state jurisdiction in the particular investment area and an ad hoc arbitration tribunal; sometimes this party can opt for the latter’s jurisdiction and
an institutional arbitration under the aegis of the Stockholm Chamber of Commerce or the International Chamber of Commerce.

3.6 Arbitration Award

3.6.1 Implementation of the Arbitration Award

The arbitration award resolves the dispute between the parties and assigns enforceable obligations either to both parties or to one of them. This award may be implemented in two different ways: either by voluntary enforcement under Article 458 bis 16 Chapter 3 or by implementing the *exequatur* procedure established by Article 458 bis 17.

3.6.1.1 Voluntary Enforcement

Experience in international commercial arbitration shows that in most cases, the arbitration award is voluntarily enforced by the party obligated to pay the award. Almost all the judgments against Algerian public enterprises have been enforced without the intervention of an *exequatur* judge.

3.6.1.2 Enforcement of the Judgment by *Exequatur*

It is only when voluntary enforcement is not possible or available that the award will be enforced by the implementation of *exequatur* proceedings. In this situation, the party seeking enforcement must determine which *exequatur* judge has the authority to enforce the award and must meet certain requirements for the award to be recognized and enforced.

Submitting the case before the *exequatur* judge leads to the first question, which concerns the designation of the competent judge. When the award to be enforced is Algerian, which means the seat of the arbitration tribunal that determined the award is in Algeria, it is enforceable by the president of the court within whose jurisdiction the award was made. Conversely, if the seat of the arbitration court is outside of Algerian territory, the president of the court where the enforcement is requested is authorized to enforce the award.

There are several conditions for the enforcement of an award. The party seeking enforcement must prove the existence of the award. Article 458 *bis* 18 of the Civil Procedure Code provides:

‘existence of an arbitration award is established by the production of an original in addition to the arbitration convention or copies of these documents having all the required conditions for their authenticity.’
The party must also ensure that the award is written in an understandable language for the judge. The New York Convention, provides in Article 4-2:

‘if the aforementioned sentence or convention is not written in the official language of the country where the sentence is invoked, the party which asks for recognition and the enforcement would have to translate these documents in the mentioned language; the translation must be certified by an official or sworn-in translator, a diplomatic or consular agent.’

Finally, according to Article 458 bis 17 of the Civil Procedure Code, the award must not be contrary to international public order.

After verifying that these conditions have been met, the president of the court enforces the arbitration award by virtue of a ruling transcribed at the end or in the margin of the minutes. It is only then that the court clerk is authorized to deliver an authenticated copy of the award to be enforced.

3.6.2 Appeals from the Arbitration Award Enforcement

3.6.2.1 Appeal

If a party wishes to appeal, the appeal is not lodged directly against the arbitration award. Instead, the appeal is from the ruling of the president of the court, either when the award has been refused or when the award has been enforced. In fact, Article 458 bis 22 of Civil Procedure Code states that: ‘The decision refusing the recognition or enforcement is capable of appeal.’ Article 458 bis 23 of the Civil Procedure Code, however, limits what decisions may be appealed according to the basis for the decision; the permissible bases for the appeal (or annulment) are listed below.

3.6.2.2 Motion for Annulment

Article 458 bis 25 Chapter 1 of the Civil Procedure Code states: ‘the arbitration award made in Algeria in matters of international arbitration could be subject to a motion for annulment in the cases of [Article 458 bis 23].’ An appeal, as explained above, concerns only the ruling of the local court’s president refusing to enforce, or enforcing, an international arbitration sentence. On the other hand, the motion for annulment calls the award rendered in Algeria directly into question.

3.6.2.3 Permissible Bases for an Appeal or an Application for Annulment

An appeal or application for annulment may be based on one of the following challenges:
Arbitration and Mediation in the Southern Mediterranean Countries

- default, nullity or expiration of the arbitration agreement;
- irregularity in the composition of the arbitration tribunal or in the designation of a lone arbitrator;
- violation of the assignment given to the arbitration tribunal;
- disregard for adversarial principles;
- no reasons, insufficient reasons, or conflicting reasons for the award;
- awarding more than is asked for – ‘an excessive award’ – or not awarding what it was asked for at all; or
- the incompetence of the arbitration tribunal.

An appeal or an application for annulment must be lodged within one month of notice of the arbitration award. Enforcement of the award is tolled during this one-month window and the duration of the appeal (Article 458 bis 27).

Finally, the ruling of the court hearing an appeal or an annulment petition may be subject to an appeal to the Supreme Court if the former did not respect the law in its decision or if fundamental procedures were not followed (Article 458 bis 28).

3.7 Arbitrators

3.7.1 Constitution of the Arbitration Tribunal

Contrary to what the expression ‘arbitration college’ may imply, an arbitration tribunal can consist of one arbitrator only. Depending on the circumstances, either the single arbitrator, or arbitration college, approach can have certain benefits. For example, the one arbitrator approach can result in lower costs and accelerated settlement of a dispute. On the other hand, use of the arbitration college approach may mean that the arbitrators that form the tribunal complement each other and are able to comprehend all the elements of a dispute; there is a higher probability that one of the arbitrators has knowledge of the type of law governing the dispute; and the members may be more comfortable because responsibility is shared and decisions are made after group deliberation.

3.7.2 Requirements for an Arbitrator

The arbitrator:

- must be a natural person;
- must have legal capacity;
- ordinarily need not be of a particular nationality, with one exception: when the parties disagree about the nomination of the arbitration tribunal president. In this case, it is the judges’ responsibility to
designate an arbitrator with a different nationality from that of the parties (Article 458 bis 4, Chapter 2);
- must have the qualifications agreed on by the parties (Article 458 bis 5a);
- must be independent (Article 458 bis 5c)
- must sign a document accepting the mission given by the parties.

3.7.3 Nomination Procedure

3.7.3.1 Nomination of the Arbitrators for Ad Hoc Arbitration

The constitution and the functioning of an *ad hoc* arbitration depend on the parties’ common will. They are authorized to designate directly and freely the arbitrators who will comprise the arbitration tribunal in accordance with Article 444, Chapter 1 of Civil Procedure Code, which states that ‘the compromise designates the litigation subject and the names of the arbitrators.’ Under the same provision, failure to make such designation renders the compromise null.

3.7.3.2 Nomination of Arbitrators in Institutional Arbitration

When the parties refer the dispute according to an arbitration law as administered by a permanent arbitration institution, that law will determine how arbitrators will be nominated, dismissed, or replaced. However, these arbitration centers rarely intervene in the parties’ designation of the arbitrators.

3.8 Parties’ Choices

3.8.1 Choice of the Applicable Proceedings Law

The parties’ freedom to designate the law governing the arbitration tribunal proceedings is recognized both under domestic and international law.

3.8.1.1 Domestic Law

The arbitration agreement can, directly or by reference to an arbitration regulation, regulate the procedure to be followed by the arbitration tribunal; it can also determine the procedural rules to be followed by the court (Article 458 bis 6). This provision does nothing more than recognize a principle generally acknowledged by the national legislation, which is the complete freedom of the parties to designate the procedural law under which the arbitration will be conducted.
3.8.1.2 International Law

Conventional international law authorizes the parties, in an indirect manner, to choose the applicable procedural law. This rule is recognized in the 1958 New York Convention, in which it is specified that the acceptance of a foreign arbitration award can be refused if the party against whom it is adduced proves that the constitution of the arbitration tribunal or the arbitration procedure was not in keeping with the parties’ agreement.

3.8.2 The Choice of the Law Applicable to the Dispute

Article 18 of the Algerian Civil Code recognizes the freedom of the parties to choose the law applicable to the dispute as long as it has a ‘real relation’ to the contract at issue or the contracting parties. Otherwise, the law of common residence or common nationality is applicable; absent either commonality, the law of the place of where the contract was concluded applies. However, contracts relating to real estate are governed the law of the place where the property is located. The chosen law will determine the validity and impact of the contractual clauses at issue.

The legislative decree of 1993 recognizes unambiguously the autonomy of the parties. Article 458 bis 15 states, ‘the arbitration tribunal resolves the case implementing the law regulations that the parties have chosen.’ Failing that choice, the arbitration tribunal must determine the law to be applied based on an objective analysis.

4. MEDIATION

Not all commercial conflicts are resolved in court or through arbitration. An emerging alternative approach that facilitates the resolution of many conflicts is mediation.

4.1 Definition

The best-known definition of mediation is ‘an alternative mode of resolution of conflicts.’ It consists of calling upon a third party mediator, who is not concerned personally with the dispute, to assist the parties in reaching a mutually acceptable solution.

In sum, mediation is a process that helps the parties find a solution to their problems without imposing one. The mediator does not propose a solution and does not advise one, but rather helps the parties to be heard, to be understood, to communicate, and to find a solution themselves.
4.2 Needs for the Mediation

Everywhere in the world, and throughout history, conflicts have existed, from conflicts within the small family unit, to the commercial conflicts between companies, to the great diplomatic conflicts between states.

While laws, judges, and courts have often been available in some form to regulate conflicts, mediation has existed in many traditional societies as an alternative approach. People have turned to this more peaceful, less structured method where a third person serves as a bridge between two adversaries for purposes of helping them settle their conflict.

Nowadays, in spite of the existence of sophisticated systems of justice, the need for recourse to mediation remains large. The use of mediation, forgotten since the era of the traditional societies, is re-emerging today. Recourse to mediation often helps parties avoid the risks of court justice: slowness, cost and complexity.

Some of the benefits of mediation are that the parties control the course of the procedure themselves, they design the terms of payment, they have the possibility of discontinuing the process at any time, and their agreement determines their legal obligations.

Additional advantages of mediation include:

- flexibility and speed,
- confidentiality,
- freedom, and
- applicability to all situations that can generate conflicts.

4.3 Mediation Center in Algeria

Recourse to mediation is infrequent among the general public in Algeria. People still prefer to go to court to solve their disputes rather than to make recourse to a third person of their choosing. While the traditional practice of mediation has long been known in Algeria, it has typically been used in the resolution of simple conflicts, and the possibility of broader application has not come to widespread attention. People are also generally uncertain of the legal validity of mediation for dispute resolution.

The Chamber of Commerce and Industry in Algeria has created a Center of Arbitration and Conciliation, which regulates conflicts of an economic nature. This Center is not very active and has a low volume of business because companies today hesitate to entrust the resolution of their conflicts to this center and tend to prefer the justice of the State.

For more information, check the Center’s website: <www.caci.com.dz>, last visited on June 4, 2007.
4.4 The Mediator

A mediator is a third-party neutral who facilitates a meeting between parties in dispute and helps them find a solution to their conflict. This third person must meet certain criteria for qualification. The mediator must:

- be impartial,
- respect the confidentiality of the parties,
- respect the law,
- be independent,
- be diligent, and
- respect the freedom of the parties.

4.5 Decisions Resulting from the Mediation

It should be noted that the mediator is not a judge; the mediator does not have any capacity to sentence or impose a resolution to a dispute. Instead, the parties themselves determine the solution to their conflict with the aid of the mediator. The solution is regarded as a legal agreement that establishes the legal obligations of the parties. If the solution is not carried out, the parties again have recourse to the mediator, and if the conflict persists, the parties are free to bring it to the court system.

4.6 Lack of Government Support

As mentioned above, justice through the court system remains the means most requested by people of Algeria in resolving conflicts. In countries where the use of mediation is more developed, judges will sometimes direct the parties to a mediator; this approach helps to promote the use of mediation. In Algeria, however, mediation is rarely applied. It remains unknown to some professionals, and even some judges, who do not know the legal validity of mediation decisions. Consequently, there is no support from the Algerian government encouraging mediation.
Chapter 2
Egypt

May El Batouti
Said Hanafi
Karim El Helaly
Heba Osman

1. INTRODUCTION

The Arab Republic of Egypt (also known simply as Egypt or in Arabic as Misr) is situated by the Mediterranean Sea in North Africa, with geographic coordinates 27 00 N, 30 00 E. Its border territories are, from the west, Libya; from the south, Sudan; from the northeast, Israel and the Gaza Strip; from the north, the Mediterranean Sea; and from the east, the Red Sea. It has an area of about 1,001,450 square kilometers. Its area includes the Asian Sinai Peninsula.

Egypt has the largest population in the Middle East region, measured at about 80,335,036 people according to a 2007 estimate. Egyptians comprise the vast majority of the population, around 97-98 percent, with the remaining population consisting largely of rural tribes; there are also refugees from Palestine and the Sudan. Estimates place the mostly Sunni Islam population at about 90 percent; Christian sects, mostly Coptic, comprise most of the remaining 10 percent of the population. People tend to live either in major urban centers or in rural villages.

Egypt is a republic, with a President and a Prime Minister sharing executive power and with a multi-party Parliament as the legislative branch. The judicial branch, discussed in more detail below, is in charge of both the presidential and parliamentary elections.¹

¹ The information in this introduction is culled from a variety of sources that provide basic information about countries around the world, including: The Middle East Information Network, Inc. at <www.mideastinfo.com>; The World Factbook at <www.cia.gov>; and Wikipedia <www.wikipedia.org>, all last visited on June 4, 2007.

G. De Palo & M.B. Trevor (eds), Arbitration and Mediation in the Southern Mediterranean Countries, 17–46.

2. COMMERCIAL DISPUTES

2.1 Introduction

Egypt is one of the largest markets in the Middle East/Africa region. However, according to a mid-1990s estimate, 23 percent of Egypt’s population lives below the poverty line. In 2001 unemployment was estimated at 12 percent, with over 500,000 new entrants into the labor market per year. The Egyptian government believed that this labor power, if trained, could make Egypt into a formidable force in a variety of industries.

In line with its aspirations to become a regional and international competitor, the Egyptian government has been following a structural economic reform program since the early 1990s. Egypt’s difficulties include its heavy reliance on tourism, Suez Canal duties, and gas exports for foreign revenue income. The government is aware that it needs to diversify its foreign income potential and that its human resources are an asset.

In addition to economic reform, the Egyptian government has recognized the high priority of expanding and deepening legal reforms as a principal avenue to both greater national productivity and global competitiveness. Accordingly, new sets of laws have been introduced, such as the intellectual property, tax, and money laundering laws. Despite impressive and demonstrable progress, however, numerous technical, institutional, legal and regulatory, human resource, and infrastructure obstacles are yet to be overcome in Egypt. These obstacles constrain greater private and public sector economic development and national productivity. Cooperation between public and private institutions, however, is on the rise and is overcoming some of these obstacles.

Contrary to common belief, Egyptian law is essentially based on continental European legal models; this is particularly true of Egyptian civil and commercial laws. The adoption of Western laws can be traced back to the period of legal and administrative reform brought about by Mohamed Ali between 1805 and 1849. An enormously important development was the establishment of the so-called ‘mixed courts.’ These courts had jurisdiction over all financial disputes that touched upon foreign interests and prevailed from 1876 until they were finally abolished in 1949. Although these courts were staffed with both Egyptian and foreign judges – hence the term ‘mixed’ – the foreigners clearly outnumbered the Egyptians. Decisions were based on modern codifications, in particular the French ‘Code Civil’ and ‘Code de Commerce.’

The prevalence of these mixed courts over so many years had a significant impact on the shaping and development of modern Egyptian law, which was exposed to various Western influences for such a long period. Compared to some other Arab states, which have only developed their legal systems in the last thirty years, Egypt has a sophisticated legal system. Although it unfortunately suffers from a flood of legal provisions and a vast number of
Egypt

regulations and administrative rules, Egyptian jurisprudence is highly advanced and enjoys great respect in the Arab world.

2.2 Commercial Disputes

2.2.1 Introduction

Although Egypt’s judicial system is modern and relatively efficient, it suffers from both staff shortages and inadequately equipped courts. These shortcomings often result in proceedings being prolonged, the enforcement of judgments being delayed, and legal actions not being carried out properly.

With respect to commercial disputes, these problems are exacerbated because the Egyptian judicial system is remarkably underdeveloped in this area. In fact, as will be discussed below, the Egyptian court system, to a large extent, does not recognize the concepts of specialized courts in general or of commercial and economic courts in particular.

While the economic committee of the National Democratic Party and legal authors, are engaged in an ongoing debate regarding the establishment of ‘Specialized Economic Courts,’ this initiative is not yet sufficiently developed to be thoroughly examined. Therefore, this section will only describe the existing system and its major pitfalls.

2.2.2 Definition

The Egyptian Civil and Commercial Proceedings Law No. 13 of 1968 (‘Proceedings Law’), with its latest amendments, does not include an express definition of what is considered a commercial dispute. The only reference to commercial disputes in the context of territorial jurisdiction is found in Article 55, which provides that in cases of commercial disputes the plaintiff may file the claim before the court in whose jurisdiction the defendant is located or the court in whose jurisdiction the contract has been performed. Therefore, reference must be made to the provisions of the Egyptian Commercial Code in order to determine whether the nature of a dispute is commercial.

Article 1 of the Egyptian Commercial Code of 1999 defines the scope of the code to include all ‘commercial operations as well as any natural or juristic person who acquires the capacity of a trader.’ Article 4 of the code provides a non-exhaustive list of activities that are considered per se commercial activities. This list includes the purchase of movables with the purpose of reselling them or leasing them after changing their original form, the lease of movables for the purpose of sub-leasing them, and the establishment of

---

3 Article 1 of the Egyptian Commercial Law No. 17/1999.
commercial companies. Articles 5 and 6 list activities that should also be considered commercial if conducted on a professional basis. This list includes: merchandise or supplying services, industry, transportation, commercial agency and brokerage, insurance, banking operations, storage, mining, exploitation of computer software, satellite diffusion, the raising of poultry and cattle, marine transportation, and construction activities. Finally, Article 7 of the code considers any activity to be commercial if it is found to be similar in nature or result by analogy to the activities listed in Articles 4, 5, and 6.

The capacity of ‘trader’ is bestowed on any individual or legal person that exercises, on a professional basis, a commercial activity in its name and for its own account, as well as all types of companies whatever the legal regimes to which they are subject.

Egyptian jurisprudence does not consider the distinction between commercial and civil disputes important for the purpose of determining the competent court. This is because the Egyptian legal system does not recognize the concept of a separate commercial jurisdiction. Even if there is an internal distribution of matters within courts, this does not mean that there is an independent court to examine commercial disputes.

2.2.3 Impact on Trade and Business Activities

This lack of a proper distinction between commercial and civil matters and the consequent lack of proper commercial courts with a focus on commercial disputes has led to a serious adverse effect on the exercise of business activities in Egypt.

Dr. Samiha Fawzy, Vice Chairman of the Egyptian Center for Economic Studies in Egypt (‘ECES’), conducted a detailed study in 1998 which reported that Egyptian firms regarded tax administration and commercial dispute settlement as the two most severe constraints on their operations. Both constraints were reported to have increased in severity between 1994 and 1998, and they appeared to be more serious for smaller firms than for larger ones and for firms in industry, construction, and trade than for those in oil or tourism.

Dr. Fawzy showed the frequency and severity of disputes to be in the following declining order: bankruptcy, broken agreements, problems with the tax authority, and the quality of supplies. Almost two thirds of the firms’ disputes were with other private firms, 22 percent had disputes with government agencies, and the rest were with banks, labor, and public enterprise. According
to Dr. Fawzy, investors and economic players complain that the cost of litigation is high, litigation is time consuming, and ‘the judicial system is not well acquainted with commercial disputes related to market economies.’ She also reported investor complaints about lack of contract enforcement mechanisms and poor enforcement of laws.\(^8\)

One of the crucial consequences of this ambiguity and lack of specialization is the time it takes to resolve a dispute through the judicial system. Basing his argument on a World Bank survey that he applied to Egypt’s commercial cases, the Executive Director of the ECES stated that the clearance rate of such cases taken to the formal court system was only 36 percent in Egypt compared to 80 percent in Japan and 88 percent in Belgium. At the same time, the average time needed for the majority of cases that were settled in Egypt has increased from two years in the 1970s to over six years in the early 1990s.\(^9\)

In light of the foregoing, it would be safe to conclude that the lack of differentiation between commercial and civil disputes, in conjunction with the competence of courts and the lack of specialized, well-equipped commercial judges, has a serious adverse effect on the conduct of business activities in Egypt and that the cost of dispute settlement is one of the most important obstacles faced by investors in Egypt.

In this connection, it is appropriate to turn to the nature of the economy in Egypt and where it stands. The economy is one of the most important pillars of any country’s development, industrialization, and prosperity. According to the Economist Intelligence Unit,\(^10\) the economy in Egypt is facing significant difficulty since the cabinet of Prime Minister Ahmed Nazif took the reins of government, after his predecessor Atef Ebeid, on July 9, 2004. The challenges include restoring business confidence with a view to stimulating far more rapid, private-sector-led economic growth; arresting the deterioration in public finance; and bringing greater coherence and transparency to monetary policy and the management of the exchange rate. The pace at which the new cabinet has embarked on reform has surprised many who had expected a more gradual approach, given the well-documented caution of the president. Key measures have included lowering customs duties and simplifying customs procedures – a long-standing demand of investors, foreign and domestic – as well as sharp reductions in income taxes. The diesel subsidy has been cut and a slew of other measures have been announced, including a far-reaching privatization program.

The customs and taxation reform measures aim to stimulate the economy by raising disposable income and reducing barriers to investment and

---


\(^10\) Synopsis prepared by the EU regarding the Economist Intelligence Unit, Ltd.
The government is calculating that the short-term cost in terms of lower revenue will, in the medium term, be more than recouped by a widening of the tax net, as the incentive to evade is reduced, and by a more rapid pick-up in economic activity. Both results should raise the tax intake and reduce pressure on government spending. Achieving such goals should be possible as consumer and business confidence strengthens, boosted by the more coherent economic management now in evidence. The pick-up in privatization should also bolster Egypt’s ability to pay down the domestic debt stock.

There are, however, risks to the cabinet’s bold approach. If commitment to reform flags, economic activity may not strengthen sufficiently and privatization may not accelerate thoroughly enough to offset revenue shortfalls. Such developments would leave the public finances in a more precarious state than ever. Moreover, Egypt’s main industry – tourism – is vulnerable to acts of violence. If tourism suffers a sharp downturn, the government’s task will be made more difficult. The Sharm El Sheikh bombings in 2005 had a less severe impact on the tourism sector than the Luxor massacre of November 1997, which caused a decline in tourism receipts in 1998 of about a third.

2.3 Investment Disputes

2.3.1 Investment Treaties

Egypt is party to thirty-four bilateral investment treaties. Most of these treaties, if not all of them, include a jurisdiction clause whereby any dispute that arises between any of the contracting parties or their nationals who are protected by virtue of these treaties must be submitted to the International Center for Settlement of Investment Disputes (‘ICSID’). Since 1998 four claims were brought against Egypt before the ICSID. Two were based on the Bilateral Investment Treaty (‘BIT’) with the United Kingdom, one was based on the BIT with the United States, and the last was based on the BIT with Greece.

It is interesting to note that the Egyptian Government’s respect for the role of these investment treaties has increased dramatically over the past ten years in light of the gravity of the decisions issued against the government. This late awareness has led the government to employ more qualified practitioners and not to depend on the governmental corps.

2.3.2 Investment Law

The by-laws of a company established under the Egyptian Investment Law may contain an arbitration clause. In most cases, the General Authority for Investment and Free Zones (‘GAFI’) will accept the competence of the Cairo Regional Center for International Commercial Arbitration (‘CRCICA’). In some
cases references to shareholders’ agreements and joint venture agreements will also be accepted.

Foreign investors may conclude branch office agreements with the Investment Authority. Such agreements usually include arbitration clauses. Clauses referring to the ICSID and the Egyptian Law on Arbitral Jurisdiction No. 27/1994 are expressly permitted under Article 7 of the Investment Law. Dispute resolution according to ICSID is agreed upon in many investment protection agreements.

2.4 Dispute Resolution Techniques

2.4.1 Commercial Courts

In civil and commercial matters, the Egyptian court system follows the principle of two stages of appeal. This structure does not include the Supreme Court of Appeal (the Court of Cassation), which, as discussed below, only has the power of cassation and not an independent power of decision.

There is a general court, which has jurisdiction over all matters for which no other jurisdiction has expressly been designated. Below that court are the courts of first instance for cases involving only small amounts. The decisions of the courts of first instance may be contested before the general court, which exercises the function of a court of appeal in these cases if the amount in dispute exceeds the threshold required to file an appeal. There is a Court of Appeal for the decisions of the general court.

The Supreme Court of Appeal, situated in Cairo, is competent to decide upon questions of law. There are divisions for criminal courts, civil courts, courts for commercial disputes, and courts regarding family and inheritance law. Five judges sit in each session. The Supreme Court of Appeal was established to unify the law. Its supervision of the courts of lower instance only covers legal and procedural issues but not questions of fact.

The problems inherent in the Egyptian judiciary system usually do not occur due to the legal framework of the court organization and procedures, but because of some shortfalls in practice, especially concerning the deficient equipment of the courts and judiciary. Egyptian judges suffer from a high workload and an inefficient court administration as well as from a lack of courtroom facilities. A main reason for the many delays is the system adopted for the notification of judicial summons and decisions. Since the court employees who serve judicial documents are underpaid, they frequently prioritize their work autonomously. Due to the insufficient training of judges in specific areas, especially in commercial matters, decisions regarding complicated issues are usually left to experts who are employed by the Ministry of Justice or the State Council. Since these experts are not bound by any time limits, it may take months or even years for an expert to render an opinion.
Further, the effects of the socialist period (1957–1973) influenced by President Gamal Abdel Nasser, may still be felt today. The extensive nationalization brought about a drastic decline of experienced lawyers working in the fields of commercial and business law. Many of these lawyers took up positions with their former, now nationalized, clients or emigrated. This emigration of specialized lawyers resulted in a clear deterioration of the legal standards in the respective legal fields. Meanwhile, it has been recognized that it is crucial to improve and strengthen the Egyptian legal system in order to create a more favorable environment for investments in Egypt.

2.4.1.1 Description

As pointed out above, the Egyptian legal system does not provide for specialized courts for the settlement of commercial disputes, contrary to the practice under the mixed courts system. The interpreting memorandum of the Civil and Commercial Procedures Law states that the legislature saw that the existence of specialized commercial courts was only a result of some historical considerations and that the gap between commercial and civil matters has been reduced in a manner that does not justify the creation of a special court for commercial matters.

However, this express abandonment of a distinction between commercial and civil matters did not prevent the internal distribution of disputes amongst the different circuits of the courts. In practice, disputes are divided within the courts into several circuits, amongst them a commercial one. This distribution is nothing but an internal administrative distribution and does not have any impact on the admissibility of claims.

Even if there is no specific commercial or labor jurisdiction, according to Law No. 46 of 1972 regarding the court structure, the Minister of Justice has the power to establish courts of first instance for commercial and labor issues. Two commercial courts were established in Cairo and Alexandria in 1940. They do not differ from the other courts of first instance except for their specialization in commercial matters.

2.4.1.2 Jurisdiction

The jurisdiction of these two commercial courts as well as the jurisdiction of the commercial divisions of the first instance, appeal, and the court of cassation is based on the traditional rules of jurisdiction under the Civil and Commercial Procedures Law, which follow the principal of territoriality as well as the value of the claim, with a few exceptions regarding the type of the dispute.
2.4.2 Other Techniques

The judicial system does not include any other forms of dispute settlement that occur prior or subsequent to the court’s judgment. It is left for the judge only to decide whether he needs the assistance of an expert to address certain technical aspects of the claim he is examining. Even in the case of an expert determination, this opinion is not binding on the judge.

3. Arbitration

3.1 Overview

Arbitration has become a premier method for settlement of commercial disputes both nationally and internationally. It derives its force from being a speedy method (as compared to litigation) and from resulting in a binding enforceable decision (unlike other ADR methods). The following sections shall discuss the current arbitration scene in Egypt and in Islamic Shariaa’, and then will examine arbitration as practiced in Egypt, moving from what arbitration is under Egyptian law through the enforcement of arbitral awards.

3.2 Role of Arbitration

Arbitration in its modern form provides a practical solution for business. It is an intermediate solution between the judicial process and other forms of dispute settlement. From the judicial process, it took the feature of being final and binding, and from mediation and conciliation, it took the feature of providing a rapid solution as well as flexibility to the parties in a dispute.

As a result, with arbitration, the parties to a commercial dispute are saved from recourse to lengthy litigation procedures that in some countries, like in Egypt, may continue for as many as ten years. They are also able to get a final, binding, and enforceable decision settling the dispute, contrary to other forms of ADR. Arbitration’s expediency and finality further allow members of the business community to save expenses and assure investors of the existence of an efficient method for resolving disputes.
Arbitration and Mediation in the Southern Mediterranean Countries

3.3 Arbitration under Islamic Sharia

Arbitration was used in the Arab peninsula even prior to Islam and was practiced under the Christian and Jewish religions. As Islam came to the Arab peninsula, it confirmed a number of traditions that were already in place and abolished others that conflicted with the Islamic concept. Islam confirmed the method used by Arab tribes in resolving disputes, and this method was practiced by Prophet Mohamed (peace be upon him) in the well-known incident of the Black Stone. In addition to this history, arbitration (tahkeem in Arabic) was explicitly mentioned in the Quran in verses 35 and 58 of Sorat Al Nesaa' and confirmed in the other sources of Islam.

In Egypt, Shariaa’ is considered to be the main source of legislation as confirmed by Article 2 of the Egyptian Constitution, reading: ‘Islam is the Religion of the State. Arabic is its official language and the principal source of legislation is Islamic Jurisprudence (Shariaa’).’ As such, arbitration has been accepted in Egypt as a method of settlement of disputes, finding its roots in Shariaa’.

3.4 Egyptian Arbitration Law

3.4.1 Pre-1994

Before the issuance of the Egyptian Arbitration Law No. 27 for the year 1994 (‘Arbitration Law’), arbitrations were governed by Articles 501 through 513 of the Proceedings Law. Those 13 articles governed the whole body of arbitration in Egypt and created difficulties for arbitration users in Egypt because they contained a number of unreasonable provisions, such as the requirement that the arbitrators be appointed in the arbitration agreement.

Awards issued pursuant to these articles were to be enforced by an order issued by the execution judge of the court in which the original award was deposited. The enforcement of foreign arbitral awards was and still is governed by Articles 296 through 301 of the Proceedings Law.

---

11 This section is based in part on the article ‘Arbitration under the Islamic Sharia’ by Zeyad Alqurashi, published online in the Oil, Gas & Energy Law Intelligence, Volume I, Issue # 02, March 2003; see <www.gasandoil.com/ogel/samples/freearticles/article_63.htm>, last visited on June 4, 2007.

12 He acted as an arbitrator in the dispute between several Arab tribes regarding which of them would have the honor of lifting and placing the Black Stone after rebuilding the Kaaba. He put the Black Stone in his outer garment and judged that every tribe choose a representative and that all the representatives carry the garment together to the place of the Stone.

13 Article 502 of the Proceedings Law.
In the beginning of the 1980s a dramatic change in Egyptian economic policy took place. Egypt took its first steps toward liberalizing the economy and attracting foreign trade by enacting investment laws granting foreign investors privileges and incentives and relaxing laws governing ownership of companies. It became apparent, however, that investors needed an assurance that an effective and speedy method of dispute resolution was available.

The Egyptian legislature therefore started the development of an arbitration law to replace Articles 501 through 513 of the Proceedings Law. In preparing this new arbitration law, the legislature followed the UNCITRAL Model Law of 1985 on International Commercial Arbitration to a great extent, but inserted a number of amendments thereon to suit the custom of national legislation. Various professors of law worked on this law over the course of eight years and it was subject to long and extensive debates in the legislature. Finally, the result of those efforts was the issuance on April 18, 1994 of the Arbitration Law, which entered into force one month later.

3.4.2 The New Arbitration Law

3.4.2.1 Scope of Applicability

The Arbitration Law has broad scope. While it was originally intended to govern only international commercial arbitrations, its terms governed both international and domestic commercial arbitrations by the time of its issuance. Its first article gave it broad scope in terms of time as well, stating that it ‘shall apply to any arbitration pending at the time it enters into force or which commences thereafter, even if it is based on an arbitral agreement concluded before the law entered into force.’ Finally, Article 3 of the law repealed Articles 501 through 513 of the Proceedings Law as well as any provision contrary to the Arbitration Law.

In terms of subject matter, the first paragraph of Article 1 establishes that the Arbitration Law applies to all arbitrations conducted in Egypt or to international commercial arbitrations when the parties agree to be subject to its provisions:

‘Without prejudice to the provisions of international conventions in force in the Arab Republic of Egypt, the provisions of the present law shall apply to any arbitration between public law or private law persons, whatever the nature of the legal relationship around which the dispute revolves, when such arbitrations are conducted in Egypt or when the parties to an international commercial arbitration conducted abroad agree to subject it to the provisions of this Law.’

14 The Explanatory Note of the Arbitration Law.
It is worth noting that at the time of the issuance of the Arbitration Law, Article 1 consisted solely of the above quoted paragraph. However, despite the clear wording as to the applicability of this law to public bodies entering into arbitration agreements, there was confusion as to whether public or governmental bodies were bound by arbitration agreements. To resolve this confusion a second paragraph to this article was introduced by Law No. 9 of 1997, adding the following paragraph to Article 1 of the Arbitration Law:

"In regard to administrative contract disputes, the arbitration agreement shall have the approval of the concerned minister or the official assuming his powers with respect to public juridical persons. No delegation of powers shall be authorized therefore."

Accordingly, the Arbitration Law now plainly applies to arbitrations in which a public or governmental authority is a party.

3.4.2.2 Definition of Arbitration

In general, the word ‘arbitration’ is taken to mean a method to resolve commercial disputes between two or more parties by a panel of one or more impartial individuals, called arbitrators, having the right to issue final and binding awards. Both the Model Law and the Arbitration Law clarify that an arbitration proceeding need not be conducted by an official institution to be governed by their provisions. Article 2 (a) of the Model Law defines arbitration as ‘any arbitration whether or not administered by a permanent arbitral institution.’ Similarly, Article 4 (1) of the Arbitration Law states that it covers ‘the arbitration agreed upon by the parties to a dispute by their own free will, whether the body to which the arbitral mission is entrusted by virtue of the parties’ agreement is an institution or permanent arbitration centre or not.’

3.4.2.3 Definition of International

In setting the criteria for an arbitration to be considered international, Article 3 of the Arbitration Law followed the Model Law in providing that an arbitration is to be considered international if:

- the subject matter of the dispute is located in more than one state;
- the parties’ head offices are located in different countries;
- the seat of arbitration is not located in the same country as the parties’ head offices; or
- an essential part of the agreement subject to dispute is to be performed in a place other than the parties’ head offices.
However, in setting these criteria, Article 3 provides generally that the arbitration is considered international if the matter thereof relates to international trade.

Moreover, the Egyptian legislature has provided an extra criterion for an arbitration to be considered international, which is if the parties agree to resort to a permanent arbitral organization or to an arbitration center having its headquarters in Egypt or abroad. Therefore, any institutional arbitration in Egypt, according to this criterion, is to be considered international. This is a provision that is not to be found in the Model Law or in other Arbitration Laws as far the authors know.

Despite this attempt to differentiate between domestic and international arbitrations, the Arbitration Law seems to set no consequence to such differentiation, save for the Article 9 provision determining that the jurisdiction to review arbitral matters lies with the court having original jurisdiction over the dispute should the arbitration be domestic, while this jurisdiction is vested in the Cairo Court of Appeal should it be an international arbitration.

In contrast, the CRCICA differentiates between international and domestic arbitrations in terms of fees, whether registration, arbitrator, or administrative fees, but the CRCICA arbitration rules do not set criteria for differentiating between international and domestic cases. It is, however, a matter of practice that an arbitration case will be considered domestic if the parties to the dispute are both Egyptians and the contract subject to the dispute is performed in Egypt.

Another point of difference between the Model Law and the Arbitration Law with respect to the definition of international is that under the Arbitration Law an arbitration is considered international if the respective head offices of the parties to the arbitration are located in the same country, while the place closely linked to the subject matter of the dispute is located in another country. This provision is an amendment of Article 3(c) of the Model Law stipulating that arbitration is considered international if the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

3.4.2.4 Definition of Commercial

In defining when arbitration is considered ‘commercial’ the Egyptian legislature followed the Model Law, note 2, that the term should be given a wide interpretation. Article 2 of the Arbitration Law stipulates that:

‘Arbitration is commercial within the scope of this Law if the dispute arose over a legal relationship of an economic nature, whether contractual or non-contractual. This comprises, in particular, the supply of commodities or

15 See Articles 40 and 40 [bis] of CRCICA Arbitration Rules.
services, commercial agencies, construction and engineering or technical know-how contracts, the granting of industrial, tourist and other licenses, technology transfer, investment and development contracts, banking, insurance and transport operations, exploration and extraction of natural wealth, energy supply, the laying of gas or oil pipelines, the building of roads and tunnels, the reclamation of agricultural land, the protection of the environment and the establishment of nuclear reactors.’

It is worth noting that arbitration is not permissible in matters where compromise sulh is not allowed, regardless of being commercial or not. Furthermore, Articles 4 through 9 of the Egyptian Commercial Law No. 17 of 1999 provide a list of what maybe considered commercial.

3.4.2.5 Arbitration Clause

In establishing what forms a valid arbitration clause or agreement, the Egyptian legislature, following in the footsteps of the Model Law, defined an arbitration agreement in Article 10 (1) as:

‘an agreement by which the parties agree to resort to arbitration as a means of resolving all or some of the disputes which arose or which may arise between them in connection with a specific legal relationship, contractual or non contractual.’

The arbitral agreement may be drawn up before or after the occurrence of the dispute, whether as part of an agreement or as a separate agreement. In the event that the agreement is drawn up before the occurrence of the dispute, the subject matter of the dispute must be determined in the statement of claim, while if the agreement is concluded after, then it must, under pain of nullity, determine the matters included in the arbitration. An arbitration agreement may be also included by reference.

As in other arbitration laws and the Model Law, the Arbitration Law requires that the arbitration agreement be in writing and signed by the parties; however, it has not set the absence of writing as a reason for the arbitration agreement to be held null and void.

3.4.2.6 Appointment of Arbitrators

An arbitral tribunal under the Arbitration Law may be composed of one or more arbitrators as per the parties’ agreement. Failing this agreement, the number of

16 Article 11 of the Arbitration Law.
17 Article 10 (2) of the Arbitration Law.
18 Article 10 (3) of the Arbitration Law.
19 Article 12 of the Arbitration Law.
The Arbitration Law sets a number of basic requirements that an arbitrator must fulfill. An arbitrator must not be a minor or, unless rehabilitated, subject to interdiction or deprived of civil rights by reason of a judgment for a felony, misdemeanor contrary to morality, or declaration of bankruptcy.

With respect to nationality, the Arbitration Law, like the Model Law, stipulates that an arbitrator need not be of a specific nationality unless agreed otherwise by the parties, although the Arbitration Law further stipulates that the arbitrator need not be of a specific nationality unless otherwise provided by the law. Moreover, the Arbitration Law provides that the arbitrator need not be of a specific gender unless it is agreed otherwise by the parties or provided for by the law.

An arbitrator is required to agree in writing to act as an arbitrator in specific proceedings and the arbitrator must disclose in this agreement any circumstances that may cast doubt on his/her independence or neutrality.

As in Article 11 of the Model Law, under the Arbitration Law the parties are free to choose the method for the selection of arbitrators. The laws also establish a similar procedure to be followed in case of the parties’ failure to appoint the arbitrators.

Furthermore, Articles 18 and 19 of the Arbitration Law set the grounds and procedures for challenging arbitrators. Similarly to Article 12 (2) of the Model Law, Article 18 provides that:

- an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his/her impartiality or independence; and
- either party may challenge an arbitrator appointed by the party, or in whose appointment the party has participated, except for reasons of which he becomes aware after the appointment has been made.

Article 19 of the Arbitration Law deals with the procedures for challenging arbitrators. Originally Article 19 required that the challenge application be submitted to the arbitral tribunal within 15 days from the date on which the tribunal was constituted or from the date on which the reason for challenge came to the attention of the applicant. It further provided that should the challenged arbitrator not step down, then the tribunal would issue a decision in the application. In the event that the challenge application were rejected, the

---

20 Article 15 of the Arbitration Law.
21 Article 16 of the Arbitration Law.
22 Article 17 of the Arbitration Law.
Arbitration and Mediation in the Southern Mediterranean Countries

applicant had the right to refer the matter to the court having jurisdiction within thirty days of being notified of the rejection.

This Article has been amended by Law No. 8 of 2000 as follows:

− The challenge application shall be submitted in writing to the arbitral tribunal, indicating therein the reasons for the challenge, within 15 days from the date on which the applicant has become aware of the constitution of the arbitration tribunal or of the conditions justifying the challenge. If the arbitrator being challenged does not step aside within fifteen days from the date of the submission of the application, it shall be referred, without charges, to the court referred to under Article (9) of this law, to render an incontestable decision thereon.

− The challenge application shall not be accepted on the part of whoever has previously submitted a challenge application related to the challenge of the same arbitrator in relation to the same arbitration.

− The submission of the challenge application shall not result in the suspension of the arbitration procedures. If the challenge of the arbitrator is accepted and sentenced, the arbitration procedures which have been undertaken, including the arbitrator’s ruling, shall be consequently considered as null and void.

3.4.2.7 Nullity Provisions

The nullity of arbitral awards is governed by Articles 52 through 54 of the Arbitration Law. Arbitral awards issued pursuant to the Arbitration Law may not be appealed through recourse to any means prescribed in the Proceedings Law.23 An application for the annulment of the arbitral award is acceptable in following cases:24

− If no arbitral agreement exists, or if it is void, capable of being void, or expired.
− If at the time of entering into the arbitral agreement one of the parties thereto was a minor or incapacitated pursuant to the law governing capacity;
− If one of the parties to the arbitration was unable to present a defense because the party was not properly notified of the appointment of an arbitrator or of the arbitral proceedings, or for any other reason beyond the party’s control;
− If the arbitral award fails to apply the law agreed upon by the parties to the subject matter of the dispute;

23 Article 52 of the Arbitration Law.
24 Article 53 of the Arbitration Law.
Egypt

− If the arbitral tribunal was constituted or the arbitrators were appointed in a manner contrary to law or to the agreement between the parties;
− If the arbitral award rules on matters not included in the arbitral agreement or exceeds the limits of such agreement. Nevertheless, if the parts of the award relating to matters which are amenable to arbitration can be separated from the parts relating to matters which are not, then nullity shall apply only to the latter parts; and
− If nullity occurs in the arbitral award, or if the arbitral proceedings are tainted by nullity affecting the award.

Moreover, the court may on its own motion declare the award null and void if its contents violate public policy in Egypt.

One point of difference between the Model Law and the Arbitration Law is that the former provides in its Article 34 (4) for the right of the court to suspend the nullity proceedings in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal’s opinion will eliminate the grounds for setting the award aside. No such provision is found in the Arbitration Law.

3.5 Ad Hoc vs. Institutional Arbitration in Egypt

3.5.1 Introduction

Institutional arbitration is generally taken to mean arbitrations conducted before a permanent arbitration center or institution having its own arbitration rules. Ad hoc arbitration generally refers to an arbitration procedure that is not administered by others and where the parties are fully responsible for all material organization of the dispute resolution procedure on their own or by reference to certain procedural rules to be followed.

The Arbitration Law does not include any definition for either type, yet it makes a number of subtle references to both throughout its different provisions. For example, Article 5 of the Arbitration Law stipulates that

‘in those cases where the law permits the parties to arbitration to select the procedures which must be followed in a given matter, this also includes their right to allow a third party to make such selection. In this regard, third parties are deemed to be any arbitral institution or centre in Egypt or abroad’

and

Article 25 grants the parties to an arbitration procedure ‘the right to agree on the procedures to be followed by the arbitral tribunal, including the right to subject it to such procedures to the provisions in force in any arbitral organization or centre in Egypt or abroad.’
The Arbitration Law does not differentiate between institutional and *ad hoc* arbitrations and both are subject to the same provisions in terms of enforcement of awards.

### 3.5.2 Active Institutions

As it stands today, there are three active arbitration centers in Egypt, the most well-known and active of which is the CRCICA. In addition, there are the Ain Shams University Arbitration Center and Dr. A. Kheir Law & Arbitration Center (‘AKLAC’). The latter is a private initiative and is established as an independent non-governmental organization.\(^{25}\)

### 3.5.3 The Cairo Regional Center for International Commercial Arbitration (CRCICA)

#### 3.5.3.1 Establishment

The CRCICA is a non-profit organization enjoying immunities granted to other international organizations. It was established in 1979 for an experimental period of three years following the signing of an agreement between the Asian African Legal Consultative Committee and the Egyptian government. CRCICA became a permanent organization in 1983.

#### 3.5.3.2 Role

The CRCICA is considered the main promoter of arbitration and other ADR techniques in Egypt. It offers a wide range of services ranging from administering domestic and local arbitrations and other ADR procedures, to selecting arbitrators and mediators, to the promotion of the same through the conduct of seminars and conferences, and the publication of research.

#### 3.5.3.3 Rules

The CRCICA has its own set of rules that are based on the UNCITRAL rules, but have been adapted to fit Egyptian culture and arbitration law.

#### 3.5.3.4 Arbitration Proceedings

Under the CRCICA rules, arbitration starts when the respondent receives the claimant’s notice of arbitration. This arbitration notice must include: a demand that the dispute be referred to arbitration, the names and addresses of the parties,

the arbitration clause or agreement or a reference thereto, a reference to the contract out of which the dispute arose, the general nature of the claim, an indication of the amount claimed, the relief or remedy sought, and the number of arbitrators.  

Following the respondent’s receipt of the notice of arbitration, the respondent shall reply in writing within 30 days indicating the preliminary defense with reference to, and copies of, the documents that may support the defense. This reply should include the name of the nominated arbitrator.

If the parties have not previously agreed on the number of arbitrators and if within 15 days following the respondent’s receipt of the notice of arbitration the parties have not agreed that there will be one arbitrator, three arbitrators shall be appointed.

If a single arbitrator is to be appointed and the parties fail to agree on the name of the person within thirty days of a proposal by either party, then the appointing authority named by the parties shall make the appointment. Should said authority refuse or fail to make such an appointment within 30 days of the party’s request, CRCICA shall make the appointment. The same procedure applies for the appointment of the chairman if the arbitral tribunal is composed of three arbitrators.

A party intending to challenge the arbitral tribunal must, within 15 days of being notified of the appointment of the challenged arbitrator, submit a notice to this effect. The submission of a challenge notice does not cause the suspension of the proceedings.

After the appointment of the arbitral tribunal, the tribunal shall determine the place and language of arbitration if no agreement between the parties has been reached in this regard. The tribunal will generally set a preliminary hearing for the purposes of drawing up terms of reference or just for the setting of a timetable for the arbitration procedures.

Following the hearing, a statement of claim is to be submitted by the claimant at the time determined by the arbitral tribunal. The statement of claim must include the names and addresses of the parties, a statement of the facts supporting the claim, the points of dispute, and the relief and remedy sought. The respondent shall then provide its statement of defense and counterclaim (if any) within the period of time determined by the tribunal. Also, any pleas with respect to the jurisdiction of the arbitral tribunal shall be made no later than the time of submitting the statement of defense or counterclaim.

26 Article 3 of CRCICA Arbitration Rules.  
27 Article 6 of CRCICA Arbitration Rules.  
28 Article 7 of CRCICA Arbitration Rules.  
29 Article 11 of CRCICA Arbitration Rules.  
30 Article 15 (1) of CRCICA Arbitration Rules.  
31 Article 18 of CRCICA Arbitration Rules.  
32 Article 21 of CRCICA Arbitration Rules.
The tribunal will determine the closure of the hearings after ensuring that the parties have no further proof to submit. Then, after deliberating the matter, the tribunal shall issue an award in the dispute.

3.6 Role of Local Courts

Under the Arbitration Law, the legislature has vested a number of roles in the local courts. The court vested with such powers is referred to as an Article 9 court. The Article reads as follows:

i. Jurisdiction to review the arbitral matters referred by this law to the Egyptian judiciary lies with the court having original jurisdiction over the dispute.

ii. However, in the case of international commercial arbitration, whether conducted in Egypt or abroad, jurisdiction lies with the Cairo Court of Appeal unless the parties agree on the competence of another court of appeal in Egypt.

iii. The court vested with jurisdiction in accordance with the preceding paragraph shall continue to exercise exclusive jurisdiction until the completion of all arbitral procedures.

The Article 9 court role is limited to the following instances as explicitly provided for under the Arbitration Law, which also provides in Article 13 thereof that

‘a court seized with a dispute in respect of which an arbitral agreement exists must rule the case non admissible if the respondent invokes a plea of non admissibility before raising any request or defense in the case.’

Moreover, the filing of a case before the court does not preclude the commencement of the proceedings or issuing an arbitral award.

3.6.1 Witnesses

An Article 9 court may provide assistance to the arbitral tribunal in relation to the appearance of witnesses before the tribunal. Article 37 of the Arbitration Law provides:

‘The President of the Court referred to in Article (9) of this Law, upon request from the Arbitral Tribunal, shall be competent to:

1. Pass judgment against defaulting or intransigent witnesses imposing the penalties prescribed in Article 78 and 80 of the Law of Evidence in Civil and Commercial matters.
2. Order a judicial delegation commission rogatoire.’
Articles 78 and 80 of the Law of Evidence entitle the court to apply a penalty of EGP 4000 on the witness who was correctly notified but failed to appear before the tribunal. The court may also compel the witness to appear before the tribunal. Finally, if the witness refuses to take the oath or to answer the questions posed, the court may apply a penalty of EGP 200.

3.6.2 Appointment of Arbitrators

Article 9 courts may be requested to appoint (an) arbitrator(s) pursuant to Article 17 of the Arbitration Law or to replace an arbitrator who is unable to perform the mission, fails to perform it, or interrupts the proceedings in a manner which leads to unjustifiable delays pursuant to Article 20 of the Arbitration Law. Moreover, in the event of an arbitrator being challenged, the matter will be referred to the Article 9 court as per Article 19 of the Arbitration Law and as detailed in the section titled ‘appointment of arbitrators’ above.

3.6.3 Extent of Interference

The role of an Article 9 court is not limited to witnesses and to the appointment of arbitrators. The Arbitration Law also provides for the following:

Article (14) provides that:

‘the court referred to in Article (9) may, on the basis of an application from one of the parties to the arbitration, order that provisional or conservatory measures be taken, whether before the commencement of arbitral proceedings or during the procedure.’

Article (24) provides that:

1. The parties to arbitration may agree that the arbitral tribunal shall be entitled, pursuant to a request by one of them, to order either party to take whatever provisional or conservatory measures it deems the nature of the dispute requires, as well as to demand the presentation of an adequate guarantee to cover the expenses of the measures it orders.

2. If the party to whom the order is issued defaults on executing it, the arbitral tribunal may, at the request of the other, allow the letter to take the procedures necessary for execution, without prejudice to that party’s right to apply to the president of the court referred to in Article (9) of this law for an enforcement order.

In addition to this, an Article 9 court’s main role becomes clear when the enforcement of arbitral awards is needed, as shall be explained in the following section.
3.7 **Enforcement of Awards**

The rules governing the enforcement of arbitral awards may be divided into two sets of rules: the first set is applicable to those rules applicable to foreign arbitral awards, and the second set is arbitral awards issued under the Egyptian Arbitration law.

3.7.1 **Foreign Awards**

The enforcement of awards rendered abroad and not subject to the Arbitration Law is governed by Articles 296 through 301 of the Proceedings Law. Pursuant to these articles, foreign arbitral awards are to be enforced in accordance with the same conditions applied to Egyptian awards being enforced abroad.\(^{33}\)

The application to enforce a foreign award is to be submitted to the court of first instance that has jurisdiction over the area in which the enforcement of the award is required.\(^{34}\) Prior to ordering the enforcement of the award the court must ensure that:

– The Egyptian courts do not have jurisdiction over the dispute;
– The parties to the dispute were afforded a reasonable opportunity to present their case and were notified about attending the proceedings;
– The award is final and binding pursuant to the laws of the country in which it was issued; and
– The award does not contradict a previous judgment issued by the Egyptian courts and does not include anything contrary to Egyptian public policy.

Furthermore, Article 299 of the Proceedings Law requires that the award be issued in a dispute that can be subject to arbitration pursuant to the Egyptian law.

3.7.2 **Domestic Awards**

The enforcement of domestic awards (arbitral awards rendered pursuant to the Arbitration Law) is governed by Articles 55 through 58 of the Arbitration Law. According to these articles, arbitral awards rendered in accordance with the provisions of the Arbitration Law are final, binding and enforceable.\(^{36}\)

\(^{33}\) Article 296 of the Proceedings Law.
\(^{34}\) Article 297 of the Proceedings Law.
\(^{35}\) Article 298 of the Proceedings Law.
\(^{36}\) Article 55 of the Arbitration Law.
In order to enforce a domestic award, the following steps must be taken:

− The party in whose favor the arbitral award was rendered must first deposit the original award or a copy thereof in the language in which it was issued, or an Arabic translation thereof authenticated by the competent authority if it was issued in a foreign language, with the clerk of the competent court referred to in Article 9 of the Arbitration Law;\(^{37}\)

− The passage of the deadline for requesting the annulment of the arbitral award,\(^{38}\) which is 19 days after the date on which the party against whom the award was rendered, is notified;\(^{39}\)

− An application is to be made to the president of the court referred to in Article 9 of the Arbitration Law requesting the enforcement of the arbitral award. This application must be accompanied by:

1. the original award or a signed copy thereof;
2. a copy of the arbitral agreement;
3. an Arabic translation of the award; and
4. a copy of the report evidencing the deposit of the award with the competent court’s clerk.\(^{40}\)

The court will order the enforcement of the award after ascertaining that:

− the award does not conflict with any judgments issued by the Egyptian courts in a similar dispute;
− the award does not contain anything contradicting public policy in Egypt; and
− the party against which the award was rendered has been correctly notified.

From the foregoing it is apparent that the rules governing the enforcement of both foreign and domestic awards are fairly similar.

\(^{37}\) Article 47 of the Arbitration Law.
\(^{38}\) Article 58 (1) of the Arbitration Law.
\(^{39}\) Article 54 (1) of the Arbitration Law.
\(^{40}\) Article 56 of the Arbitration Law.
4.  MEDIATION

4.1 Introduction

Mediation in Egypt is considered, as in any other part of the world, ‘a settlement process in which a neutral party facilitates communication between the parties, listens to their arguments, and assists them in reaching a mutually satisfactory result.’

Mediation, in the new and modern definition, is a novel concept in Egypt. Nevertheless, mediation in its old-fashioned sense is not a new concept in Egypt and is still considered the preferred method for resolving various types of conflicts (family, community, and state conflicts). Rituals and cultural processes for conflict control have contributed in major ways to the development of mediation in Egypt. The most important of those processes are: (i) sulh (settlement) and (ii) musalaha (reconciliation), and they are considered alternative and indigenous forms of conflict control and reduction.

The sulh ritual, which is an institutionalized form of conflict management and control, has its origins in tribal and village contexts. ‘The sulh ritual stresses the close link between the psychological and political dimensions of communal life through its recognition that injuries between individuals and groups will fester and expand if not acknowledged, repaired, forgiven and transcended.’ According to Islamic Law (Shariaa’), ‘the purpose of sulh is to end conflict and hostility among believers so that they may conduct their relationships in peace and amity ...’ In Islamic law, sulh is a form of contract (‘aakd), legally binding on both the individual and community levels. Similar to the private sulh between two believers:

‘the purpose of [public] sulh is to suspend fighting between [two parties] and establish peace, called muwada’a (peace or gentle relationship), for a specific period of time. The Quran is an authoritative source that provides for modes of dispute resolution in Arab-Islamic societies and Egypt. The Quran calls for forgiveness in cases of apology and “remission.”’

Furthermore, in Egypt the preferred choice of resolving political disputes is mediation. Mediation between Arab countries is distinctive from mediation that occurs in other parts of the world in terms of the likelihood of Arab countries choosing it as a method of conflict resolution, in terms of the manner or process by which it is conducted, and in terms of the outcomes of mediation. There are

two elements that make mediation among Arab countries distinct from mediation among other countries: (i) Arab political regimes; and (ii) Arab culture. There are two types of mediation in the Middle East: (i) Arab/Arab mediation (e.g., Kuwait/Iraq); and (ii) Arab/Non-Arab disputes at the domestic and international level (e.g., Sudan/Addis-Ababa & Egypt/Israel Camp David). In addition, under Egyptian laws, when any administrative and/or governmental agency is subject to a dispute, the claimant must first resort to a dispute resolution committee. The committee’s main goal is to examine the dispute. It exerts reasonable efforts to identify the misunderstanding and try to resolve the matter amicably. If the dispute is not resolved, the committee will issue a recommendation for the competent court to consider while hearing the claim.

4.2 Mediation Service Providers in Egypt

Although mediation is an established mode for conflict control in Egypt, as discussed above, mediation centers are very few in Egypt. The primary center for mediation is the Mediation Center, which was established as a branch of the CRCICA to administer mediation and other peaceful non-binding means of avoiding and settling trade and investment disputes. The CRCICA has adopted rules that apply to all ADR proceedings by the center (attached hereto as exhibit A). Other branches for CRCICA are listed below:

- The Alexandria Center for International Maritime Arbitration (‘ACIMA’), a branch of the CRCICA, was founded in 1992 pursuant to a cooperation agreement between the Cairo Center and the Arab Academy for Science, Technology and Maritime Transportation.
- The Alexandria Center for International Arbitration was established in June 2001 in cooperation with Alexandria Businessmen Association as a branch of CRCICA to administer commercial arbitration and other peaceful non-binding means of avoiding and settling trade and investment disputes.
- The Mediation & ADR Center was established in August 2001 as a branch of CRCICA to administer mediation and other peaceful non-binding means of avoiding and settling trade and investment disputes.
- The Port Said Center for Commercial and Maritime Arbitration, which was established in February 2004, upon an agreement with the Suez Canal Authority. The Port Said Center for International Commercial and Maritime Arbitration was founded to deal with commercial and maritime disputes.
- The Dr. A. Kheir Law & Arbitration Center (‘AKLAC’), which is an independent non-governmental institution, was established based on the increasing significance of commercial arbitration within the new
Arbitration and Mediation in the Southern Mediterranean Countries

Egyptian Arbitration Law No. 27/1994 and internationally.

In addition to the above, law firms play an important role and replace the presence of ADR centers in Egypt, particularly when it comes to mediation. When a contractual dispute arises between two parties, the first step is to seek the assistance of lawyers in resolving the dispute amicably through mediation.

4.3 Mediation Among the Corporate Community in Egypt

Due to the long and exhaustive process of judicial proceedings in Egypt, ADR is the preferred method for resolving disputes. In particular, due to the lack of experience among judges with regard to technical issues for certain industries, parties in dispute usually prefer arbitration to judicial proceedings. Nevertheless, realizing the value of mediation and the advantages over arbitration it provides, the corporate community in Egypt is pursuing mediation over arbitration.

Conversely, mediation training and presentation workshops are not readily available, as opposed to those concerning arbitration. Trained mediators in Egypt are urgently required, now more than ever. Specialized centers for mediation should be established in the country. In the heart of those center objectives is creating problem-solving workshops and training mediators. Moreover, training peer-to-peer mediators on both sides of a conflict often will generate the necessary understanding and skill base to allow resolution of disputes to go forward. It is considered best practice to develop those centers targeting particular industries such as information technology, e-commerce, and telecommunications.

The general rule is that mediation success rates improve when the right mediator is selected. However, selecting a mediator is generally a difficult process. The questions that are likely to arise prior to selecting a mediator in the Egyptian business community could be summarized as follows: Is the mediator professionally trained? What level of experience has the mediator acquired in mediating similar cases? What areas of expertise enhance the mediator’s experience? Moreover, other important factors are considered crucial for the business community in Egypt while selecting a mediator and those are as follows: Ethics, subject matter understanding and availability, non-judgmental listening and collaborative problem-solving skills, and respectability.

The current legislative framework is becoming more conducive to the development of mediation because most of the industry laws require the parties to a dispute to seek resolution through a specific department before going to court. For example, in intellectual property disputes, a ministerial decree requires the disputing parties to attempt a resolution through the Intellectual Property Unit established by the same decree before resorting to court. Also, the Egyptian National Regulatory Authority (‘NTRA’) has recently established a department that specializes in settling disputes that arise between entities in the...
Egyptian telecommunication industry. Law No. 10 of 2003 obliges the disputing parties to resort to the NTRA dispute committee before going to court.

An agreement resulting from mediation is usually enforceable in Egyptian courts. The use of mediation, however, must be based on a rule of law, such as a contractual provision. Most agreements that foresee mediation in the event of a dispute in Egypt contain a clause similar to the following:

‘... Any dispute or difference of any kind whatsoever between the Parties arising under, out of or in connection with this Agreement, including without limitation any question regarding its existence, validity or termination and whether before or after the termination, abandonment or breach of this Agreement (“a Dispute”) shall be resolved in accordance with the following mechanism: (i) Mediation. Each Party shall designate in writing to the other Party a representative who shall be authorized to resolve any Dispute in an equitable manner, and, unless otherwise provided herein, to exercise the authority of the Parties to make decisions by agreement, each Dispute shall be initially referred by written notice to such designated representative for resolution. If the designated representatives are unable to resolve any such Dispute within fifteen (15) calendar days of such referral, such Dispute shall be referred by each representative to a senior officer designated by the Parties, respectively and such senior officers shall attempt to resolve such Dispute with a further period of fifteen (15) calendar days. The Parties to this Agreement shall attempt to resolve all Disputes promptly, equitably and in good faith, and shall provide each other in a timely manner with reasonable non-privileged records, information and data pertaining to any such Dispute. (ii) Arbitration. Unless the Parties otherwise agree, if the period of thirty (30) calendar days referred to above has expired and the Dispute remains unresolved, either Party may initiate arbitration in accordance with Paragraph ...’

Once the parties agree to mediate, they select the mediator in accordance with the criteria mentioned above.

The mediation process typically proceeds as follows in Egypt: Due to the non-binding nature of mediation, the parties usually select evaluative mediation, whereby the parties empower the mediator to evaluate the nature of the dispute and the demands of the parties, and to suggest a non-binding solution. The rationale for this approach is that by allowing the mediator to evaluate their demands, the parties show their good faith and serious intent to resolve the dispute(s) between them. As suggested by the provision quoted above, sometimes the mediation process as adopted in Egypt is linked to the arbitration process: if the mediation process does not result in a solution within a fixed period, the parties may resort to arbitration. In other events, when the parties feel strongly that mediation is their choice for resolving the dispute, they bypass evaluative mediation and proceed directly with facilitative mediation. Finally, if the dispute is complex and involves technical matters, the parties often prefer to have one or more co-mediators.
4.4 Raising Awareness and Promoting Mediation

In order to raise awareness regarding the usefulness of mediation and other ADR mechanisms, a number of steps must be taken. General conferences and workshops on the topic for all public and private sectors must be held on a regular basis. Programs for earning certification credits are highly recommended to encourage attendees and their organizations to participate in and apply mediation and other ADR mechanisms in controlling conflicts and resolving disputes. Complex industries such as those in the information technology, e-commerce, oil & gas, pharmaceutical, and telecommunication fields must be targeted by mediation conferences and workshops specifically tailored to each industry. Private and public mediation centers should be established in major cities with branches in distant areas. Finally, lists of qualified mediators must be available and updated regularly. In particular, specialized mediators with skill sets tailored to particular industries must be available and constantly attuned to their corresponding industries.

4.5 Conclusion

Mediation can be a powerful tool for investors, lawyers, and government officials to bridge the understanding gap and identify underlying interests. It is also a necessary option in light of the realities and limitations of burdensome judicial procedures before Egyptian courts. Furthermore, it gives the parties in dispute the opportunity to pursue and achieve the goals they originally intended to reach. Mediation simply helps the parties in dispute recognize either that this relation was intended to work, or it was not. The presence of mediation facilities and mediators in Egypt will ultimately promote comfort among local and foreign investors, and will provide more reliable expectations with regard to results that may be achieved and the timeframe involved in the dispute resolution process.

5. OTHER ADR TECHNIQUES

There is no law regulating the usage of mediation and other ADR techniques in Egypt. ADR techniques other than arbitration and mediation are not widely used in Egypt. While the CRCICA does provide rules governing conciliation, technical expertise, mini-trials, and claim review boards, there are no statistics available on their use.

However, it maybe safely said that claim review boards are widely used in construction contracts because most construction contracts concluded in Egypt are based on the Fédération Internationale des Ingénieur-conseil or the International Federation of Consulting Engineers ("FIDIC") models. Such
contracting parties are now increasingly inclined to follow the model provision referring disputes to a Dispute Resolution Board either at the outset of the contract or after the dispute arises.
Arbitration and Mediation in the Southern Mediterranean Countries
1. **INTRODUCTION**

Israel is a country roughly the size of New Jersey, and lies between Egypt, Jordan and Lebanon. This small piece of territory is inhabited by almost 6,500,000 people. About eighty percent of these people are defined as Jews, the majority of the remaining 20 percent as Arabs. Of course, this general ethnic-based division conceals the real internal divisions. ‘Arab’ subgroups include Muslims, Christians, Druze, Circassians, and Bedouin, with differences of culture, religion and even language among them. The ‘Jewish’ majority also splits along cultural backgrounds, often with dissonance among the groups. With streams of immigrants from places as diverse as Morocco, Germany, Yemen, North America, Russia and Ethiopia, the Jewish population in Israel has always been at odds with itself.

Israel is a meeting point – or clashing point – of religious and secular ideals, of modern and traditional values, of the new and the ancient. While the majority of the population might be said to be secular, both Jewish and Arab populations include large religious sectors ranging from fundamentalist religious groups to traditional (yet modern) ones.

The system of government is a Western-style democracy built around a unicameral parliament in the legislative role, an executive government headed by a Prime Minister, and a very powerful and independent judiciary. Western, secular ideals and trends tend to drive legislation development. Religious precepts have no legal standing unless they are enacted by law, which they rarely are. One notable exception is the legislation granting religious authorities jurisdiction over issues of marriage, divorce, and personal status.

This mosaic of conflicting ideals, cultures, beliefs, traditions and social norms, governed by a single legal system, sets the stage for both frequent instances of conflict and for the emergence of alternative methods for their resolution.
Arbitration and Mediation in the Southern Mediterranean Countries

2. COMMERCIAL DISPUTES

2.1 SMEs and the Israeli Economy

There is general acknowledgement in Israel of the important contribution of small- and medium-sized enterprises (‘SMEs’) to the economy. SMEs form a major portion of the employer pool in the local market, and their contribution to exports is substantial. Israel has learned the value of SMEs – as well as the problems they often face and the types of support they require – through the experience gained from the rise of the Israeli high-tech industry in the mid-to-late 1990s. They are especially valued for their contribution to developing Israel’s peripheral areas and their low initiation and setup costs.

Recognizing these facts, the Israeli government, like those in many other countries, has set up a government agency to serve both as a clearinghouse of knowledge, advice, and contacts, and to represent the Israeli market externally. Through the SME Development Agency and other venues, the government has put a great deal of effort into developing bilateral, international, and regional ties. These efforts have resulted in agreements for knowledge sharing, commercial delegation-swapping, and joint ventures.

2.2 The Israeli Legal and Judicial System

Israeli society is extremely adversarial and litigious, as evidenced by the million or more motions filed every year. Several formal and informal mechanisms are in place to deal with this influx, including the court system, mediation and arbitration services, and in-house processes utilized in specific frameworks.

The Israeli court system is highly developed, with multiple courts designed to handle a variety of legal issues. The jurisprudence is based on Anglo-American common law, and Israeli court decisions borrow heavily from the substantive content of systems based on this law. Judges are chosen on the merits of their professional ability – including their ability to clear cases off their dockets quickly.

Even so, there is no way the court system could ever hope to cope with the flood of litigation that has been threatening to strangle it ever since the late 1980s. Faced with the extraordinary number of motions filed each year and a backlog reaching back three or four years, the system has been on the verge of collapsing numerous times.

The statistics are exacerbated by the fact that even after a wave of recent appointments, the court system includes only about 600 judges. Simple math will show that each judge must be assigned an impossible caseload in order to keep up with the flow. And, as if this were not enough, the Israeli Bar today numbers over 30,000 members – and rising – which boils down to about one lawyer for every 200 citizens. In comparison, in the United States, long held
to lead the field in litigation, there is one lawyer for about every 360 citizens. This intense overpopulation of attorneys contributes its share to keeping the litigation pot boiling.

The court system includes three main components: (1) The Civil Court System, which is discussed in more detail below. This system handles the major portion of litigation as well as all criminal and administrative matters, (2) The Religious Court System, which is comprised of separate courts for Jews, Christians and Moslems. These courts are responsible for all matters pertaining to marriage, divorce and personal status; and (3) The Labor Court System, with courts that are separate from the Civil Court system due both to the historical evolution of the courts and to the acknowledgement of the need for particular expertise and suitable mechanisms for labor-related issues. The Labor Court System is primarily responsible for employee-employer suits and for large-scale disputes between organized labor and management. In addition, this system is charged with Social Security claims, disability suits and the like.

Within this court structure, it is the task of the Civil Court System to deal with all commercial litigation other than the labor disputes noted above. For example, bankruptcy proceedings, as well as investment disputes, are included in the jurisdiction of the civil courts.1

The Civil Court System comprises three levels: the magistrate courts, the district courts, and the Supreme Court.

2.2.1 Magistrate Courts

The magistrate courts, the lowest level of the court system, handle civil litigation with a value up to approximately USD 500,000, as well as relatively light criminal offenses. The magistrate courts handle the largest mass of civil and commercial litigation, and they are notoriously swamped and understaffed. The magistrate courts also operate small claims courts, which deal with claims with a value up to approximately USD 4,000 filed by private citizens against each other or against corporations and businesses. There are 30 magistrate courts in Israel, sited in major cities as well as in satellite cities and smaller towns.

---

1 Sometimes this can cause multiple jurisdictions regarding a single issue. For example, if a company has fired all of its employees and then entered proceedings for the company’s dissolution, the employees might originally file suit against the company for unpaid salaries and compensation in the Labor Court. However, the dissolution procedure, which might include members of the corporate government, creditors, investors, and others, would be filed in the civil district courts. Employees might also join these civil district court proceedings in certain situations in which they would be considered to be creditors.
2.2.2 District Courts

For various legal and administrative purposes, Israel is divided into five districts. Each district has a district court, which serves two main functions:

i. An appeals court for cases heard in the magistrate courts located within the district.

ii. A court of first instance for civil claims valued at over USD 500,000, company dissolution proceedings, certain types of real estate claims, certain administrative matters, and major criminal trials.

2.2.3 The Supreme Court

The Supreme Court serves as a court of appeals for cases tried in the lower courts of the legal system. Additionally, the Court serves as the High Court of Justice charged with deciding constitutional and major administrative issues. This dual function is similar to the American model in that it sets the Supreme Court at the pinnacle of most legal issues as well as casting it in the role of gatekeeper of human rights and constitutionality. Supreme Court decisions form precedents binding on the lower courts.

A significant difference, however, between the American model and the Israeli model is in the number of cases that the Supreme Court must handle. In the United States, the Supreme Court selects, from among the many cases submitted to it, those raising the issues to be placed on its agenda and denies certiorari to the vast majority of petitions. In contrast, the Israeli Supreme Court must deal with just about every appeal and petition sent its way. With 14 members on the bench, the Supreme Court is overburdened, with a heavy backlog of cases on its docket.

2.3 Definition/Classification of Commercial Disputes

Commercial disputes have no separate definition in Israel’s legal framework. Rather, they are classified as civil disputes, and as such are handled by the Civil Court System at its different levels. The main exception to this rule, as previously mentioned, is the separation and channeling of labor disputes into the Labor Court System. Other exceptions are antitrust issues and issues involving en masse use of certain commercial contract forms, which are dealt with by special tribunals. Corporate insolvency/bankruptcy/dissolution proceedings, in contrast, remain in the civil court system. Finally, there are no specialized local formal frameworks for dispute resolution in domestic or foreign investment disputes.
2.4 Arbitration Services

As discussed below, arbitration is an alternative method of dispute resolution which is often preferred by commercial players. However, while the law sets up a fairly well-rounded legislative framework for arbitration proceedings, there is no official arbitration body, center or institute; nor is there any legislation mandating arbitration. In order to meet the market’s demand for arbitration services, private practitioners have established themselves as service providers, working either by themselves or by setting up partnerships or other commercial frameworks. Additionally, quite a few professional guilds have set up arbitration panels for in-house disputes. Other entities serve as clearinghouses for arbitration services without actually providing these services themselves.

2.5 Mediation Services

As also discussed below, the past ten years have seen an impressive rise in the use of mediation as an ADR method. An even more impressive jump has been seen in the number of practitioners offering their services in the field.

As with arbitration, there is no official center or institute charged with providing mediation services. While formal institutions exist for promoting the use of ADR (focusing on mediation), as well as for regulating the niche of court-connected mediation, provision of actual services is left, for the most part, to private practitioners.\(^2\)

While there seems to be a certain increase in the degree to which ‘private’ mediation is employed (i.e., cases in which parties choose to mediate their disputes without being referred to the process through the court system after a claim has been filed), there is no doubt that the large majority of cases mediated in Israel are referred to mediation by the court system. Due to the multi-court system, comprehensive data on court referrals is difficult to obtain and to quantify. However, it is certainly worth mentioning that all of the different court systems described above refer cases to mediation to some extent.

3. Arbitration

Arbitration is the veteran ADR process in Israel, as it is elsewhere, and it is used in a great many disputes. Many disputing parties choose this flexible alternative, particularly in disputes requiring specific expert knowledge, quick verdicts, or confidentiality.

\(^2\) It should be mentioned that the past couple of years have seen a rise in the amount of in-house mediation services offered by courts, mainly on an informal basis decided by the administrator or presiding judge of a particular courthouse.
3.1 The Legal Framework for Arbitration

The Arbitration Act of 1968 regulates arbitration in Israel. The act is, to a large extent, an evolution of the English laws on arbitration dating back to about 1889, inherited through the period of the British Mandate in Palestine.

Generally speaking, the Arbitration Act grants parties wide discretion in designing their own arbitration mechanism and process. Parties can choose their own arbitrator or panel and grant the neutrals whatever amount of power and discretion they wish. The parties can decide the arbitration procedure, the range of possible awards, and the methods by which evidence and briefs will be presented. They can even decide which law will govern the case (i.e., parties can agree that the arbitrator, although sitting in Tel Aviv, must decide the case according to Finnish law). However, parties rarely utilize this broad discretion and instead make do with ad hoc arbitration: inserting a simple arbitration clause in wider pre-dispute agreements or choosing the name of an arbitrator in post-dispute agreements.

If the parties have not designed their own process, the Arbitration Act sets out a default procedure to govern the case. This default procedure grants far-reaching authority to the arbitrator, who can establish the procedural rules. The arbitrator is also authorized to choose the standards by which to decide the case and is not bound to make the decision based on any set of legal rules, Israeli or otherwise. The result is far-reaching arbitrator power and authority, which often leads to both parties complaining or feeling dissatisfied with the process.

The Arbitration Act, true to its ‘hands-off’ policy, guarantees the court’s intervention only in cases where a party attempts to avoid arbitration after having committed to the process, or in cases where the procedure is being managed in a grossly unprofessional or unfair manner.

3.2 When Can a Dispute Reach Arbitration?

Parties may proceed to arbitration only if they have agreed to do so (there is no law under which arbitration is ever mandated). This agreement can be reached either long before the dispute erupts or post-dispute. According to the Courts Act of 1984, a judge may suggest to disputing parties that the case be submitted to arbitration rather than adjudication. However, this referral is contingent on the parties’ agreement. Once a party has agreed to arbitration, participation in the procedure becomes mandatory; the party may not renege on the agreement and seek to resolve the dispute in court.
3.3 **Ad Hoc Arbitration**

As discussed above, *ad hoc* arbitration – in the sense of an agreement to arbitrate that details neither the identity of the arbitrator nor the arbitrational procedure – is very common. Whether due to an oversight or to parties being unaware of their ability to tailor a process suited to their needs, this situation is, in fact, close to being the norm. Thus, the rules most commonly employed in such cases are the default procedures defined by the Arbitration Act.

In some cases, parties agree that their dispute will be arbitrated by a particular organization or service provider, which implies acceptance of the procedural methods employed by that body and thus avoids the procedural vacuum.

3.4 **Arbitration Conventions and Foreign Arbitration Awards**

Israel is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the ‘New York Convention’) (June 10, 1958) and the Convention on the Settlement of Investment Disputes Between States and Nations of Other States (the ‘Washington Convention’) (March 18, 1965). Israel has also signed (though not yet ratified) the recent Hague Convention on Private International Law regarding jurisdiction clauses in inter- and multi-national commercial contracts, although this convention is of tangential interest because it does not deal with arbitration.

Generally speaking, foreign arbitration awards are executed in Israel without extraordinary examination or delay, but precise data on the average length of these procedures could not be obtained.

3.5 **Domestic Arbitral Awards**

Parties settling their dispute through arbitration may have the arbitrator’s verdict confirmed and enforced by the court system as if it were a court verdict given by a judge. This procedure is not automatic. The winning side must file a request for confirmation of the award by the court (usually in the district court). This request involves a filing fee and is almost always granted. Conversely, the loser can challenge the award, either by requesting that the court annul the arbitrator’s award or by objecting to the winner’s request for confirmation. The courts do not view this challenge as an appeal; they will hardly ever open a case to examine its substantive content and only very rarely will they intervene. Such intervention will only happen when gross unfairness, bribery of the arbitrator, or other corruption is manifest. Knowing that courts rarely rule in their favor, losers rarely request annulment of arbitration awards, granting the mechanism of arbitration a great deal of finality.
There is no such procedure as ‘appealing’ an arbitration award. The only way such an appeal would be possible is for the parties to provide for such a procedure in their arbitration agreement. While there is nothing to stop parties from including such a mechanism in their agreements, this is rarely done. Recently, there have been proposals, mainly from the Israeli Bar Association, to include an appeals provision in a standard arbitration clause or agreement.

3.6 Arbitration Service Providers

There is no public arbitration center in Israel with official ties to the Ministry of Justice or the Ministry of Commerce. There are several private organizations, ranging from private arbitration offices to non-profit organizations, which receive referrals from the courts or private cases and refer them to their members. These private organizations are incorporated or affiliated with a non-profit referral network, but might be for-profit enterprises as far as the actual service providers are concerned. One such entity is the center affiliated with the Association of Chambers of Commerce. In addition, some professional institutions and guilds have their own in-house arbitration services.

Due to the private nature of these enterprises, there is no readily accessible data on their rulings or statistics on court confirmations or interventions. Most of these institutions have their own default procedures. They will, however, usually comply with agreements the parties have reached on procedure.

A variety of other organizations provide or facilitate the provision of arbitration services. Many private practitioners have established themselves as service providers, working either by themselves or by setting up partnerships or other commercial frameworks. They market their expertise to the general public as well as to commercial organizations. However, these professionals and centers are not organized as a guild, they do not share any prescribed arbitral procedure, and they do not collaborate formally with each other or with any national or public organization.

In addition, many private or semi-public institutions (i.e., privately registered institutions that provide services to a wide public) use their own in-house arbitrators to handle their disputes. These include trade and professional guilds, such as the Contractor’s Union, the Football Union, and others, as well as community and settlement movements.

Still other entities serve as clearinghouses for arbitration services without actually providing these services themselves. Most notable is the Israeli Bar Association, which maintains rosters of attorneys offering arbitration services in different specialties and refers cases to these attorney/arbitrators rather than operating its own ‘Bar Arbitration Center.’ Other professional guilds without in-house panels often receive requests for aid in appointing arbitrators and provide informal assistance or referral services.
3.7 Use of Standard Arbitration Clauses in Commercial Contracts

Due to the lack of centralized arbitration institutions, there is no organization to promote use of standard arbitration clauses as a matter of form. Use of such clauses depends on the contractual party’s prior experience with arbitration or on its attorney’s drafting habits. Recently, however, there have been suggestions originating with the Israeli Bar Association to educate lawyers as to the advantages of arbitration and to promote the use of standard arbitration clauses.

3.8 Compulsory Recourse to a Specific Domestic Arbitration Center

Use of a particular center or service provider is compulsory only if previously agreed to by the parties or so ordered by the court in case of disagreement on nominating the arbitrator, as discussed below. Often the pre-agreements are incorporated into long-term contracts with a view towards keeping dispute resolution an in-house matter. For example, members of the kibbutz (communal settlement) movement pre-agree to settle disputes between themselves and the kibbutz, and in some cases between themselves, by using the movement’s arbitration unit. A similar pre-agreement and an in-house arbitration panel exist in the contractual relationship between professional football players, teams, and leagues.

3.9 Confidentiality

One of the advantages of arbitration is the privacy of the process. The ability to shut the door on the proceedings and keep the public out is often beneficial to parties involved in commercial arbitration.

Parties may agree to the confidentiality of arbitration proceedings in their pre-dispute or their ad hoc arbitration agreement, binding them to this commitment contractually. The arbitrator’s commitment to confidentiality depends on the contract with the parties; in many cases, an arbitrator’s agreement to take on a case in which the parties have promised each other to respect the confidentiality of the proceedings would be construed as a contractual undertaking on the arbitrator’s part to preserve confidentiality. Indirectly, courts have referred to confidentiality as an inherent part of the process and have taken this into account. For example, when deliberating whether to refer a case to court adjudication or to uphold an arbitration clause, judges have tended to prefer court adjudication in cases where there was a dominant public interest in public hearings.

Neither the Arbitration Act nor the default arbitration procedure it defines, however, includes confidentiality as a requirement of the process. The arbitrator does have discretion, if not ordered otherwise by the parties ahead of the proceedings, to order confidentiality as a procedural rule.
Regardless of earlier arrangements, parties wishing to seek confirmation of the arbitral award through the court system must forego confidentiality. The confirmation proceedings are held in an open-door courthouse; additionally, once the award is approved, the court’s decision is a matter of public record.

3.10 Appointment of Arbitrators

3.10.1 Nominating Procedures

Arbitrators may be chosen by any mechanism agreed to by the parties. In practice, several common trends have emerged:

i. naming a specific arbitrator in the arbitration agreement;
ii. naming the holder of a post as the arbitrator (such as ‘Should a dispute arise, we will petition the head of the Israeli Bar Association to serve as arbitrator’);
iii. agreeing that each side will choose an arbitrator;
iv. agreeing that each side will choose an arbitrator, and a third panelist will be chosen jointly by the parties or by their appointed arbitrators; or
v. agreeing that a specific person or the holder of a post will appoint the arbitrator (‘Should dispute arise, we will petition the head of the Israeli Bar Association to appoint an arbitrator’)

Generally, the judiciary is only involved in arbitrator nomination if the parties are unable to appoint one on their own. Usually this occurs when one of the parties feels that the other is stalling on the joint nomination process. In this case, one of the parties (or both) can petition the court to nominate an arbitrator. In addition, in practice, and informally, judges trying to persuade disputants to transfer to arbitration will also provide them with the name and telephone number of the arbitrator of their choice.

One of the major advantages of arbitration is, of course, the ability to personally choose and appoint the person reviewing the case. Parties to commercial disputes can often turn to a third party known to both of them from their joint professional environment. Therefore, parties to disputes rarely complain about the nomination procedure until they hit a snag. Such a snag usually results from the other party’s objection to a preferred arbitrator or the feeling that the other party is dragging its heels on the nomination issue in order to stall. In the latter case, as noted above, it falls upon the court to nominate an arbitrator. The parties’ degree of satisfaction with this process then often depends upon their degree of trust in the nominating judge.

Legal professionals would prefer that arbitration always be conducted by lawyers, jurists, or retired judges. They argue that arbitration procedures
mirror the legal process and that arbitrators therefore need legal expertise to conduct an arbitration properly. Additionally, they suggest that the customers’ expectations of a fair outcome and fair proceedings are met only when those proceedings follow the legal model. Finally, noting that courts are often requested to affirm and carry out arbitration awards, they say it is necessary that the judges trust the fairness and legality of the process. Many lawyers would prefer to see arbitration as the domain of lawyers, who call in external expertise only when they consider it necessary.

Arbitrators from outside the legal community argue that subject expertise, or an innate ability to conceive of good or fair solutions, are traits much more valuable than legal knowledge when it comes to settling disputes and satisfying the parties’ expectations. They also stress that over-legalization of the arbitration process can strip it of some of its most obvious advantages: speed, cost efficiency, and flexibility. But arbitrators from outside the legal community are often at a disadvantage due to judges’ personal familiarity with attorneys and with the Bar. Consequently, such arbitrators must often send letters including their curriculum vitae and describing their arbitration and subject-matter experience to courthouses and to individual judges in order to suggest that cases be referred to them.

3.10.2 Arbitrator Qualification

The Arbitration Act imposes no qualifications whatsoever for arbitrators. The only qualification is the parties’ agreement.

3.10.3 Can Sitting Judges Be Nominated as Arbitrators?

The Arbitration Act does not expressly prohibit judges from arbitrating, just as it does not disqualify zookeepers or even criminals; it sets no limits on the person, as long as the parties agree or the arbitrator is otherwise chosen according to the arbitration agreement. However, the judges themselves are bound by the general limitations restricting outside employment of civil servants, as well as by a clause in the act regulating the judiciary forbidding judges to take part in private enterprises or extra-judicial activities without the permission of the Chief Justice of the Supreme Court and the Minister of Justice. In short, judges are not considered an option for arbitration activity, and the question has really only been raised in extraordinary cases, such as the question of whether a sitting arbitrator nominated to the bench in the middle of an arbitration proceeding could continue and finish the proceeding.

It should be noted that there is a procedure under the Courts Act known as ‘Compromise Judgment,’ under which the parties to a civil case may jointly request the sitting judge to decide the case, not necessarily on its legal merits, but according to any way the judge sees fit. In this procedure, the parties allow
the judge to waive any judicial procedure or legal substance and to decide the case more or less as the judge wishes. This is in essence a type of arbitration, although it results in an official court verdict, and one with a great deal of finality that is very rarely overturned on appeal.

As a point of interest, arbitration is a profession of choice for retired judges. Quite a few have developed lucrative private practices by utilizing the skills they acquired on the bench as well as the public’s trust in the judiciary to jumpstart their practice.

3.10.4 Arbitrator Lists and Rosters

The court system claims that formal lists do not exist and that parties are urged to find a professional on their own. Informal lists, however, do exist, either compiled by individual judges or maintained by private, for-profit, arbitration service providers. The Israeli Martindale-Hubbell directory includes listings for attorney-arbitrators. Other directories, which include descriptions of individual arbitrators’ expertise or experience, are also available. These directories are, in essence, advertisements and do not indicate any official qualification, eligibility, or recognition.

3.10.5 Nomination of Foreign Arbitrators

There are no restrictions on an arbitrator’s nationality. Naturally, when arbitrators are nominated or suggested by the court, there is a tendency to appoint local experts.

4. MEDIATION

4.1 Introduction

After arbitration, mediation is the leading ADR mechanism utilized in Israel. Resort to other processes is negligible. This section will focus solely on mediation; other methods will be discussed below.

Mediation is an increasingly popular alternative in many types of disputes. Its widest use in Israel is in family and divorce issues. It is also very commonly encountered in labor disputes. Both the Family Courts and the Labor Courts have integrated mediation methods and mechanisms into their day-to-day operations. There are no customs or cultural obstacles of any significance to prevent application of mediation to disputes in Israel.
4.2 Mediation Institutionalization

Mediation was rarely encountered in Israel before the late 1990s. Leading the effort to import and implement the process were the court system and the Ministry of Justice. This effort led to the establishment of two important bodies:

i. The Court Administration’s Advisory Committee on Court-connected Mediation (the ‘Advisory Committee’), which was charged with approving mediators and mediator training qualification for court-connected mediation.

ii. The Ministry of Justice’s National Center for Mediation and Dispute Resolution (‘NCMDR’), established as an independent unit in the Ministry of Justice, which was charged with promoting the use of mediation and raising public awareness of its benefits. This body has played a key role in some of the major developments in the Israeli mediation scene. Recently, it was instrumental in orchestrating the signing of two major ‘Mediation Treaties’ in the commercial/industry and labor sectors, calling for the use of mediation in disputes encountered in these fields.

Later on, other institutional players became involved. Most notable, perhaps, is the Israeli Bar Association, which established a section on Dispute Resolution as well as a Mediation Institute offering mediation services to the public and the courts. Local bar association chapters followed suit, establishing similar institutes.

4.3 Mediation Service Providers

Israel has a thriving mediation scene, with many service providers. A random search on the Internet will instantly offer disputing parties hundreds of potential providers. Mediation services are offered for just about any imaginable topic: divorce and family matters, commercial affairs, community issues, labor disputes, and others.

While many professionals offer services on their own, the ‘mediation center’ has been the preferred organizational framework for mediation activities in all sectors: private, community and public. Mediation initiatives will usually come together into an entity defined as a private mediation center, a community mediation center, a campus mediation center, or a professional guild mediation center. Of course, ‘center’ is not an officially recognized method of incorporation; it is merely a name given to an enterprise that seems to have developed some special characteristics. Centers were – and still are – usually initiated by a single mediator or at the most two–three partners, perhaps aided by a one or two person support staff or freelance mediators.
In general, there would appear to be no outstandingly famous and recognized mediators in Israel; however, it is quite possible that different sectors have their own preferred and recognized service providers. One can easily access lists of mediators (some detailing qualifications such as experience and education) through the Mediator Roster discussed below (which is open to public view and use), through the NCMDR, and, as noted above, through the Internet. The Israeli Martindale-Hubbell legal directory devotes a large section to mediation services.

4.4 Mediator Qualifications

4.4.1 Regulation

It is important to stress that mediation is not a regulated profession, in the sense that anybody can advertise as a mediator, open an office, and wait for the public to knock on the door. As in arbitration, the parties’ agreement is paramount.

However, regulation occurs to some degree on a de facto basis because most of the cases reaching mediation are court-referred. The courts are supposed to refer cases to mediators who are included in the court’s Mediator Roster. The criteria for inclusion in the Roster as well as instructions for its upkeep and management are laid out in The Courts Regulations (Mediator Roster), 1996.

In order to be included in the Roster, a mediator must be approved by the Court’s Advisory Committee. To gain such approval, a mediator must meet three criteria. The mediator must have:

- completed a 40-hour training course approved by the committee;
- earned at least an undergraduate degree; and
- gained a minimum of five years experience in the mediator’s own professional field.

There are approximately 2,000 approved mediators on the court’s current Mediator Roster. However, many service providers are not included in this roster, whether due to under-qualification or a matter of preference.

4.4.2 Informal Prerequisite Mediator Characteristics for Commercial Disputes

The Israeli business community is generally dominated by middle-upper class males, 40–60 years old, of Western/European origin. Therefore, most female mediators, young (20–40 year old) mediators, or mediators belonging to an ethnic minority (such as new immigrants or non-Jews) might find it harder to earn reputations as prominent business mediators. This is not due to under-qualification, but is due, rather, to the fact that they do not belong to the
4.4.3 Training

Most of the first Israeli mediators were trained by experts from abroad who came to Israel to conduct training sessions in the early to mid-1990s. These experts, generally speaking, represented American East Coast problem-solving mediation. Since 1997, local mediation centers have branched out into mediation training; indeed, there was a period during which many centers saw the bulk of their income from training activities due to low consumer awareness of mediation. Within a few years, thousands of people underwent mediation training to one extent or another.

As with mediation practice, anyone can offer mediation training services. However, in order for such training to be recognized by the courts for the purpose of inclusion in the Mediator Roster, the training organization must have its curriculum and trainers approved by the Advisory Committee. In order to meet the Advisory Committee’s criteria, most training organizations first adopted a 40-hour, and later, a 60-hour, training course focusing on issues that the Advisory Committee determined to be relevant for court-connected mediation.

Apart from an additional 20-hour course in family mediation required for eligibility to receive court referrals of divorce cases for mediation, few options exist for professional development beyond the 40–60 hour training courses. Some private mediation centers offer training in areas such as family mediation, business mediation, and legal aspects of mediation. Noting the need for mediators to acquire practical experience before engaging in private practice, the Ministry of Justice’s NCMDR established a program aimed at providing both a suitable platform and proper supervision for this advanced training. The NCMDR undertook to broker a three-way agreement between the courts, the Mediation Centers, and the NCMDR itself to promote the public interest through the availability of quality mediation services. The result is an advanced practical training course known as the Practicum.

In the Practicum, the courts refer large quantities of Small Claims Court cases to approved training centers, which bring in the mediation trainees and supply the trainers to mentor them. In the course of the Practicum, a trainee performs intake of the potential parties to mediation, mediates four to six cases, and observes over a dozen more, all under close supervision by experienced mentors. This training – standardized and constantly overseen by the NCMDR – has supplied hundreds of mediator trainees with their first practical experience.
Although a proposal is under review to amend the Court Regulations so as to give Practicum-trained mediators a degree of precedence over other mediators on the Mediator Roster, it has not yet been put into effect.

4.5 Public Awareness of Mediation

4.5.1 Legal Professionals

For legal professionals, awareness of mediation services, both as to their availability and their advantages, is increasingly growing. Ten years ago, the word mediation caused the average legal professional to raise an eyebrow questioningly. Today, a jurist who is not familiar with the term would elicit surprise.

The embrace of mediation by the legal profession was sparked by the Chief Justice of the Supreme Court publicly voicing his support for the use of ADR and extolling the advantages of these procedures in numerous articles and public appearances beginning in the late 1990s. Only then did the legal community start to take these mechanisms seriously as a practical option, rather than a theoretical idea. The Israeli Bar Association heard the message loud and clear, and its ambivalent approach to the process was replaced by its enthusiasm as it set up its own institutions and training programs. Many attorneys now offer mediation services along with their legal services. Almost all judges in the court system have undergone mediation training organized by the court administration, and so have many members of the court system’s administrative staff.

4.5.2 The Business Community

In the business community, arbitration was long seen as the predominant ADR process, and it is only in the past three or four years that awareness of mediation has grown. In 2003 a much-publicized agreement was signed among the major commercial corporations and the Chambers of Commerce declaring that the use of mediation will be preferred over litigation. A similar agreement was signed a year later between labor unions and trade/employer unions. It is unclear whether these developments have brought about change in the dispute resolution habits and norms of specific corporations.

4.5.3 Government, Public Agencies, and the Judiciary

Israel’s Attorney General has issued a directive ordering all government agencies to consider the use of mediation, particularly in inter-departmental or inter-agency disputes. The NMCDR has published a report addressing the participation of the state in mediation processes. Some governmental
departments have a relatively high degree of awareness of the process’s advantages and uses, for example, the Ministry of the Environment and the Ministry of Education.

Of course, the judiciary, the branch of government most directly affected by the rise of mediation, is fully aware of its benefits. The court system has reorganized itself in a manner better suited to incorporate the use of ADR as a day-to-day part of the system. Each courthouse has set up a case intake unit, with one of its functions being to identify cases suitable for mediation or arbitration at a very early stage of the litigation process and to suggest to disputants that their case be referred to appropriate professionals.

4.5.4 Law Students

Every law faculty offers at least one elective ADR course in its curriculum; some offer more. As opposed to courses on arbitration, which, as previously stated, tend to be legally oriented and not designed to train arbitrators, mediation courses are usually taught in a hands-on, workshop-style method designed to transfer practical skills to participants. It is safe to say that every law student in Israel today is aware of the existence and availability of mediation.

4.6 Mediation Outcomes and Enforcement of Agreements

If no agreement is reached through the mediation process, or if the mediator decides to halt the process, the process comes to an end. In the case of a privately initiated mediation, parties can search for alternative methods of resolving the dispute (including litigation). In the case of court-referred mediation, the mediator notifies the court, without giving any substantive explanation for the lack of agreement or the decision to end the process. The court picks up where it left off and reschedules the case for the next step in the litigation process.

If, on the other hand, the mediation culminates in an agreement settling the dispute, the parties can decide how they want to frame that agreement and what they want the referring court to do about the case. Essentially, the parties have three choices:

i. They can agree on a handshake, not forming their agreement into a legal document, and simply jointly petition the court to drop the case;
ii. They can shape their agreement into a binding, formal, legal contract and jointly petition the court to drop the case; or
iii. They can shape their agreement into a binding, formal, legal contract, and petition the court to affirm it, thereby giving it the power of a court decision or verdict.
Besides having the empowering effect of enabling parties to write their own verdict, the third option also has significant practical implications in the event that one party is suspected by the other to be in breach of the mediated agreement. If the contract has been officially stamped by a judge and converted into a verdict, the complaining party does not need to sue the other party in court to obtain its contractual rights; it can have the agreement/verdict immediately executed through the court system, skipping the judicial stage, because a verdict has already been given. This option, usually preferred by parties to court-referred mediation, is what gives the process both its teeth and its allure: the knowledge that one can reach an agreement in a quick procedure that will be as binding as any judicial decision.

Furthermore, due to a 2003 amendment to the Courts Act, the third option – enabling parties to transform an agreement into a judgment – is available not only in court-referred mediation, but also in privately initiated cases. Parties to a privately initiated case can take their agreement to the court that would have dealt with their case had a suit been filed and petition the court to affirm the agreement as a judicial decision.

### 4.7 Community Mediation

One of the most positive effects of the widespread training discussed above is that mediation touched a lot of people, and, for many, the effect was very powerful; people began looking for channels to begin using this new tool in their day-to-day lives. Some did this in order to gain mediation experience and perhaps build up an independent practice; still others did it simply in order to improve the atmosphere in their own surroundings – at home, at work and in their community. As so many people had trained in so many different frameworks, there was little problem meeting up with other mediation enthusiasts, networking, and reaching an operative decision or an action plan.

Out of this dynamic emerged many initiatives aimed at implementing mediation at the community level. The development of community mediation enjoyed the support of the Justice Ministry’s NCMDR, and this exemplifies the government’s attempt to balance efforts to standardize ADR with its attempt to allow local and traditional efforts to resolve conflict. The movement received additional support from the non-profit sector: several well-established Israeli NGOs adopted or initiated community mediation programs. The combination of their experience, funding channels, and administrative frameworks, along with the mediators’ enthusiasm and skills, tended to yield successful programs.

While it is estimated that as many as 100 community mediation projects may have been launched over the past decade, including mediation centers, training and education programs, and other initiatives, many of these did not achieve significant results or viability, and only several dozen are thought to be active in any way today. However, some community mediation centers have
succeeded in becoming recognized and respected institutions in the community they aim to serve, and they have registered successes both in resolving disputes on the local level as well in raising the general public’s awareness of the benefits of mediation.

5. **OTHER ADR MECHANISMS**

Arbitration and mediation are by far the most commonly encountered dispute resolution mechanisms outside of the court system. Other, more traditional dispute resolution processes do exist; however, their impact on commercial life is negligible.

In the Israeli-Arab community, the process of *Sulcha* is sometimes encountered, primarily for settlement of blood feuds and inter-communal disputes. In this process, a panel of dignitaries fulfills a number of functions, ranging from acting as ‘go betweens’ for passing messages between parties to acting as arbitrators deciding the outcome of an issue. This rarely invoked process has no official standing. For example, a family may decide to forego, at the behest of the *Sulcha* panel, avenging the death of one of its members, but this does not affect the state’s duty or desire to arrest and prosecute the murderer. In addition to the formal process of *Sulcha*, it is quite common, in issues ranging from marital to commercial, to find the parties requesting help from a local dignitary or communal leader. This help might be a mixture of consultation, arbitration, and/or mediation. Such requests are generally limited to cases in which family or village ties necessitate solutions that take community issues into consideration. Anything of a less local nature will be brought to court.

In the Jewish Orthodox community, there are sectors that try to avoid using the civil court system, preferring to settle matters ‘in-house.’ In cases where both disputants are from this community, they will usually go to a ‘private’ court to have the case adjudicated by rabbis according to *Halachic* (Jewish Orthodox) Law. From a legal standpoint, this is essentially a type of arbitration, and this is how the state views such institutions and judgments. It is difficult to estimate the number of cases brought to such private adjudication, or the number of Israelis who view these private courts as their sole recourse for adjudication. However, in the larger context of adjudication in Israel, these are certainly marginal. Outside of this adjudicative process, it is quite common to find religious parties to disputes ranging from marital to commercial jointly requesting help from a rabbinic figure. As with other forms of private, informal dispute resolution, the rabbi’s assistance might take forms reminiscent of consultation, arbitration, or mediation.

Recently, efforts have been made to advance the use of Early Neutral Evaluation. This process, borrowed from the California state court system, is
initiated after parties have filed their initial briefs in court. A neutral evaluator, with expertise in the claim’s subject matter, meets with the parties and their attorneys, hears summaries of the case, and probes the parties’ cases further. The evaluator can then comment on each party’s strengths and weaknesses, and render an opinion on the probable outcome of the litigation process. The evaluator sometimes provides mediation-like services by helping the parties reach agreement on case management issues. The process can also end with the evaluator facilitating a settlement between the parties. This process is not yet in widespread use in Israel.

6. **CONCLUDING OBSERVATIONS**

This section will give a brief overview of the current state of higher education concerning ADR and ways in which education and other techniques can help promote the use of ADR, and will conclude with some observations about the future of ADR in Israel.

6.1 **ADR in Higher Education**

Other than the law school mediation courses mentioned above, the availability of practical, higher education programs in alternatives to litigation is fairly limited. There are no university programs dealing primarily with arbitration. Law schools invariably offer elective courses on arbitration. These courses are not, as a rule, practice-oriented. There are several practice-oriented training courses, offered by private, for-profit, arbitration service providers. However, there is no official accreditation for such programs.

There are two established graduate and doctoral programs in Conflict Resolution, at Bar Ilan University and at Hebrew University. A third graduate program has been opened recently at Tel Aviv University. It should be stressed that while these programs do offer courses and seminars on dispute resolution, much of their focus is on conflict resolution in the international, societal, or intercultural level.

Bar Ilan University’s Law Faculty offers mediation as a specialty field in its general Master of Laws (LLM) program.

There are no programs in Peace Studies offered in Israeli universities. In Haifa University and in Tel-Hai College, however, Peace Education is offered as a specialty field in the School of Education.

Most of Israel’s academic institutions offer elective courses on mediation in the framework of different academic programs, such as business administration, social work, and education.
6.2 Suggested Strategies for Promoting Use of Mediation and Other ADR Processes

While there are many ways to advance the goal of promoting the use of various ADR processes, this report will focus on areas where external help might be especially useful.

6.2.1 Increasing Awareness Through Campaigns and Education

Increasing public awareness will help promote use of ADR processes. Two strategies are particularly important for this goal. First, the general public should be the subject of a widespread media campaign raising their awareness about the existence and advantages of ADR. Primarily due to lack of funding, there has never been such a media campaign; private mediation centers cannot afford to initiate anything beyond sporadic advertisement of their services in newspapers or on the Internet.

Second, possibilities for incorporating conflict resolution and management courses into business school education should be explored and promoted. In most programs aimed at management education, the most one can hope to encounter is a short, elective negotiation workshop.

6.2.2 Improvement of Service Quality

Quality control is also critical to continued use of ADR processes. Due to the relatively low level of training, and even lower level of professional or regulatory supervision in the mediation field, there have naturally been cases of mismanagement or even negligence, leading disputants to avoid taking part in mediation in the future. In such a small country, it takes very little to give a new concept or trend a bad name. This situation could be improved in many ways.

One possibility would be to offer incentives or to subsidize mediation centers that offer high-quality (according to set criteria) services to the courts. Under the current system, mediator fees are capped in court-referred cases, resulting in an incentive to assign cases to inexperienced junior associates. Offering benefits for quality services would encourage mediation centers to have their senior, experienced mediators handle cases.

Another possibility would be to provide ADR practitioners with funding to support professional training and development abroad. As discussed, there is relatively little possibility in Israel for professional development and advanced training beyond the basic training course.
6.2.3 Research

ADR mechanisms must be suited to the Israeli social, legal, and business environments if they are to offer an attractive alternative to litigation, but very little local research has addressed this area. Research projects aimed at identifying which methods and practices of ADR are particularly suited to the local climate would help promote their use. Government support, as well as support originating with foreign governments or investors, would be very useful and have positive and empowering effects on the development and use of ADR in Israel.

6.3 Conclusion

ADR is a recognized, institutionalized part of the Israeli legal, commercial, and community infrastructure. The veteran process of arbitration was supplemented with what can only be called a mediation boom in the late 1990s, and there is no lack of capable professionals in either field. The feeling lingers, however, that ADR in Israel has not yet reached its peak. We predict that the future holds in store increased public awareness, enhanced practitioner professionalism, and more effective institutionalization, enabling ADR to achieve its full promise in Israel.
Chapter 4
Jordan

Tariq Hammouri
Dima A. Khleifat
Qais A. Mahafzah

1. INTRODUCTION

Jordan is located in the Middle East and has an area of 92,000 square kilometers. Its border territories are, from the North, Syria; from the Northeast, Iraq; from the East, Southeast, and South, Saudi Arabia; from the South, the Red Sea; and from the West, Israel and Palestine.

The population of Jordan numbers approximately 6,053,193 souls (July 2007 estimate), of which 98 percent are Arab, 1 percent Circassian, and 1 percent Armenian. Sunni Muslims comprise 92 percent of the population and Christians 6 percent. The majority of Christians are Greek Orthodox, but some are of Greek and Roman Catholic, Syrian Orthodox, Coptic Orthodox, Armenian Orthodox, and Protestant denominations. The remaining 2 percent of the population consists of small groups of Shi’a Muslims and Druze (2001 estimate).

The government is a constitutional parliamentary monarchy in which the King, Abdullah II, is the head of the Executive authority. The Prime Minister is appointed by the King, and the Cabinet is also appointed by the King upon the Prime Minister’s appeal. The legislative authority is exercised by the King and the bicameral National Assembly. The National Assembly consists of the 55-seat Senate, also known as the Upper House or the House of Notables, whose members are public figures appointed by the King from designated categories, and the 110-seat Chamber of Deputies, also known as the House of Representatives.

The judicial authority, as discussed below, is assumed by courts of different types and hierarchies, and decisions of these courts are awarded in the King’s name.

Although commonly known as Jordan, the country’s conventional and formal name is the Hashemite Kingdom of Jordan.

2. COMMERCIAL DISPUTES

2.1 Economic, Judicial, and Legislative Background

2.1.1 Economy

In 1989, Jordan suffered an economic crisis when inflation reached an annualized 25.6 percent, real economic growth contracted by an annualized rate of 13.4 percent, and the Jordanian Dinar (JOD) depreciated by 35 percent against the US dollar (USD). Moreover, the balance of payments and the foreign reserves at the Central Bank fell to record low levels of USD 34 million, while the balance of outstanding external debt as a percentage of GDP reached 180.6 percent and services as a percentage of exports reached 24.9 percent.

Following the 1989 crisis, economic reform efforts began. They focused primarily on attaining macroeconomic stability and rectifying fiscal imbalances. By 1999, the stringent reform efforts had succeeded in sustaining a cautious macroeconomic management policy, which included the gradual reduction of high fiscal imbalances and the implementation of a structural reform agenda. However, despite the deep structural reforms and success in achieving macroeconomic stability during the 1990s, the economy remained highly vulnerable to external factors. Jordan faced many challenges including low growth in real output, a continually high external debt and budget deficit, a chronic water deficit, and an unproductive private sector.

Reform efforts were consequently revisited in 1999, prompting an accelerated pace of reforms and the launch of new strategies and initiatives aimed at realizing sustainable socioeconomic development. These fiscal reforms led to significantly lowered external public debt as a percentage of GDP, from 96 percent in 1999 to 72.7 percent in 2006. Other measures currently in the pipeline include additional pension reform and managing the public sector to curb the level of current expenditures. These measures are aimed at developing a budget that is responsive to socioeconomic development needs, capable of self-financing, and able to cover the recurring costs of projects.

Furthermore, monetary stability has been a cornerstone of the development agenda. Official foreign currency reserves have been constantly rising and are currently at USD 4.44 billion, while inflation has been

---

1 This section includes extracts from the Official website of His Majesty King Abdullah II of Jordan: <www.kingabdullah.io>, last visited on June 4, 2007.
2 For more information, see the following website: <www.mop.gov.jo/pages.php?menu_id=70>, last visited on June 4, 2007.
3 Budget Speech 2007 (December 11, 2006): Dr. Ziad Fariz, Deputy Prime Minister and Minister of Finance.
Jordan

successfully contained at an average of less than 2 percent over the past five years.

Jordan has also witnessed a dynamic privatization process which enhanced the efficiency of privatized firms and created a competitive market where demand and supply can freely interplay. To date, the privatization process has injected USD 1.1 billion into the economy through the privatization of 55 state enterprises that include the Arab Potash Company, Jordan Cement Factories, and Jordan Telecom. Jordan is keen to continue the process, and projects under consideration include the Jordan Phosphates Mining Company and Royal Jordanian, the national airline carrier. The government is also committed to supporting the implementation of major development projects, including residential and commercial development, the Disi water conveyance project, water treatment plants, and the Aqaba Special Economic Zone (ASEZA).4

The privatization process has been coupled with a rapid integration into the world economy, including Jordan’s accession to the WTO, the signing of the Free Trade Accord (FTA) with the United States, the Qualifying Industrial Zones (QIZ) Agreement with the United States and Israel, the Partnership Agreement with the European Union, the Arab FTA, and the most recent FTA with Singapore. The overall reform strategy focuses on export expansion, private-led growth through competitiveness, and minimization of government intervention in the economy.

The results of the ongoing economic reforms are encouraging. Despite the disruption caused by the Iraqi conflict and the continuing Palestinian-Israeli conflict, real GDP growth in 2004 was estimated at 7.5 percent,5 while domestic exports – which had grown to more than USD 2.3 billion in 2003 – grew by almost 40 percent in the first quarter of 2004 as compared with the same period in 2003. The Social and Economic Development Plan (2004–2006) aims to achieve and sustain a GDP growth rate of 6 percent per annum and per capita income growth of 3.6 percent by 2006.6 7

---

4 Aqaba was transformed to a Special Economic Zone through the enactment of special laws and bylaws that took effect on February 15, 2001. The total investment volume in the ASEZ is expected to attract around USD 6 billion over the next 20 years.


6 The current status has not been officially released yet from the ‘Statistics Department,’ which is the authorized party to publish such information based on its own surveys. However, referring to the abovementioned speech of the Ministry of Finance in the parliamentary Budget Debate issued on December 11, 2006, the government expects a GDP growth rate of 6 percent and not less than 3 percent capital income growth.
2.1.2 The Judicial and Legislative Aspect

Creating an environment favorable to increased investment and sustained growth has also required sweeping legislative reforms, which have focused on creating an environment that is responsive to the needs of the private sector and evolving global market trends. The reforms have encompassed passing new laws and amending a number of existing laws related to intellectual property, companies, e-transactions, securities, copyrights, patents, telecommunications, money laundering, and other areas.

Parallel to economic development and legislative reform, the Ministry of Justice has been reviewing and reforming court proceedings. The judicial reform process is aimed at enhancing the efficiency of the court system, strengthening its autonomy, training judges and lawyers, establishing an integrated information system network, and ensuring transparency and accountability. These goals are to be achieved through:

i. strengthening the independence of magistrates;
ii. simplifying and rationalizing legal procedures with a view to reducing delays;
iii. establishing alternative dispute resolution (ADR) mechanisms, with particular emphasis on commercial matters, to reduce the case load of judges;
iv. increasing the transparency of judicial decision-making and the predictability of judgments;
v. increasing the competency of the present and future judicial corps in matters of business law broadly defined;
vi. improving the judicial system’s enforcement capacity;
vii. ensuring broader and more timely dissemination of legal information through electronic access to speed archiving and dissemination;
viii. broadening the participation of stakeholders in the drafting of new legislation; and
ix. modernizing the Ministry of Justice’s work processes, including but not limited to, the Judicial Inspection Unit within the Ministry.

Jordan’s Constitution guarantees the independence of the judicial branch, clearly stating that judges are “subject to no authority but that of the law.” While His Majesty the King must approve the appointment and dismissal of judges, in practice these actions are supervised by the Higher Judicial Council, which

7 For more information about Jordanian GDP growth rate, per capita income, imports, and exports, see <www.jordaninvestment.com/jibuploads/economic_indicators.doc>, last visited on June 4, 2007.
Jordan

makes independent decisions regarding the periodic recommendations submitted to it by the Ministry of Justice.

The Constitution divides the courts into three categories: civil, religious, and special. The civil legal system has its foundations in the *Code Napoléon*, a French legal code implemented in Egypt in the early 19th century. The civil courts exercise their jurisdiction over civil and criminal matters in accordance with the law, and they have jurisdiction over all persons in all matters, civil and criminal, including cases brought against the government. The civil courts include magistrate courts, courts of first instance, courts of appeal, the High Administrative Court, and the Court of Cassation (Supreme Court).

The religious courts are divided into *Sharia* (Islamic law) courts and the tribunals of other religious communities, namely those of the Christian minority. Religious courts have primary and appellate courts and deal only with matters involving personal law, such as marriage, divorce, inheritance, and child custody. *Sharia* courts also have jurisdiction over matters pertaining to the Islamic *waqfs*. In cases involving parties of different religions, regular courts have jurisdiction.

Special Courts exercise their jurisdiction in accordance with the provisions of the laws constituting them. Examples of special courts in Jordan

---

9 Article 99 of the 1952 Constitution.
10 Article 102 of the 1952 Constitution.
11 The primary difference between the first instance court and the magistrate court for civil disputes is that the lawsuit shall be raised before the magistrate court if the amount of the lawsuit is not more than JOD 3,000. If the amount of the lawsuit exceeds JOD 3,000 then the first instance court shall be the competent court to settle the dispute between the parties. However, there are, although in a limited number of cases, specific issues that are provided by law to be within the specific jurisdiction of the magistrate court or the first instance court, notwithstanding the value of the claim. For example, labor lawsuits are brought before the magistrate court regardless of the value of the case. In cases where the value of the case is not clear and there is no special provision to direct where the case should be heard, the case is tried before the first instance court as a general rule. Still, the first instance court judges are higher in rank than the magistrate court judges.
12 The High Administrative Court is a litigation court that looks into administrative disputes. Although it falls under the umbrella of the Judicial Council, the judges of the High Administrative Court are senior judges, equivalent in rank to judges of the Court of Cassation.
13 Article 104 of the 1952 Constitution.
14 *Waqf* is an Islamic concept that means withholding the disposition of a tangible or a non-tangible forever, and assigning its benefit for good deeds to another party and its successors. Article 1233, The Civil Law, No. 43 of 1976, *Official Gazette* No. 2645 (August 1, 1976), p. 2.
Arbitration and Mediation in the Southern Mediterranean Countries

are the Security of State Court, the Custom Court, the Income Tax Appeal Court, and the Police Court.

2.2 Commercial Disputes in Courts

The principle of specialization of courts is not officially recognized in the judicial system of Jordan. The same judge may examine a bankruptcy case (which is considered a commercial dispute) and at the same time look into a labor case (which is not considered a commercial dispute). However, in practice, the court system tends to direct cases of a certain nature – such as investment cases, general commercial cases, intellectual property cases, bank cases, or corporate cases – to particular judges or committees of judges who happen to have more experience in such disputed matters. These judges do not have special training in handling commercial disputes but have, instead, gained their expertise through long years of experience in this field.

Certain laws and provisions are applied to general commercial disputes. The Law of Commerce\(^\text{15}\) applies to commercial activities, which are:

- Activities carried out by merchants (whether a person whose profession is trade, or a company whose main objective is commercial);\(^\text{16}\) and
- Activities that are considered commercial by the definition of law.\(^\text{17}\)

Thus, activities such as exporting objects, transport, agency, insurance, buying and selling non-tangible objects for profit, mining, general exhibitions, and other activities are all considered commercial activities, regardless of the ‘person’ carrying them out.

If the Law of Commerce lacks a provision addressing a particular commercial issue, then the judge will turn to the principles and provisions of the Civil Law.\(^\text{18}\) If no applicable provision is to be found in the law, the judge may then seek guidance in judicial precedent, jurisprudence, justice rules, and commercial custom.\(^\text{19}\)

Domestically, different commercial matters are governed by different special laws. For example, generally speaking and in principle, corporate matters are governed by the Companies Law\(^\text{20}\) and bankruptcy is mainly


\(^{16}\) Articles 8 and 9 of the Law of Commerce.

\(^{17}\) Articles 6 and 7 of the Law of Commerce.

\(^{18}\) The Civil Law.

\(^{19}\) Articles 2 and 3 of the Law of Commerce.

Jordan

governed by the Law of Commerce and the Law of Civil Judicial Proceedings, while agency is governed by the Law of Agents and Agencies, the Law of Commerce, and the Civil Law.

With regard to foreign investment, there are no restrictions or controls on payments, transactions, transfers, access to foreign exchange, or repatriation of profits. Except for the cases stipulated in Articles 3 and 4 of the Regulations on Regulating Non-Jordanian Investments No. 54 of 2000, investors are allowed 100 percent ownership in many sectors and are treated on an equal footing with resident investors.

On the other hand, on the international level, Jordan has acceded to numerous bilateral and multilateral investment treaties, such as the Treaty on the Settlement of Investment Disputes in the Arab Countries of 2001, which provides for the settlement of disputes through conciliation and arbitration, and the Treaty between Jordan and the United States on the Mutual Encouragement and Protection of Investment. Also, there is the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States of 1965 (the ‘Washington Convention’), although its constitutionality is still being debated.

In general, there are no specific dispute resolution mechanisms for investment disputes in Jordan whether the disputants are locals or foreigners. Furthermore, unless an international bilateral or multilateral treaty about investment applies to the foreign investor, Jordanian law is to be applied in any dispute faced by a foreign investor.

---

27 Signed by Jordan on July 14, 1972, ratified on October 30, 1972, and entered into force on November 29, 1972. There is no publication of the treaty in the Official Gazette.
28 For more information about investment in Jordan and the effects in different sectors of the economy, see the website in footnote 7.
3. **Arbitration**

Arbitration has been traditionally known and accepted as a means of settling disputes since the establishment of modern Jordan. The first formal statute to regulate arbitration was the Arbitration Law of 1953 and its amendments, which was annulled by the current Arbitration Law of 2001. The Law of 2001 is mainly derived from the Egyptian Arbitration Act No. 27 of 1994, which in its turn was based on the UNCITRAL Model Law of 1985 on International Commercial Arbitration.

Despite the multiple sources for the law, arbitration in Jordan remains mainly in its early and traditional form: voluntary and private. It is a creature of the contractual consent of the parties to be obligated by the decision of the arbitrator – or the arbitral panel – of the parties’ choosing, and the agreement of the decision-maker(s), in their turn, to abide by the rules of arbitration that the parties have decided to adhere to.

### 3.1 Domestic Ad Hoc and Institutional Arbitration

In domestic arbitration, either the parties agree in advance to the specific issues or types of disputes that will be arbitrated, or, after a dispute arises, they enter into an *ad hoc* agreement to arbitrate. The parties to a business contract may negotiate a whole set of custom-made arbitration rules establishing procedures to fit their needs and addressing all eventualities. Alternatively, the parties may include a simple arbitration clause in their contract making reference to statutory procedures such as the Jordanian Arbitration Law, adopting rules crafted...
specifically for *ad hoc* arbitral proceedings such as the UNCITRAL Rules, or incorporating the ICC rules or the CRCICA rules in their agreement. Whichever approach is taken, the arbitration clause or agreement survives the annulment of the contract, its voidance, or its cancellation or termination for any cause, and it is considered severable from the other contract conditions.

In case the parties in a domestic dispute have agreed on arbitration as a method of settling disputes, but have not agreed upon the procedures of the arbitration, the arbitrator or the arbitration panel may select the arbitration procedures that they believe appropriate, in accordance with the provisions of the Arbitration Law.

If the parties are in a position to pay the administrative charges, which may be substantial, they might favor resorting to institutional arbitration. In such a case, the contract between the parties will contain an arbitration clause which will designate an institution as the arbitration administrator. The institutional approach is generally preferred when one of the parties is foreign or an international entity. In such a situation, both the local party and the foreigner might find referral to a regionally or internationally known arbitration institution to be reassuring in light of the pre-established rules and procedures.

In Jordan, there is no institutional arbitration center *per se*. There are several centers, though, which serve as law offices rather than institutional arbitration centers but are still resources for arbitration services. Those centers include one or more partners who are well known for their arbitration and legal skills, and the personal profiles of the partners is the most important factor in the choice of the center. Examples of these offices are: the Law and Arbitration Center, the Jordanian Center for Dispute Resolution, the IP and ADR Arab Center, the Arab Intellectual Property Mediation and Arbitration Society, and the Arab Center for Mediation and Arbitration.

With the absence of institutionalized arbitration centers in Jordan, the fees and charges for any given arbitration can vary widely. The Arab Intellectual Property Mediation and Arbitration Society is the only center that has its fees and charges set in advance and published on its website.

36 The Cairo Regional Center for International Commercial Arbitration.
37 Article 31 of the Arbitration Law.
38 Article 22 of the Arbitration Law.
39 Article 24 of the Arbitration Law.
3.1.1 Appointment of Arbitrators

As for the appointment of arbitrators, according to the Arbitration Law, the parties to the arbitration may select the arbitrator(s), but the number of arbitrators must be odd. No nominated arbitrator may have a record of judgments for committing a felony or a misdemeanor contrary to honor, or due to a declaration of bankruptcy – even if the arbitrator has been rehabilitated. The arbitrator’s acceptance of the mandate shall be in writing and, when accepting, the arbitrator shall disclose any circumstances likely to raise doubts about impartiality or independence.

The Arbitration Law explicitly states that the arbitrator may be a foreigner since the nationality of the arbitrator is not significant. Also, unless otherwise agreed upon by the arbitrating parties or provided for by the law, an arbitrator need not be of a specific gender.

If the parties have not agreed on the selection of the arbitrator and:

− the arbitration panel consists of one arbitrator, the court selects the arbitrator following the request of one of the parties;
− the arbitration panel consists of three arbitrators (or more), each party selects an arbitrator, and the selected arbitrators choose the third arbitrator;
− one of the parties does not designate an arbitrator within 15 days of receiving a request to do so from the other party, or if the two designated arbitrators fail to choose the third arbitrator within 15 days of designating the last of them, the court will then choose the arbitrator following a request to do so from one of the parties.

If, for any reason, the arbitrator fails in fulfilling the arbitral duties, resulting in an unexcused delay in the arbitration proceedings, and the arbitrator does not resign, the parties to the arbitration may agree on releasing the arbitrator.

---

46 Although there are many internationally qualified arbitrators in Jordan, the Arbitration Law does not specify any requirements for the lawyer, the retired judge, or the specialist to meet in order to act as an arbitrator.
47 Article 14 of the Arbitration Law.
48 Article 15/b of the Arbitration Law.
49 There are no official Arbitrators’ lists that a court might refer to in case it needs to nominate an arbitrator. Instead, there are non-official lists such as the list provided by the Jordanian Arbitrators Association, but the list is confined to the Association’s members. In general, the court nominates respected lawyers of broad and lengthy experience, retired judges, or, rarely, well-known specialists in their fields.
50 Article 16 of the Arbitration Law.
Jordan

Alternatively, following a request from any of the parties, the court may discharge the arbitrator and its decision cannot be challenged in any way.\textsuperscript{51} According to the Independence of the Judiciary Law,\textsuperscript{52} sitting judges are not permitted to hold any other jobs while working in the judicial system. This prohibition includes engaging in commercial business activities, being a member in any company’s or establishment’s board of directors, or engaging in any other job or profession. Otherwise, the judge shall be held liable. This same law, however, provides the exception that if the Government or any public institution is a party to a dispute to be resolved by arbitration, or if the dispute is of an international nature, the Cabinet of Ministers may appoint a sitting judge as an arbitrator based on a recommendation from the Judicial Counsel.

3.1.2 Confidentiality

The Arbitration Law stipulates that the arbitral award, or any part thereof, may not be published without the consent of the parties to the arbitration proceeding.\textsuperscript{53}

3.2 International Arbitration

Jordan has acceded to important bilateral and multilateral conventions and treaties concerning arbitration and enforcement. Among these agreements are the Riyadh Arabic Treaty on Judicial Collaboration of 1983 (the ‘Riyadh Treaty’)\textsuperscript{54} and the Arabic Treaty on Commercial Arbitration of 1986.\textsuperscript{55} The latter treaty stipulates that an Arabic Center for Commercial Arbitration shall be established, but unfortunately the idea of such a center has not gained traction. Other treaties include the Amman Arabic Treaty on Commercial Arbitration (the ‘Amman Convention’)\textsuperscript{56} and the Treaty on the Settlement of Investment Disputes in the Arab Countries Treaty of 2001.\textsuperscript{57} Jordan is also a party to numerous other bilateral agreements and treaties concerning alternative dispute resolution mechanisms, especially regarding arbitration.

\textsuperscript{51} Article 19 of the Arbitration Law.
\textsuperscript{53} Article 42 of the Arbitration Law.
Although Jordan has signed the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the ‘New York Convention’), there is a continuing debate about whether the Convention conforms to the Jordanian Constitution. In Article 33/2, the Constitution stipulates that conventions and treaties that impact the country’s treasury or the public or private rights of Jordanians shall not be enforced unless and until the Parliament approves of them. The New York Convention has not been submitted to the Parliament for approval. Those who claim that the New York Convention is unconstitutional have focused on Article 33. On the other hand, the courts have recognized the New York Convention in a few cases, which leaves the case for or against the application of the New York Convention open for debate in Jordan.

The situation is no different with respect to the Washington Convention. Not only does this Convention, like the New York Convention, still need Parliamentary approval, but the declaration of Jordan acceding to the Washington Convention was not even published in the Official Gazette. Despite the above problems, however, Jordan has been involved in ICSID arbitrations, and decisions issued by ICSID have been recognized by the Jordanian Government. Examples of such arbitrations are: (a) Jacobs Gibb Limited v. Hashemite Kingdom of Jordan (Case No. ARB/02/12), and (b) Salini Costruttori S.p.A. and Italstrade S.p.A. v. Hashemite Kingdom of Jordan (Case No. ARB/02/13).

3.3 Enforcement of the Arbitral Award

Enforcement of the arbitral award depends on whether the relevant arbitration is considered domestic or international.

3.3.1 Domestic Awards

If the relevant arbitration is considered domestic, then the provisions of the Arbitration Law apply to requests to void or execute the award.

The Arbitration Law specifies a period of 30 days for the parties to claim that the arbitral award is void based on certain conditions stipulated in Article 49 of the Arbitration Law. Such a claim is heard by the Court of Appeal even if the party claiming that the arbitral award is void relinquished the right to do so before the award was determined. If the Court of Appeal finds the arbitral award valid, then the Court must order execution of the award, and

---

60 Article 50 of the Arbitration Law.
the Court’s decision is final and cannot be appealed to the Court of Cassation. But if it finds that the arbitration award is void, then the Court of Appeal’s decision can be challenged before the Court of Cassation.

To enforce and execute an arbitral award, a request to the Court of Appeal must be submitted 30 days after the arbitral award is delivered to both parties, to ensure that the period for claiming voidance has expired. The execution request must be submitted together with: a copy of the agreement to arbitrate, the original copy of the arbitral award or a signed copy thereof, and, if the award was issued in a different language, a legal and authenticated translation of the arbitration award into the Arabic language.

The Court of Appeal shall order the execution of the arbitral award unless it finds that the award includes aspects contrary to public order in the Kingdom or the party against whom the award was invoked was not properly given notice of the award. If what is contrary to public order in the arbitral award can be isolated from the rest of the award, then the Court may order the execution of the award except for the part that is contrary to public order.

A Court of Appeal’s decision to execute the arbitral award shall not be challenged before any other court. If, however, the Court refuses to execute the award, this decision can be challenged before the Court of Cassation within 30 days, as noted above.

3.3.2 International Awards

When applying the New York Convention to the enforcement of foreign awards, the articles in the Enforcement of Foreign Decisions Law (the ‘Enforcement Law’) and the Civil Procedures Law apply, but within the conditions laid down in the New York Convention. These provisions mean that a foreign arbitral award can be enforced only if the award has become enforceable and is considered so by virtue of the laws of the country where the award has been handed down.

A request to execute the award must be submitted to the competent court of first instance, observing the conditions mentioned in Article 4 of the Convention and taking into consideration the procedures in the Civil Procedures Law. The enforcement of the award may be refused at the request of the party

---

61 Article 51 of the Arbitration Law.
62 Article 53 of the Arbitration Law.
63 Article 54 of the Arbitration Law.
64 The Enforcement of Foreign Decisions Law (hereinafter called The Enforcement Law), No. 8 of 1952, Official Gazette No. 1100 (February 16, 1952), p. 89.
66 Article 2 of the Enforcement Law.
against whom the award was invoked, and upon the conditions mentioned in Article 5 of the New York Convention.

Contrary to domestic arbitral awards where the arbitral award can be challenged before the Court of Appeal and, only in certain cases, before the Court of Cassation, the Civil Procedures Law provides that the enforcement of the foreign award can be challenged before the Court of Appeal and then also before the Court of Cassation. It is worth noting that this extended appellate procedure may be considered a violation of Jordan’s obligations under the New York Convention, which stipulates that:

“There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.”

It is further worth noting that each bilateral or multilateral treaty sets different conditions for the enforcement and recognition of awards. For example, the Amman Convention gives jurisdiction to enforce an award to the highest national court in the country where the enforcement is sought (in Jordan, the Court of Cassation). However, the Riyadh Treaty allows the country where the enforcement is sought to decide the enforcement authority (in Jordan, first, the competent court of first instance, whose decision may be challenged before the Court of Appeal and then before the Court of Cassation).

### 3.4 Costs of Enforcement

As for the costs and charges for the enforcement of arbitral awards, the Regulations on Courts’ Fees and Charges\(^{68}\) stipulate that the court fee for the annulment of an arbitral award is 3 percent of the sum of money subject to annulment. The fee for the execution of a domestic arbitral award is the same percent of the claimed value in arbitration. In each of the two situations, the 3 percent shall not exceed JOD 1500. In contrast, when the execution of a foreign arbitral award is sought, only 1 percent of the sum mentioned in the award for the benefit of one of the parties is paid, not exceeding JOD 300.\(^{69}\)

\(^{67}\) Article 3 of the New York Convention.

\(^{68}\) The Regulations on Courts’ Fees and Charges, No. 43 of 2005, Official Gazette No. 4711 (June 16, 2005), p. 2468.

\(^{69}\) Articles 7 and 8 of the Table on Courts’ Fees and Charges of 2005, Official Gazette No. 4711 (June 16, 2005), p. 2473.
3.5 Conclusion

The new trends in trade and economy have encouraged many to seek alternatives to court methods to resolve their disputes. This new approach is sanctioned by the official departments and the government in general, and is seen in the incorporation of arbitration as a means of settling disputes in many new laws, such as:

- the Law of Transportation of Merchandise on Roads, No. 21 of 2006;\textsuperscript{70}
- the Law of Industry Chambers, No. 10 of 2005;\textsuperscript{71}
- the Temporary Law of Trade Chambers, No. 70 of 2003;\textsuperscript{72}
- the Temporary General Law on Electricity and its amendments, No. 64 of 2002;\textsuperscript{73}
- the Insurance Law and its amendments, No. 33 of 1999;\textsuperscript{74} and
- the Law of the Water Authority, No. 18 of 1988.\textsuperscript{75}

But the need remains to draw more attention to arbitration and ADR methods in general, through teaching this subject at all law faculties in the Jordanian universities as a separate subject, and, perhaps, as a new study specialization in higher education. The Investment Board, the Bar Association, and the judicial system in general should also contribute to this effort by encouraging resort to ADR methods rather than the protracted and exhausting court-annexed solutions.

4. Mediation

Mediation may range from minimal intervention – merely facilitating information flow between the parties – to an extensive role in feeding advice and information from the outside, evaluating options, proposing solutions, and pressing towards favored outcomes.

4.1 General Insight: Formal Mediation

In Jordan, the first formal use of mediation on a relatively large scale resulted from the mediation procedures established by the Law of Mediation for the

\textsuperscript{70} Official Gazette No. 4751 (March 16, 2006), p. 771.
\textsuperscript{71} Official Gazette No. 4702 (March 31, 2005), p. 1111.
\textsuperscript{72} Official Gazette No. 4606 (June 16, 2003), p. 3255.
\textsuperscript{73} Official Gazette No. 4568 (October 16, 2002), p. 4930.
\textsuperscript{74} Official Gazette No. 4389 (November 1, 1999), p. 4271.
\textsuperscript{75} Official Gazette No. 3540 (March 17, 1988), p. 539.

83
Settlement of Civil Disputes of 2003 (recently replaced by the Law of 2006). The Mediation Law enjoyed a soft landing in a country like Jordan, where mediation is traditionally known, customarily accepted, and followed in many aspects of life. Resorting to well-known, respected, and elderly individuals for informal mediation has always been a customary approach to solving various kinds of disputes arising between individuals. The famous *atwa*, *jahat*, *sulh*, and other customary ADR mechanisms are still used in family disputes, car accidents, accidental killings, and other such disputes.

According to the Mediation Law of 2006, mediation in the court system is administered by a number of magistrate court and first instance court judges who are nominated by the Chairman of the First Instance Court. In addition to these mediation judges, the Head of the Judicial Council may nominate private mediators consisting of retired judges, lawyers, and professionals of long experience who are known for their impartiality and integrity. However, the law does not mention training in mediation as a prerequisite for judges, lawyers, or professionals to serve as mediators.

The following are the fees applicable to cases referred to mediation by the case management judge:

---


77 The *atwa* is a temporary truce for a limited period of time, sought in criminal wrongs such as killings and honor crimes but not in civil wrongs generally. *Atwa* is sought at an early stage in a dispute to prevent the victim or his clan from taking revenge by assaulting the aggressor or his clan or taking their money.

78 *Jahat* is a number of prominent and very much respected members of the community who approach the victim’s family or clan upon the aggressor’s request, in order to seek a truce (*atwa*), a reconciliation, or a pardon from the victim or his clan.

79 The *sulh* concept is a process of reconciliation.

80 The duties and powers of the Judicial Council as described in the Law of the Independence of the Judiciary No. 15 for the year 2001 include: appointing judges, promoting judges, increasing the salaries of judges and transferring the judges from their courts to other courts. Moreover, the Judicial Council as described in the same law consists of the following members: the president of the Court of Cassation (who is also the president of the Judicial Council), two members of the Court of Cassation, the Chief Public Prosecutor, the presidents of the Appeals Courts, the president of the High Court of Justice, the most senior Inspector of the regular courts, the Secretary General of the Ministry of Justice, and the president of the Amman First Instance Court.

81 Article 2 of the Mediation Law of 2006.

82 For more information, see Article 9 of the Mediation Law of 2006.
i. If the dispute is settled through judicial mediation, the plaintiff should be reimbursed half of the judicial fees which have already been paid.

ii. If the dispute is settled through a private mediator, the plaintiff should be reimbursed half of the judicial fees. However, the other half of the judicial fees should be paid to the private mediator, whose fees shall not be less than JOD 300. Further, if half of the judicial fees amount to less than JOD 300, the parties to the dispute should equally pay to the private mediator the rest of the amount needed to reach to JOD 300.

iii. If the private mediator could not settle the dispute between the parties, the case management judge should determine the private mediator’s fees, which should not exceed JOD 200. These fees shall be paid by the plaintiff and shall be considered part of the judicial fees.

The legislative framework in Jordan encourages disputants to resort to mediation as an alternative dispute resolution method, as demonstrated by the following provisions of the Law of Mediation:

i. The case management judge, after meeting with the parties or their lawyers, has the authority to pass along any filed case to the mediation judge or to a private mediator upon the request of the disputants or their approval. In all circumstances, the judge shall consider the agreement of both parties on the nomination of the mediator as much as possible.

ii. The parties to a dispute, pursuant to the approval of the case management judge or the magistrate judge, have the right to resolve their dispute through mediation by referring their dispute to any person they deem appropriate. In this case, the mediator shall determine his fees in coordination with the disputants. In case the dispute is settled amicably, the plaintiff shall reclaim the previously paid court costs.

If the mediator is successful in reaching a complete or a partial settlement, the mediator should present a report to the case management judge or the magistrate.

83 The duties of the case management judge include supervising the filing of the lawsuit when receiving it from the first instance court, following the requested procedures to notify the parties of the lawsuit, meeting with the parties to the lawsuit or their attorneys in the first session to negotiate with them the subject matter of the dispute and check that all the needed evidence and documents exist and request any documents from third parties, trying to settle the dispute amicably between the two parties by encouraging them to settle the dispute through determining the agreed matters and the disputed matters, and the authenticating of the settlement between the parties if the parties reach one. Article 59 of the Civil Procedures Law.

84 Article 3 of the Mediation Law of 2006.
Arbitration and Mediation in the Southern Mediterranean Countries

judge enclosing the settlement signed by the disputants. The judge must then endorse the settlement for it to be considered a final judgment. At the end of the mediation process, whether the mediation resulted in resolving the dispute or not, the mediator shall return to each party any documents received from that party. No photocopies shall be taken or kept by the mediator or such mediator shall bear legal responsibility for the action. Furthermore, the proceedings of the mediation are deemed confidential. Any information used in the course of mediation may not be used by the disputants before any court or before any other authority.

4.2 Mediation in Specific Instances

In family matters, the Law of Personal Status explicitly stipulates that if a dispute between a husband and wife arises and one of them requests separation by divorce, the judge should first try to conciliate between them. Should conciliation efforts fail, the judge should then postpone the case for one month so that both parties can try to reconcile. If their efforts fail, the judge should then designate two arbitrators/mediators, one from the husband’s family and the other from the wife’s family. If the two arbitrators fail to have a unanimous decision, the judge will designate an impartial third party, and the arbitrators’ decision is then taken to the judge, who will render judgment accordingly.

As to labor conflicts, and according to the Jordanian Labor Law, the Minister of Labor may appoint one or more Ministry officials to serve as conciliation officers and to carry out mediation for the settlement of collective labor disputes for the sector that the Minister specifies and for the duration that the Minister deems appropriate.

If, for any reason, the conciliation officer, and later on, the Minister, are not able to achieve a settlement between the parties, the Minister shall set up and refer the dispute to a Conciliation Board. The Board will consist of a chairman, appointed by the Minister, who shall have no connection with the dispute or with trade unions or employers’ associations, and two or more members

85 Article 7/B of the Mediation Law of 2006.
87 Article 8 of the Mediation Law of 2006.
89 The impartial party should be neither from the husband’s side nor from the wife’s side, and should be equally close to or distant from both the husband and wife. Article 132 of the Law of Personal Status.
90 Article 132 of the Law of Personal Status.
92 Article 120 of the Labor Law.
representing employers and workers in equal numbers, each party appointing its own representatives on the Board.\textsuperscript{93}

If the Conciliation Board fails to bring about a settlement of the dispute, the Minister shall request the Judicial Council to commission three judges to constitute a labor tribunal to address the dispute. This tribunal’s decisions are binding and final for the parties to the dispute and cannot be challenged before any judicial or administrative authority.\textsuperscript{94}

4.3 Conclusion

Despite the existence of a legislative framework for mediation in Jordan, the Law of Mediation falls far below expectations. Problems surrounding the institutionalization of mediation and its incorporation in the Jordanian judicial system arrangements underline the need for a well-defined regulatory framework. Such a framework must specify the nature and objectives of mediation, its relationship to other modes of intervention (notably the courts), the provenance and responsibilities of the mediator, and the conditions under which mediation should be undertaken.

In addition, the development of mediation so far raises many questions. Can mediation safely be utilized as a court-annexed mechanism, or should it develop exclusively as an independent professional intervention with its own regulatory framework? Is the role of the mediator, under Jordanian law, practiced in a very directive and almost umpire-like way? Is there a concern that mediation might cross the line into adjudication? These questions need to be addressed, and might have answers when the practice of mediation is more established in and outside courts.

5. Other ADR Mechanisms

Aside from the settlement of collective labor disputes specified in Jordanian law and family disputes, there is minimal awareness of other ADR mechanisms. A number of Jordanian business people remain unaware of mediation as an ADR method, let alone other mechanisms.

A new bill is expected to reach the legislature soon, which is the Law of Deewan al-Mathalem, a notion very similar to the ombudsperson concept. This law is expected to entitle an independent and non-partisan official appointed by the government to receive and examine complaints made by citizens against the administration. The official’s work is expected to address concerns about standards of government, and may involve extensive use of negotiation with the

\textsuperscript{93} Article 122 of the Labor Law.
\textsuperscript{94} Article 124 of the Labor Law.
parties in dispute, conciliation, and mediation, as well as dealing with maladministration, fact-finding, and umpiring in general.

As with mediation, the overall development of alternatives to litigation raises many questions. How far are we seeing a shift of attention today towards dispute resolution processes that were always there? Do alternatives to court processes present a challenge to the lawyer’s monopoly? What will be the relationship of the new ADR professionals with the formal justice system in the future? Will the new mechanisms of dispute resolution be suitable for the emergent regulatory frameworks: the larger political groupings or the activities of multi-national corporations?

One may have many other questions in mind about ADR mechanisms. But what is most likely to happen in the future is that adjudication as a means of settling disputes will remain a part of dispute resolution systems, with the alternatives to court mechanisms continually transforming, perhaps becoming more formal.
Chapter 5
Lebanon

Fatima Abdallah
Alexandra Absi
Chadia El Meouchi
Ramy Torbey

1. INTRODUCTION

Lebanon is a Middle Eastern country of 10,400 square kilometers bordered by the Mediterranean Sea to the west, by Syria to the east and north, and by Israel to the south. The number of citizens inhabiting Lebanon is estimated at 3,925,502 in July 2007. According to current estimates, about 40 percent are Christians (mostly Maronites, Greek Orthodox, Armenian Apostolic, Melkite Greek Catholics and Chaldean Catholic), 35 percent are Shi’a Muslims, 21 percent are Sunni Muslims and 5 percent are Druze.

Tourism and banking activities (enhanced by the banking secrecy in Lebanon) have naturally made the service sector the most important pillar of the Lebanese economy. Lebanon is highly renowned for its service sector and the high quality skills of its workers, who speak, in general, a minimum of three languages: Arabic, English, and French.

Lebanon is a parliamentary, democratic republic with a President, Prime Minister, a Cabinet, and a 128-seat Parliament. Under a system called confessionalisme, the different sectors of the government must reflect the religious demographics of the country: the Parliament is half Muslim and half Christian, and certain members of the government must be members of designated major religious sects within the country.

The civil court system has three levels: courts of first instance, courts of appeal, and the Court of Cassation (Supreme Court).1

---

1 The information in this introduction is culled from a variety of sources that provide basic information about countries around the world, including: The Middle East Information Network, Inc. at <www.mideastinfo.com>; The World Factbook at <www.cia.gov>; and <www.wikipedia.org>, all last visited on June 4, 2007.


2. COMMERCIAL DISPUTES

2.1 Introduction

As noted above, Lebanon’s economic infrastructure is marked by its dependence on the service sector. In addition, trade and manufacturing are leading sectors. A study handled by the Department of Central Statistics revealed that the volume of domestic trade for the year 2004 was up to six billion Lebanese Pounds (LBP). Furthermore, a statistical study issued by Lebanese Customs showed that total Lebanese imports for the same year were up to USD 9,396,953. Those statistics give an idea of the high number of international trade contracts involved in the Lebanese economy, which consists mainly of small- and medium-sized enterprises (‘SMEs’).

The Lebanese government has sought to enhance the growth within the service sector using two main strategies:

- the adoption of economic incentives and the protection of investments, and
- the adoption of a legal framework adapted to international trade and to the conflicts related to both domestic and international trade, namely ADR mechanisms.

This chapter aims to highlight the situation of both arbitration and ADR mechanisms in Lebanon and give a general idea of the existing legal framework governing these matters.

2.2 Commercial Disputes

2.2.1 Overview

Conveniently located at the crossroads of Asia, Africa, and Europe, Lebanon has long been the center of trade routes and the convergence point of civilizations and cultures. Lebanon’s first inhabitants, the Phoenicians, were well known merchants, sea traders, and colonizers as of 3000 B.C.

Because of its lack of natural resources, commerce has remained of major importance to the Lebanese economy throughout history. During the last two centuries, the activity at the Beirut port has flourished and the country has become a regional and international hub for trade and business.

Today, Lebanon offers one of the most liberal investment climates in the Middle East and capitalizes on a wide array of business advantages for the development of its trade and service sector: a free economy, a liberal financial environment, qualified human capital, unparalleled banking secrecy, moderate tax rates, expanding infrastructures, and multicultural lifestyles.

90
Due to the importance of the services and trade sector in Lebanon, as well as the relatively small size of the market, SMEs represent approximately 99 percent of the number of businesses in Lebanon. In fact, the definition of SMEs by Lebanese standards encompasses businesses with up to forty employees, although such a definition would refer to micro enterprises under international standards.

The SMEs in Lebanon produce approximately 62 percent of the total annual business turnover, which means that at least 74 percent of all commercial disputes in Lebanon involve SMEs.

2.2.2 Commercial Disputes

2.2.2.1 Definition of Commercial Disputes

The Lebanese Code of Commerce defines as commercial

all acts performed by a merchant for the requirements of his trade. Barring proof to the contrary, a merchant’s acts are presumed, in the event of doubt, to be so designed.

Merchants are any individuals performing commercial acts as their usual profession, as well as all companies whose object is of commercial nature, and any joint stock companies, regardless of their object. Commercial acts are those comprehensively listed in Article 6 of the Lebanese Code of Commerce and any act of identical nature thereto:

i. purchase of goods or other movables, tangible and intangible, with a view to resale at a profit, either in a state of nature or after they have been fashioned or transformed;
ii. purchase of the same movable objects for letting or renting for subletting;
iii. resale, letting or subletting of the objects thus purchased or rented;

Source: Ministry of Economy and Trade.
Definition of SMEs by Kafalat, a Lebanese financial company with a public concern that helps SMEs access commercial bank funding.
Source: Ministry of Economy and Trade.
Because there are no official or unofficial statistics and studies published with respect to the number of commercial disputes in Lebanon and those disputes involving SMEs, these statistics may not reflect the exact situation in Lebanon and should be considered only as a realistic probability. This calculation is based on the number of SMEs, their turnover, and the probability of local disputes between SMEs and other businesses.

Article 8 of the Lebanese Code of Commerce.
Article 9 of the Lebanese Code of Commerce.
Arbitration and Mediation in the Southern Mediterranean Countries

iv. exchange or bank operations;
v. supplying material;
vi. manufacturing, even if this is ancillary to an agricultural exploitation, but excluding the case when transformation is achieved through simple manual work;
vii. land, water or air transport;
viii. commission and brokerage;
ix. fixed premiums insurance;
x. public entertainments;
xi. printing;
xii. general warehousing;
xiii. mining or petroleum enterprises;
xiv. real estate enterprises;
sv. buying buildings for resale at a profit;
xvi. business agencies.

They also include those acts of maritime trade listed in the Code of Commerce:8

i. any construction enterprise, all purchases of vessels for internal or external navigation in order to exploit them commercially or for resale, and all sales of vessels thus acquired;
ii. all maritime expeditions and all operations related thereto, as well as the purchase or sale of gear, tackle and supplies;
iii. freighting or chartering of vessels, bulk borrowing or lending;
iv. all other contracts concerning sea trade, such as agreements and contracting works concerning seamen wages and payments in consideration of their services and their hiring to work on board trade vessels.

Commercial disputes thus comprehend all disputes arising out of any commercial act as defined above. Insolvency and bankruptcy are regulated by the Lebanese Code of Commerce and can only be attributed to merchants; therefore they are of a commercial nature. However, bankruptcy resulting from the neglect or fraud of the merchant is subject to criminal proceedings and is not considered to be a commercial dispute.

2.2.2.2 Commercial Dispute Resolution Overview

With very few exceptions, and subject to the next section, there is no difference in the legal treatment of commercial disputes based on whether they involve national or foreign investments. Every year, between 1,300 and 2,000 new

8 Article 7 of the Lebanese Code of Commerce.
commercial disputes are introduced before the commercial courts in the five Lebanese districts. Depending on the subject and disputed amount, each case is filed before a unique first instance judge acting as a commercial judge (although often ruling on other areas as well), or before a commercial court of first instance composed of a panel of three judges ruling exclusively on commercial disputes.

In addition, parties have recourse to arbitration and mediation for commercial disputes. One main active arbitration center regularly administers arbitrations in Lebanon: the Chamber of Commerce, Industry and Agriculture of Beirut (hereinafter the ‘CCIAB’). The CCIAB has established rules for:

i. the amicable conflict resolution or mediation by virtue of a mediator appointed by the CCIAB for parties wishing to have recourse to mediation, and

ii. arbitration to be conducted by a specially established arbitration tribunal in accordance with the rules set by the CCIAB.

Each year, between sixty and eighty domestic and international arbitration awards are filed with the Beirut courts for *exequatur* or other recourse, but this number does not include all arbitrations conducted at both international and domestic levels due to the confidentiality of certain proceedings and the possibility of parties executing awards voluntarily.

Overall, however, it is highly unlikely that the actual number of commercial disputes is limited to the number of lawsuits and arbitration cases specified here. The local business community is wary of arbitration despite the existence of a substantial legal framework for it. Further, the community also is disinclined to bring commercial conflicts before the courts due to proceedings that usually last two years at a minimum, the judiciary’s limited skills in resolving such disputes, and the disadvantages of traditional court processes. Therefore, the parties tend to attempt amicable settlements outside the courts through negotiation, with or without their lawyers, without use of a specific or formal alternative mechanism.

---

9 In the absence of any statistics whatsoever pertaining to the number of commercial disputes or relevant data with respect thereto, these numbers are estimates by the authors based on research performed at the Lebanese commercial courts.

10 More recently, the Chamber of Commerce, Industry and Agriculture of Tripoli and Northern Lebanon (hereinafter the ‘CCIAT’) established an arbitration center in 2002 which set rules for mediation and arbitration that refer to the mandatory provisions of the Lebanese Code of Civil Procedure. To date, no arbitration requests have been made to the CCIAT.

11 For statistics on cases referred to the CCIAB, refer to the last paragraph of Part 3: Arbitration.

12 Refer to the last paragraph of Part 3: Arbitration.
2.2.2.3 Legal Limitations on Arbitration: Commercial Representation Agreements

Recourse to arbitration for the settlement of commercial disputes is also limited considerably by the Law-Decree No. 34/67 pertaining to exclusive agencies and commercial representation in Lebanon. Article 5 stipulates that

‘Notwithstanding any agreement to the contrary, the Courts of the place where the commercial representative carries out his activity shall have exclusive jurisdiction to settle the conflicts arising from the contract of commercial representation.’

Legal writings and case law have both confirmed that, in the majority of cases, exclusive agents, commercial representation, and distributorship agreements are all subject to the exclusive jurisdiction of the Lebanese courts. Such protection of Lebanese distributors and agents has led in most cases to amicable settlement of disputes between foreign companies and their Lebanese representatives. More recently, this exclusive jurisdiction has been restraining such companies from officially appointing any Lebanese exclusive representative for the distribution of their products in Lebanon.

Given the importance of commercial representation activity to SMEs and the Lebanese economy, a revision of the Law-Decree No. 34/67 expressly authorizing recourse to arbitration in commercial representation agreements is waiting to be submitted to the Lebanese Parliament for approval. It is expected that such an amendment will considerably boost recourse to arbitration for the settlement of commercial representation disputes.

---

13 However, in 1988 and 1993, one of the chambers of the Beirut Court of Cassation validated arbitral awards with respect to commercial representation agreements, stating that Law-Decree No. 34/67 refers only to jurisdictional courts and not arbitration, and that arbitration is a purely voluntary act not included in the restriction set in Article 5. The argument supporting such a theory comes out of the absence of any text in the Decree Law expressly prohibiting recourse to arbitration; therefore, if the legislature had agreed on this prohibition, it would have inserted explicit provisions in the law.

14 The proposed revision of Article 5 of Law-Decree No. 34/67 reads as follows: ‘Despite any agreement to the contrary, the courts of the place in which the commercial representative carries out his activity shall have exclusive jurisdiction to settle the conflicts arising from the commercial representation. However, the parties might submit their litigations to arbitration in accordance with the provisions of the present law.’
2.3 Dispute Resolution Techniques

While Lebanese legislation refers expressly to arbitration, it does not mention specifically any other ADR mechanism (such as mediation); nevertheless, it is worth noting that the Lebanese Code of Civil Procedure (LCCP) refers in Articles 375, 456 and 460 to conciliation as one of the judge’s missions, and that labor and consumer protection laws specify mandatory mediation and arbitration procedures.

2.3.1 Mediation and Arbitration in Labor Laws

In accordance with the above definition of commercial acts, labor disputes are not considered to be of a commercial nature. They are therefore filed before special tribunals established in each district called ‘Arbitral Labor Councils’ in reference to a special arbitration court regulated by the Lebanese Labor Law.\(^{15}\)

The Arbitral Labor Council is composed of:\(^{16}\)

- a president (judge) appointed by decree on the proposal of the Minister of Justice and the approval of the Superior Judicial Council;
- two members appointed by the Minister of Labor, one representing the employers and another representing the employees;
- two acting members representing the employers and the employees in order to substitute for the incumbent representative in case of absence or excuse, by decree on the proposal of the Minister of Labor; and
- a government commissioner appointed by decree on the proposal of the Minister of Labor.

All labor disputes should be filed before the Arbitral Labor Council, which shall have jurisdiction over:\(^{17}\)

- disputes concerning the fixation of the minimum wage rate;
- disputes emerging from labor incidents; and
- disputes emerging from dismissal, resignation, fines, and in general, all disputes between employers and employees resulting from the enforcement of the provisions of the Labor Law.

Furthermore, whenever a collective labor agreement is entered into between an employer and syndicates,\(^{18}\) a legal mediation procedure in accordance with the

---

\(^{15}\) Labor Law of September 23, 1946.

\(^{16}\) Article 77 of the Lebanese Labor Law.

\(^{17}\) Article 79 of the Lebanese Labor Law.
Arbitration and Mediation in the Southern Mediterranean Countries

Collective Labor Agreement Law becomes mandatory for all disputes arising out of any such collective labor agreement. In that case, the Head of the Labor and Trade Relations Department at the Ministry of Labor or his delegate acts as a mediator, or, in case of his absence, his representative, as designated in accordance with the regulations in force or delegated by the Director General of the Ministry of Labor.

In the event of failure of the mediation procedure, in whole or in part, an Arbitral Committee constituted and regulated by the law on collective labor agreements shall have jurisdiction to settle the collective dispute in accordance with the provisions of said law. However, the collective labor agreement law also provides, for disputes not involving the state or a public service, that the dispute may be settled by any other arbitrator or arbitral board whenever there is an express stipulation of the parties thereto in the collective or individual agreements.

2.3.2 Mediation and Arbitration in Consumer Protection Law

The Consumer Protection Law, which has been recently promulgated, also provides for specific mediation and arbitration mechanisms in all disputes arising out of the relationship between the consumer and the supplier or manufacturer.

The law imposes mandatory mediation for disputes pertaining to amounts of not more than LBP 3 million that arise between a consumer and a supplier or manufacturer. Mediators are appointed by the Minister of Economy and Trade, upon the suggestion of the Director General of Economy and Trade, provided the proposed mediators are not concerned in the mediated dispute.

Should the dispute between a supplier and a consumer or a manufacturer exceed LBP 3 million in value, or the mediation not reach a partial or a complete agreement between the parties even where the value of the dispute

18 The Collective Labor Agreement Law referred to Parliament by Decree No. 15352 of February 5, 1964 defines the collective labor agreement as ‘an agreement in which conditions of work shall be regulated and organized between a party, representing either one or several syndicates, or one or several confederations of workers Trade Unions, and another party who is a single employer or several employers, or a representative of one or several professional organizations, or one or several employers or professional confederations.’
19 Article 30 of the Collective Labor Agreement Law.
20 Article 32 of the Collective Labor Agreement Law.
21 Article 47 of the Collective Labor Agreement Law.
22 Article 47, paragraph 2 of the Collective Labor Agreement Law.
24 Article 82 of the Consumer Protection Law.
25 Article 83 of the Consumer Protection Law.
Lebanon

falls short of that amount, the dispute shall fall exclusively within the jurisdiction of the Dispute Settlement Committee. Penal pursuits, however, shall remain under the jurisdiction of the competent Penal Courts.

The Dispute Settlement Committee is composed of an honorary judge or a judge acting as president; a representative of the Chambers of Commerce, Industry and Agriculture; and a representative of the Consumer Protection Association.

3. Arbitration

3.1 Regulations Governing Arbitration in Lebanon – The Lebanese Code of Civil Procedure

The new Lebanese Code of Civil Procedure (‘LCCP’) was adopted in 1983 and was largely inspired, particularly regarding arbitration, by French legislation. Its provisions covered both local arbitration, defined as arbitration relating to local commercial or civil contracts, and international arbitration, defined as arbitration relating to international commerce. Since 1983, and pursuant to Article 809 of the LCCP, the Republic of Lebanon and its Public Administrations (administrative agencies) have had recourse to international arbitration.

Regarding several important aspects of local arbitration, however, the LCCP was either unclear or silent. Lack of clarity about whether the state and other public entities could have recourse to local arbitration led to two judgments by the Conseil d’Etat (i.e., the Supreme Court exercising its jurisdiction over administrative matters) which nullified the arbitration clauses in contracts between the Lebanese government and local companies. Further, Article 762 indirectly excluded from arbitration all matters related to the validity of the arbitration agreement itself; Article 770 was silent on whether an arbitration tribunal decision about a request for revocation of an arbitrator (i.e., a declaration of incompetence of the arbitrator) could be subject to recourse, resulting in contradictory judgments and doctrinal debates; and no article addressed whether an arbitrator could rule on temporary measures.

3.1.1 The Rules in the LCCP Governing Local Arbitration

On July 29, 2002, the Lebanese Parliament approved Law 440, which introduced numerous needed changes and clarifications to the LCCP regarding local arbitration, codified in sections 762-808 of the LCCP. It established that

---

26 Article 82 of the Consumer Protection Law.
27 Article 97 of the Consumer Protection Law.
28 Article 97 of the Consumer Protection Law.
the state and its entities could have recourse to local arbitration, that an arbitrator
may rule on temporary measures, and that a revocation ruling is subject to
recourse, and added a provision that the parties could authorize the arbitrator in
their arbitration clause to address the validity of the arbitration agreement itself.

3.1.1.1  The Definition of Local Arbitration

Parties to a civil or commercial contract may include in their agreement a clause
stating that all disputes relating to the legality, interpretation, or enforcement of
an agreement may be resolved by way of arbitration.\(^{29}\) Furthermore, as noted
above, the state of Lebanon and its public administrations may resort to
arbitration. However, no arbitration agreement shall be valid in administrative
agreements unless the prior approval of the Council of Ministers is obtained by
way of a decree.\(^{30}\)

3.1.1.2  The Arbitration Clause

In order to have recourse to arbitration, the parties must agree to arbitration in
writing, either within a clause in the main agreement or within an arbitration
agreement or source to which the clause in the main agreement refers. Under
penalty of annulment, the arbitration clause must contain, directly or by
reference, the nomination of one or more arbitrators in their person or quality or
the mechanism for their nomination.\(^{31}\) The Beirut Chamber of Commerce and
Industry recommends a specific arbitration clause, which is the following:

‘All disputes arising in connection with the present contract shall be finally
settled under the Rules of Conciliation and Arbitration at the Beirut Chamber of
Commerce and Industry by one or more Arbitrators appointed in accordance
with the said Rules. The contracting parties declare accepting the provisions of
the said Rules and undertake to abide by them.’

\(^{29}\) Article 82 of Consumer Protection Law 659/2005 provides that any dispute arising
between a consumer and a professional (as defined in Article 2 of the law) and
resulting from the enforcement or the interpretation of the articles of the law, should,
if its amount does not exceed USD 2000, be subject to mediation in an attempt to
reconcile the parties. Furthermore, the dispute is to be settled by a dispute resolution
committee (described in Article 97 of the law) if its amount exceeds USD 2,000 or
in the event that the process of mediation (as described in the paragraph above) has
failed to reach a partial or complete solution to a dispute amounting to less than
USD 2,000.

\(^{30}\) Article 762 LCCP.

\(^{31}\) Article 763 LCCP.
3.1.1.3 The Arbitration Agreement

Should the signatory parties choose not to detail their agreement to arbitrate in a clause in their main agreement, they may choose to reference a separate arbitration agreement in which they agree to resolve their dispute through arbitration by one or more persons. The arbitration agreement must be in writing and must contain, under penalty of annulment, the object of the dispute and the nomination of the arbitrator(s) in their person or quality or the mechanism by which they are to be appointed. The arbitration agreement shall be void if the arbitrator rejects the mission granted. It is also possible for the parties in litigation to have recourse to arbitration even if the subject matter constitutes an ongoing court case. In addition, the parties may elect to have the arbitration resolved pursuant to the provisions of a foreign law or foreign custom.

3.1.1.4 The Nature of the Arbitration

The parties may agree in the arbitration agreement or clause, or in a separate agreement, that the arbitration be ordinary or under equity and that the arbitrator(s) be mandated as mediator(s) between the parties. In an ordinary arbitration, the arbitrators must apply the ordinary laws and procedural regulations with the exception of those that contravene the arbitration procedures, notably the rules in the LCCP concerning arbitration. Further, in the arbitration agreement or in a separate agreement, the parties may release the

32 Article 765 LCCP.
33 Article 766 LCCP. Arbitrators conduct the inquiry together, unless the arbitration agreement specifies that one of them is responsible for conducting it. The arbitrators may also listen to the testimony of third parties without swearing them in.
Furthermore, if one of the parties is in possession of elements of proof, the arbitrator(s) may order it to provide the elements. If one of the parties contests the principle or the length of the arbitrator’s mission, the arbitrator is competent to resolve this issue. The arbitrators decide on the date when they shall convene to render the award. From that date on, no claim, motive, or document may be presented unless the arbitrators request otherwise. In the event that there are several arbitrators, they convene secretly and the award rendered is approved by the majority of arbitrators or by all of them. The arbitrator(s) should also, during the process of arbitration, take all the provisional and conservatory measures that the nature of the conflict necessitates and do so in light of Article 589 of the LCCP. The arbitrator(s) may also render provisional decisions and rule on part of the claims before rendering the final award. Articles 779, 780, 785, 787, 788 and 789 LCCP.
34 Article 767 LCCP.
35 In the event of doubt as to the nature of the arbitration, it shall be deemed an ordinary arbitration. Article 776 LCCP.
36 Article 775 LCCP.
Arbitration and Mediation in the Southern Mediterranean Countries

arbitrators, in writing, from applying part or all of the ordinary procedural rules, with the exception of such rules which concern public policy, provided that the arbitrators remain in compliance with the arbitration procedures. In an arbitration under equity, the arbitrators may be exempt from applying the ordinary laws and procedural regulations, and they rule under equity. Exceptions from such exemptions are made for the laws related to public policy and the fundamental principles of procedural regulations, including those related to the rights of defense, the motivation of the award, and the specific rules for the organization of the arbitration.

3.1.1.5 The Rules for the Nomination of Arbitrators

The LCCP does not provide that arbitrators must have specific qualifications or diplomas. Each arbitrator should, however, be an actual person. If a legal entity is selected, its role shall be confined to the organization of the arbitration. The number of arbitrators should, at all times, be odd, under penalty of annulment of the arbitration. Furthermore, in the event that an individual person or a legal entity is chosen to organize the arbitration, the organizer will be in charge of appointing arbitrator(s) acceptable to the parties. If the appointed arbitrators are not acceptable, the organizer shall ask each party to nominate one arbitrator and shall appoint the third arbitrator. If a party fails to appoint its arbitrator, then the

37 The exemptions may not cover any provisions of the LCCP concerning Articles 365 to 368 LCCP (i.e., the subject of the conflict, the judge’s obligation not to rule ultra or infra petita, the parties’ obligation to submit the facts that support their claims, the judge’s obligation to rule according to the facts submitted during trial only and not to facts that are outside the trial) and Articles 371 to 374 LCCP (i.e., the judge’s obligation to ask the parties for information on the facts submitted by them, each party’s right to defend itself, the parties’ right to confrontation, a party’s right of recourse against a decision taken without its knowledge). Article 776 LCCP.
38 The arbitrator may not be: a minor, an incapacitated person, a person deprived of civic rights, or a bankrupt person that has not been rehabilitated. Article 768 LCCP.
39 The arbitrator’s acceptance of the mission is necessary and should be in writing. An arbitrator aware of a reason that renders the arbitrator incompetent should inform the parties of it and should not accept the mission unless authorized by the parties to do so. An arbitrator who has accepted the mission may not resign without a valid reason under pain of being forced to compensate the damages caused by the unjustified withdrawal. Article 769 LCCP.
40 In the event that the parties appoint two arbitrators or an even number of arbitrators, an additional arbitrator should be appointed, either according to the agreement of the parties or by the appointed arbitrators. Should the parties or the arbitrators fail to appoint the required arbitrator, the President of the First Instance Tribunal shall make the appointment. Article 771 LCCP.
Lebanon

The appointment of an arbitrator may not be revoked unless the parties agree and an arbitrator may not be declared incompetent to conduct the arbitration except for reasons that are discovered or take place after the designation. The appointment of the arbitrator(s), the president of the first instance tribunal may be asked to appoint the arbitrator(s). Furthermore, should the parties or the organizing arbitrator fail to appoint the additional arbitrator needed to make up an odd number, the president of the First Instance Tribunal shall make the appointment. The first instance tribunal is also competent to declare an arbitrator or arbitration panel incompetent. With regard to the conduct of the arbitration process, the president of the first instance tribunal has the authority to grant an extension of time for the conduct of the arbitration and the rendering of the award. In the situations involving the appointment and number of arbitrators or the extension of time, the president of the first instance tribunal may render a decision promptly upon request of one of the parties or the arbitral tribunal. The decision in this regard may not be appealed.

42 Article 772 LCCP.
43 The declaration of the incompetence of an arbitrator may be requested for the same reasons as those for requesting the declaration of the incompetence of a judge (which are strictly enumerated in Articles 120 to 130 LCCP). The request of incompetence of an arbitrator should be directed to the first instance tribunal of the judiciary district in which the arbitration takes place, or otherwise, to the First Instance Tribunal of Beirut during the fifteen days following the knowledge, by the person requesting it, of the appointment of the arbitrator or following the appearance of the reason of revocation. The decision of the Tribunal in such a request may not be appealed. Article 770 LCCP.
44 In doing so, the president of the First Instance Tribunal shall review the arbitration clause and if it is found to be obviously void or incomplete and insufficient to appoint the arbitrator(s), then the president shall render a judgment nullifying it and declaring that there will be no appointment of arbitrator(s). A null arbitration clause shall be deemed as having not existed. Article 764 LCCP.
45 Article 771 LCCP.
46 Article 770 LCCP.
47 Article 773 LCCP.
48 The arbitrators may request from the judge: (a) the condemnation of the witnesses who are in default of testifying or those who refuse to testify, and (b) judicial orders to undertake specific activities. Article 779 LCCP. During the arbitration proceedings, in the event that a party alleges the forgery of one or more document(s), the arbitration proceedings shall be suspended for the period of time necessary for the competent court to see into the forgery matter. Once the court
3.1.1.7 The Suspension of the Arbitration

The suspension of an arbitration is governed by Articles 505 to 508 of the LCCP, which are the articles that govern the suspension of a trial. The suspension of an arbitration suspends all on-going time limits and annuls all procedures undertaken during the suspension (unless the party who invokes the reason of suspension declines, expressly or impliedly, to do so). The arbitration process is suspended in the following cases: (a) the death of one of the parties in legal actions transmissible to the heirs, (b) one party’s loss of capacity to enter into litigation, and (c) a proxy’s loss of qualification to represent a party during trial. The suspension takes effect once the opposing party is notified of the reason. The arbitration process is not suspended, however, if the attorney of one of the parties dies or if the attorney’s mandate ends or is ended. In such a case, the arbitral tribunal should grant a reasonable period of time in order for the party to find a new attorney.

In addition, if an incidental question outside the competence of the arbitrator(s) is raised during the arbitration or if criminal procedures have been initiated regarding the forgery of a document or a criminal incident related to the conflict of the parties, the arbitration is suspended, along with the time limit set renders its decision, it shall inform the arbitral tribunal and the arbitration procedure shall resume. Article 783 LCCP.

An exception is made for the president’s decision not to appoint an arbitrator for the reasons provided in paragraph 2 of Article 764 LCCP (i.e. if the president finds the arbitration clause to be obviously null or incomplete and insufficient to appoint the arbitrator(s)). Such a decision may be appealed before the Court of Appeal, which must decide promptly.

The arbitrators may request from the judge: (a) the condemnation of the witnesses who are in default of testifying or those who refuse to testify, and (b) judicial orders to undertake specific activities. Article 779 LCCP. During the arbitration proceedings, in the event that a party alleges the forgery of one or more document(s), the arbitration proceedings shall be suspended for the period of time necessary for the competent court to see into the forgery matter. Once the court renders its decision, it shall inform the arbitral tribunal and the arbitration procedure shall resume. Article 783 LCCP.

Article 782 LCCP.

Article 507 LCCP.

The suspended arbitration resumes when the person replacing the deceased party, the incapacitated party, or the proxy is notified, upon request of the opposing party, or when the opposing party is notified, upon request of the replacement. Furthermore, the arbitration resumes if the heir of the deceased party, the person taking the place of the party who lost its capacity, or the person replacing the proxy attends to the session scheduled to continue the arbitration. Article 508 LCCP.

Article 506 LCCP.
3.1.1.8 The End of the Arbitration

Unless a special agreement between the parties stipulates otherwise, the arbitration ends in the following situations: (a) the revocation, death, impeachment, or deprivation of the civic rights of the arbitrator; (b) the incompetence or abstention of the arbitrator; or (c) the failure to meet the prescribed time limit for the conduct of the arbitration process.

3.1.1.9 The Arbitration Award

The arbitration award should include the following information: (a) the name(s) of the arbitrator(s); (b) the place and date on which the award was rendered; (c) the names, titles, and qualities of the parties, and the names of their attorneys; (d) the facts claimed by the parties, their demands, and the evidence supporting their claims; and (e) the reasoning (motive) underlying the award. The arbitration award should be signed by the arbitrator(s) who rendered it. In the event that a minority of arbitrators refuse to sign the award, the rest of the arbitrators should mention such refusal and the award will have the same effect as an award signed by all the arbitrators.

The arbitration award results in the removal of the case from the hands of the arbitrator(s). Furthermore, the award has the power of res judicata with respect to the conflict resolved.

Once the arbitration award is rendered, one of the arbitrators or the parties should obtain exequatur from the appropriate court, which enables the award’s enforcement. Any court decision refusing to enforce the award should

---

55 Article 784 LCCP.
56 Article 781 LCCP.
57 Articles 790 and 791 LCCP. However, the arbitrator remains competent to interpret the award, to correct the errors and oversights, and to complete it in the event of failure to rule on a claim of a party. Articles 560 to 563 LCCP governing the correction and interpretation of judiciary sentences are therefore applicable. The interpretation, correction, or completion of the award by the arbitrator(s) is only possible during the time limit for the resolution of the conflict; once this time limit has expired, the court that would have been competent if the arbitration was not agreed upon by the parties is responsible for interpreting and correcting the award.
58 In order to obtain the exequatur of the arbitration award, the original award must be deposited by one of the arbitrators or one of the parties at the office of the first instance tribunal, along with a copy of the arbitration clause or agreement, which should be marked as being a true copy of the original by the arbitrators, a competent authority, or the head clerk of the tribunal after review of the original. Furthermore,
Arbitration and Mediation in the Southern Mediterranean Countries

include its reasoning and is valid only for the reasons of annulment provided in Article 800 LCCP, as discussed in section 3.1.1.11 below. If the conflict that is the subject of the arbitration concerns the competence of administrative tribunals, the president of the higher administrative court (Conseil d’Etat) determines its enforceability. Arbitration awards shall be subject to the provisions for prompt enforcement. In the event of an appeal or a request for an annulment of the award, the head of the competent court of appeal shall make the award enforceable if it is subject to prompt enforcement, which the court of appeal determines according to the specific conditions provided in Article 575 LCCP.

3.1.1.10 The Length of the Arbitration Procedure

If the arbitration agreement or the arbitration clause does not set a time limit for rendering the award, the arbitrators should complete their mission within six months from the last arbitrator’s acceptance of the mission.

3.1.1.11 The Recourse Against Local Arbitration Awards

Court decisions about enforceability of arbitration awards are subject to appeal before the appropriate court of appeal unless the parties have expressly waived their rights to appeal. However, arbitrations under equity may not be subject to

the award shall become enforceable once the president of the First Instance Tribunal issues a court order which, according to Article 796 LCCP, shall be affixed to the original of the arbitration award as well as to a true copy thereof. The original shall be returned to the party that has initiated the exequatur procedure. Articles 793 and 795 LCCP.

Article 796 LCCP.

Article 795 LCCP.

Article 797 LCCP.

Article 773 LCCP. An extension of the contractual or legal time limit set for the conduct of the arbitration and the rendering of the award may be granted either by agreement of the parties or by a decision of the president of the first instance tribunal upon request of one of the parties or the arbitral tribunal.

The requests for the appeal or the annulment of the award are presented to the court of appeal of the judiciary district in which the award was rendered. The appeal or annulment of the award is possible from the moment the award is rendered. However, the party wishing to appeal or annul the arbitration award should do so no later than 30 days following the notification of the court order according the exequatur. The rules applicable to the appeal or the annulment shall be the rules governing litigation in front of the court of appeal. The decision of the court of appeal may not be subject to recourse by way of opposition but may be subject to recourse in front of the Court of Cassation (the highest court) according to the rules of such recourse. Furthermore, the decision of the court of appeals in relation to
appeal unless the parties have expressly reserved this right in writing. In such a case, the competent court of appeal shall address the matter as an arbitrator under equity. 65

A court decision refusing to enforce the arbitration award is subject to appeal during the thirty days following the date of notification of the refusal. In such a case, the court of appeal is competent, upon request of the parties, to look into the reasoning that could have been invoked by them against the arbitration award by way of appeal or annulment (depending on the situation). 66 In contrast, a court order enforcing an arbitration award may not be subject to recourse. 67

Notwithstanding any provision to the contrary, the parties to the arbitration may request the annulment of the award at any time and regardless of their right to appeal. 68 Annulment is only possible in the following cases: 69

a. an award rendered without an arbitration agreement, based on a null arbitration agreement, or rendered outside the term of an agreement;
b. an award rendered by arbitrators not appointed according to the provisions of the law;
c. an award exceeding the scope of the mission entrusted to the arbitrators;
d. an award rendered without taking into account the rights of defense;
e. an award that does not contain all the mandatory provisions concerning the claims of the parties, the reasoning and defenses, the names of the arbitrators, the grounds of the award, the award’s content and date, or the signature(s) of the arbitrator(s); or
f. an award that has violated a rule of public policy.

Unless the parties have agreed otherwise, the court to which the annulment request is presented and which annuls the award becomes competent to look into the matter, within the limits of the scope of the arbitrator’s mission. 70

arbitrations in equity may not be subject to recourse at the Court of Cassation unless the court of appeal has annulled the award, in which case the Court of Cassation shall be competent to judge on the annulment motives. If the award is not promptly enforceable, the enforcement shall be suspended until expiration of the time limit set to file the appeal or the annulment; the enforcement shall also be suspended by a recourse filed in time. Articles 802 to 804.

65 Article 799 LCCP.
66 If the appeal is refused totally or partially, it results in the enforceability of all or part of the award. Articles 806 and 807 LCCP.
67 Article 805 LCCP.
68 Articles 802 to 804.
69 Article 800 LCCP.
70 If the annulment is refused totally or partially, it results in the enforceability of all or part of the award. Articles 801 and 807 LCCP.
An arbitration award may be subject to a request for reinitiating the proceedings for the same reasons and under the same conditions that govern the reinitiating of the proceedings of a trial.71

An arbitration award may not be subject to recourse by way of third-party opposition. However, the arbitration award can be subject to third-party opposition in front of the court that would have been competent to hear the dispute if the arbitration had not been agreed upon and with respect to the provisions of Article 681, paragraph 1 of the LCCP.72

3.1.2  The Rules in the LCCP Governing International Arbitration

3.1.2.1  The Definition of International Arbitration

An international arbitration is an arbitration related to the interests of international commerce.73 The government or other public entities may refer matters to international arbitration.74

3.1.2.2  The Rules Governing the Nomination of the Arbitrator(s)

The appointment of the arbitrators or the method of their designation is stipulated in the arbitration agreement, directly or by reference to arbitration rules.75 In the event that the arbitration takes place in Lebanon or the arbitration proceedings are governed by the provisions of the LCCP, and the parties encounter difficulties in the nomination of the arbitrator(s), the president of the first instance tribunal shall be competent to appoint the arbitrator(s), upon request of the most diligent party, provided that there is no clause to the contrary and according to the provisions of Article 774 of the LCCP. Whenever it is necessary for the application of international arbitration rules, the Court of Beirut becomes competent in lieu of the court of the judicial district of the place where the arbitration is held abroad.

71 The request for reinitiating the proceedings is presented to the court of appeal of the judicial district in which the award was rendered. The decision rendered by the competent court of appeal may be subject to recourse by way of third party opposition and cassation (the Lebanese equivalent of recourse in front of the Supreme Court). Article 808 LCCP.
72 Article 798 LCCP.
73 Pursuant to the provisions of Law Decree 34/67 aiming to regulate commercial representation, Lebanese tribunals are exclusively competent to hear all matters in relation to the termination or non-renewal of exclusive commercial representation agreements. Lebanese jurisprudence interprets this Decree in varying ways.
74 Article 809 LCCP.
75 Article 810 LCCP.
3.1.2.3 The Rules Governing the Arbitration Process

The arbitration agreement may designate, directly or by reference to arbitration rules, the procedural rules governing the arbitration process. Furthermore, it is possible to specify in the arbitration agreement that the arbitration proceedings are to be governed by the civil procedure law of a designated country. In the absence of such a stipulation, the arbitrator determines the rules that are fit to resolve the matter and does so directly or by referring to specific laws or arbitration rules.\(^{76}\) The arbitrator shall render the award pursuant to the resulting rules and laws and shall at all times comply with commercial practices and customs (the *lex mercatoria*).\(^{77}\) Furthermore, when the international arbitration is governed by Lebanese law, the provisions of Articles 762 to 792 of the LCCP, which concern local arbitration, shall not apply unless the specific agreement between the parties is silent; all of the above is in compliance with Articles 810 and 811 LCCP.\(^{78}\)

3.1.2.4 The Enforcement of Arbitral Awards Rendered Abroad or in International Arbitrations

Lebanese courts recognize arbitration awards and grant the *exequatur* if the party claiming the enforcement of the award proves the award’s existence\(^{79}\) and if the award is not obviously contrary to international public policy.\(^{80}\) The provisions of Articles 793 to 797 of the LCCP are applicable to the *exequatur*. These provisions have been discussed in section 3.1.1.9, above, in connection with obtaining *exequatur* for local awards.\(^{81}\)

The judicial cost for the *exequatur* amounts to approximately USD 145. These fees do not include the translation fees, the lawyers’ fees, or the legalization fees.

---

\(^{76}\) Article 811 LCCP.

\(^{77}\) Article 813 LCCP.

\(^{78}\) Article 812 LCCP.

\(^{79}\) The existence of an arbitration award is proved by the submission of the originals of the award and the arbitration agreement, or a true copy of the originals duly authenticated by the arbitrator(s) or any competent authority thereof. If the documents are not in Arabic, they should be translated to Arabic by a sworn translator.

\(^{80}\) Article 814 LCCP.

\(^{81}\) Article 815 LCCP. If the arbitration takes place abroad, it is possible to file a true copy of the arbitration award (instead of the original award) with the office of the first instance tribunal and to obtain the *exequatur*. 
3.1.2.5 The Recourse Against Arbitral Awards Rendered Abroad or in International Arbitrations

A Lebanese court’s refusal to recognize an arbitration award rendered abroad or in an international arbitration, or to grant it *exequatur*, may be subject to appeal.\(^82\) An appeal\(^83\) of a court order granting *exequatur* or recognizing an award is only possible in the following cases:\(^84\)

a. an award rendered without an arbitration agreement, based on a null arbitration agreement, or rendered outside the term of the agreement;
b. an award rendered by arbitrator(s) not appointed in accordance with the provisions of the law;
c. an award exceeding the scope of the mission entrusted to the arbitrator(s);
d. an award rendered without taking into account the right of defense; and
e. an award violating an international public policy provision.

An arbitration award in an international arbitration rendered in Lebanon may be subject to recourse by way of annulment for the reasons listed in Article 817 of the LCCP. A court order granting the *exequatur* of the award may not be subject to any recourse. The annulment request shall be submitted to the Court of Appeal of the judicial district where the award was rendered. The request may be submitted from the day the award was rendered. However, the statute of limitations shall be thirty days from the notification of the award.\(^85\)

If the award is not promptly enforceable, the enforcement shall be suspended until expiration of the time limit set to file the recourse; the enforcement shall also be suspended by a recourse filed in time.\(^86\)

It should be noted that Articles 804 and 805, paragraph 2, of the LCCP are the only articles concerning recourse in local arbitration that are applicable to the recourse against arbitration awards rendered abroad or in international arbitration.\(^87\)

---

82 Article 816 LCCP.
83 The appeal mentioned in Articles 816 and 817 LCCP should be filed within thirty days following the date of notification of the first instance decision.
84 Article 817 LCCP.
85 Article 819 LCCP.
86 Article 820 LCCP.
87 Article 821 LCCP.
3.2 The International Arbitration Conventions that Lebanon has Ratified and/or Adhered To

3.2.1 International Arbitration Conventions Ratified by Lebanon

Lebanon has ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the ‘New York Convention’) by virtue of Law Number 629, dated April 23, 1997, with no reservations.

3.2.2 Other International Instruments Designed to Promote Resolution of Disputes through Arbitration (Regional or Otherwise)

Lebanon has also ratified the Hague Conventions of 1899 and 1907 for the creation of the permanent arbitration tribunal by virtue of the law dated June 12, 1962.

3.2.3 Involvement in ICSID Arbitration


3.3 The Domestic Arbitration Centers

3.3.1 Arbitration before the Beirut and Tripoli Chambers of Commerce and Industry

3.3.1.1 The Rules

The Rules of Mediation and Arbitration (the ‘Rules’) of the Beirut Chamber of Commerce and Industry (the ‘BCCI’) regulate arbitration before the BCCI and the Tripoli Chamber of Commerce and Industry (the ‘TCCI’). The BCCI and the TCCI appoint members to a tribunal called the Arbitration Court (hereinafter the ‘Court’), which is responsible for resolving international or local conflicts through the arbitration process.88

3.3.1.2 The Recourse to the BCCI or the TCCI

Each party wishing to have recourse to the arbitration procedures of the BCCI or TCCI must file its request with the General Secretary of the Court. The date the

88 Article 1 para. 1 of the Rules.
General Secretary receives the request is the date of the introduction of the arbitration procedure. The defendant should, within 30 days of reception of the plaintiff’s request, respond to it in writing.

3.3.1.3 The Procedure for the Appointment of the Arbitrators

Article 2 of the Rules contains the provisions for the nomination of the arbitrator(s). The following paragraph includes highlights of these provisions. Provided that the parties have not stipulated otherwise, the Court appoints the arbitrators responsible for resolving the conflict in accordance with the Rules. In doing so, the Court should take into consideration the nationality of the parties and their sense of belonging, or their residence in relation to the countries of the parties or the arbitrators.

The conflict may be resolved by a single arbitrator or by three arbitrators. In the event that the parties have agreed to have one arbitrator, they may agree on the arbitrator’s identity and have it confirmed by the Court. If the parties do not agree during the 30-day period following notification of the request for arbitration, the Court shall appoint the arbitrator. In the event that three arbitrators are to be appointed, each party designates an independent arbitrator that should be confirmed by the Court; if a party refrains from choosing an arbitrator, the Court appoints the arbitrator. The third arbitrator, who presides over the arbitral tribunal, is appointed by the Court unless the parties have agreed that the arbitrators they have appointed should choose the third arbitrator within a set time limit. In the latter instance, the Court confirms the choice of the two arbitrators. In the event that the time limit agreed upon by the parties or set by the Court expires and the arbitrators appointed by the parties cannot agree, the third arbitrator is nominated by the Court.

3.3.1.4 The Incompetence and Replacement of the Arbitrator

Each arbitrator confirmed or appointed by the Court should be, and remain, independent of the parties to the conflict. Before nomination or confirmation by

89 The request should include, in particular, the first and last names of the parties; their professional positions and their addresses; the claims of the plaintiff; the agreements between the parties, notably the arbitration agreement and the documents and information that could help in clearly establishing the circumstances of the case; and any useful indication concerning the number of arbitrators and the method of selection of such arbitrators. Article 3 of the Rules.
90 Article 4 of the Rules.
91 Article 2 para. 1 of the Rules.
92 Article 2 para. 2 of the Rules.
93 Article 2 para. 3 of the Rules.
94 Article 2 para. 4 of the Rules.
the Court, the arbitrator should inform the General Secretary of the Court in writing of any facts and circumstances that could lead the parties to doubt the arbitrator’s independence. The General Secretary communicates this information, in writing, to the parties and sets a time limit for them to communicate their observations. The arbitrator should also inform the General Secretary and the parties, in writing, of any fact or circumstance that would arise between the nomination or confirmation and the final award notification and that could lead the parties to doubt the arbitrator’s independence.⁹⁵

Any request to declare the arbitrator incompetent should be filed by a party within 30 days following its notification of the arbitrator’s appointment or confirmation, or within 30 days following the date the requesting party learns of the facts and circumstances invoked in its request. ⁹⁶ The Court rules on the request designating a deadline by which the arbitrator, the parties, and the other members of the arbitral tribunal, with the help of the General Secretary, must present their observations in writing.⁹⁷

Absent such a request, an arbitrator may be replaced in the event of death, incompetence or resignation. ⁹⁸ An arbitrator is also replaceable when the Court concludes that (a) the arbitrator is prevented de facto or de jure from accomplishing the mission or (b) the arbitrator is not undertaking the mission in accordance with the Rules or within the requested time limit. ⁹⁹

The Court’s decision on the arbitrator’s nomination, confirmation, incompetence, or replacement is not subject to any recourse and the reasoning for such a decision is not disclosed. ¹⁰⁰

3.3.1.5 The Rules Governing the Arbitration Procedure

When the parties decide that the conflict is subject to the arbitration of the BCCI or TCCI, they automatically subject themselves to the Rules that govern the procedure before the arbitrator. ¹⁰¹ In the event the Rules are silent, the parties or the arbitrator, with or without reference to a local procedure law, decide the rules that govern the arbitration proceedings. ¹⁰² The parties are free to determine the law applicable to the resolution of the conflict. In the event that the parties have not done so, the arbitrator shall determine the appropriate law. ¹⁰³ The arbitrator must take into consideration the stipulations of the contract and

---

95 Article 2 para. 7 of the Rules.
96 Article 2 para. 8 of the Rules.
97 Article 2 para. 9 of the Rules.
98 Article 2 para. 10 of the Rules.
99 Article 2 para. 11 of the Rules.
100 Article 2 para. 13 of the Rules.
101 Article 8 para. 1 of the Rules.
102 Article 11 of the Rules.
103 Article 13 para. 3 of the Rules.
commercial customs. The arbitrator examines the documents submitted by the parties and listens to the parties and to any third person(s). The arbitrator may appoint one or more experts, define their mission, and receive their reports or listen to them. The arbitrator determines the language(s) of the arbitration, taking into consideration the circumstances and, notably, the language of the contract. Notwithstanding any agreement of the arbitrators and the parties, the hearings are not open to persons who are strangers to the arbitration proceedings.

3.3.1.6 The Arbitration Award

The arbitrator should render the award within six months. The Court may, either upon a request of the arbitrator or automatically, extend this time limit when it judges it necessary. When three arbitrators have been appointed, the award is rendered by majority; if a majority is not reached, the Court’s president shall rule by himself. No award may be rendered without prior approval of its form by the Court. The award is presumed to have been rendered at the place of arbitration and at the time of its signature by the arbitrators. Once the award is rendered, the General Secretary notifies the parties, provided that the arbitration expenses have been paid to the BCCI or the TCCI by one or both of the parties. The arbitration award is final: in submitting their conflict to the arbitration of the BCCI or TCCI, the parties commit themselves to enforce the award without any delay and renounce any recourse that might otherwise have been available to them.

3.3.1.7 The Cost of the Arbitration

The arbitration award must include the arbitration expenses and direct which party is responsible for paying them or in which proportions the costs are to be borne between the parties. The arbitration expenses include the arbitrator’s

---

104 Article 13 para. 5 of the Rules.  
105 Article 14 para. 1 of the Rules.  
106 Article 14 para. 2 of the Rules.  
107 Article 15 para. 3 of the Rules.  
108 Article 15 para. 4 of the Rules.  
109 Article 18 para. 1 and 2 of the Rules.  
110 Article 19 of the Rules.  
111 Article 21 of the Rules.  
112 Article 22 of the Rules.  
113 Article 23 para. 1 of the Rules.  
114 Article 24 CR.  
115 Article 20 para. 1 CR.
Lebanon

fees (fixed according to the chart annexed to the Rules\textsuperscript{116}), the administrative fees (fixed by the Court according to a chart annexed to the Rules\textsuperscript{117}), the arbitrator’s possible expenses, the experts’ fees and expenses (if applicable), and the usual expenses disbursed by the parties for their defense.\textsuperscript{118} According to Article 3(b) of Appendix III of the Rules, each request for arbitration subject to the Rules of the BCCI or TCCI should be complemented by a deposit of USD 750 as an advance on the administrative expenses. The arbitration request may not be considered without this deposit; furthermore, this deposit is non-refundable and remains in the hands of the BCCI or TCCI.\textsuperscript{119}

3.3.2 The Arbitration Proceedings at the Beirut Customs Authority:
The Rules of Arbitration of the Customs Law

On December 15, 2000, the Customs Law was modified by Decree number 4461. The Customs Law provides its own rules with respect to arbitration (‘Customs Rules’ or ‘CR’) for the Beirut Customs Authority (‘BCA’).

3.3.2.1 The Conditions Required for Arbitration

If a conflict arises between the BCA and any person concerning the type of merchandise, its nature, its quality, its origin, or its value, and such person rejects the evaluation of the BCA, the conflict is resolved by an arbitration committee.\textsuperscript{120} However, there can be no referral to this arbitration committee

\begin{itemize}
\item Article 5 B of Appendix III.
\item Article 5 A of Appendix III.
\item Article 20 para. 2 CR.
\item Article 3 (c) of Appendix III.
\end{itemize}

The arbitration committee is composed of: (a) as president, an honorary judge who has retired and who is appointed by the Minister of Justice and another judge; and (b) as members, two experts who are appointed for the purpose of resolving the conflict that has arisen, the first one being chosen by the person concerned or the person representing them legally, and the second one being chosen by the concerned administrative custom authority. The members of the committee are subject to the rules of incompetence and of withdrawal provided in the LCCP.

The Higher Council of Customs determines the conditions required to appoint the legal experts. They are appointed by a decision of this Council, which considers suggestions made by the General Director of Customs and the opinion of the different chambers of commerce and industry or the associations of businesspeople and industrial producers or the concerned technical associations. The experts must be experienced and competent in the commercial, industrial, technical and agricultural fields. The decision appointing the experts should specify the chapters which fall under the responsibility of each expert and the components on which the expert could be asked to give an opinion (e.g., the type of merchandise, its nature, its
when the law provides specific provisions to determine the type of merchandise, its nature, its quality, its origin, or its value. Furthermore, arbitration is possible only with respect to merchandise that is still under the surveillance of the BCA; in all the other cases, the conflict is resolved according to the usual ways and with respect to Article 381 of the Customs Law. The Customs General Director determines the conditions of application of this article and the conditions of the temporary delivery of the merchandise, provided that these conditions are not contrary to public policy or to the applicable laws and regulations.

3.3.2.2 The Role of the Higher Council of Customs

The Higher Council of Customs determines, upon the suggestions of the Customs General Director: (a) the procedures and formalities that should be followed in order to refer the conflicts to the arbitration committee, such as the prerogative of the heads of each district to choose the experts from the administration’s side, and (b) the procedures for sampling. The Higher Council of Customs also determines, upon the suggestions of the Customs General Director, the fees of the committee’s president and two members, taking into consideration the sessions held by them.

3.3.2.3 The Involvement of the Judiciary

In the event that one of the parties is opposed to the arbitration or does not appoint its expert, the expert is appointed, upon request of the second party, by the judge designated to rule on urgent matters in the judicial district of the appropriate customs authority, according to the procedures provided in Article 155 of the CR.

quality, its origin or its value). These decisions are published in the Official Gazette. Articles 154 and 155 CR.

Article 153 CR.

However, it is possible for the Customs Administration, in the event that the merchandise is not absolutely prohibited and that its presence is not necessary in resolving the conflict, to allow that the merchandise be delivered without waiting for the conflict’s resolution and on condition that an acceptable guarantee is given or that a security covering the taxes and potential penalties is deposited, and that enough samplings are kept in case the need of using them arises.

Article 162 CR.

Article 156 CR.

Article 164 para. 1 CR.

Article 157 para. 1 CR.
3.3.2.4 The Arbitration Process

The arbitration committee’s meetings take place in the center of the district where the conflict was born; it convenes secretly and makes its decisions by majority. The committee may hear any person and may rely on the statistics and analyses that are deemed fit to conduct its inquiry. When the conflict’s subject is not the type of merchandise, its nature, its quality, its origin, or its value, or when the law provides specific rules that determine these characteristics, the committee renders a decision declaring its incompetence to resolve the conflict. The committee proceeds, as quickly as possible, to examine the claims of the parties, listen to their comments, and render a decision resolving the conflict that is mandatory to both parties.

3.3.2.5 The Arbitration Committee’s Decision

The committee’s decision should identify the members of the committee, the conflict’s subject, the name and domicile of the party opposed to the arbitration, and the claims invoked. It should also include the technical specifications, the reasoning for the decision, the decision’s date, and the signatures of the committee’s members. The committee notifies the concerned parties of its decision. In the event that the decision is to the importer’s advantage, the BCA should reimburse the amount paid as a guarantee of the administration’s rights within 30 days of the request for the said amount. The committee’s decision addresses only the material and technical facts of the conflict, and not its legal aspect. Furthermore, the committee has no competence to address general principles relating to the type of merchandise, its nature, its quality, its origin, or its value. The committee’s decision lacks the force of a case precedent and therefore may not be invoked as such in any other conflict involving the same or different parties.

3.3.2.6 The Recourse of the Committee’s Decision: Its Annulment

The committee’s decisions are not subject to recourse, except for a request for an annulment, which should be filed during the 30 days following the notification of the committee’s decision. The request for annulment does not

---

127 Article 158 para. 1 CR.
128 Article 158 para. 2 CR.
129 Article 158 para. 3 CR.
130 Article 158 para. 4 CR.
131 Article 158 para. 5 CR.
132 Article 158 para. 6 CR.
133 Article 159 para. 1 CR.
134 Article 159 para. 2 CR.
The competent court applies the provisions of the LCCP for the annulment of local arbitration awards. The court’s decision about the request for annulment is final and is not subject to recourse. In the event that the court decides that the arbitration committee has violated applicable principles and procedures, it annuls the committee’s decision. The court is then competent to resolve the conflict, using, when necessary, the help of two new customs experts that it chooses from the list of experts (mentioned in Article 155 of the CR). The court renders a final decision in the matter and notifies the parties with a view to its immediate enforcement.\textsuperscript{136}

3.3.2.7 The Consequences of the Committee’s Decision for the Parties

In the event that the Customs Administration loses the conflict before the arbitration committee, it is responsible for paying, in addition to the amount of the security or what is left of it, interest at the commercial interest rates. In the event that the other party had obtained a guarantee, the expenses resulting from the guarantee are reimbursed within the limits provided by a decision of the Minister of Finance. In the event that the Customs Administration loses the dispute before the arbitration committee and refuses to release the merchandise, the owner of the merchandise may seek indemnification from the competent court according to the general principles governing the Administration’s responsibility. If the other party loses the case, it is responsible for paying, in addition to the required taxes, the costs of delay at the rates mentioned above. The destruction or modification of samples and documents, as well as the costs resulting from the use of experts, may not be indemnified.\textsuperscript{137} The party who lost the conflict is responsible for the abovementioned fees and for all the expenses.

3.3.3 Statistics on the Number of Arbitration Cases Each Year

Domestic arbitrations frequently take place in Lebanon. It is also common for parties to submit the resolution of any conflicts to international arbitration, for which the place of arbitration is sometimes Beirut. Actually, it is quite difficult to give an exact idea of the number of arbitrations conducted at either the international or domestic level because of the confidentiality of the procedure and the ability of the parties to execute the awards voluntary. Nevertheless, we believe that the table below can give an approximate idea of the number of awards that have been given the \textit{exequatur} from 2000 till 2005, as well as other
relevant data concerning the role of the President of the First Instance Tribunal of Beirut toward arbitration.

In the table, ‘App.’ refers to approvals; ‘Ref.’ to refusals. ‘Classified’ shows the number of requests abandoned because of an amicable settlement of the dispute and/or a voluntary execution of the arbitral award. The ‘Total’ shows the total number of annual requests addressed to the President of the Tribunal of the First Instance in Beirut for resolution. Note that the 2005 statistics cover the year only through March 12, 2005.

Table 1: Statistics about Arbitration in Beirut

<table>
<thead>
<tr>
<th>Year</th>
<th>Arbitrator Designs</th>
<th>Exequatur</th>
<th>Challenges to Arbitrators</th>
<th>Time Limit Extension</th>
<th>Award Deposit &amp; Regis.</th>
<th>Classified</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>4</td>
<td>App. 18</td>
<td>App. 2</td>
<td>App. --</td>
<td>9</td>
<td>--</td>
<td>34</td>
</tr>
<tr>
<td></td>
<td>Ref. --</td>
<td>Ref. 1</td>
<td>Ref. 1</td>
<td>Ref. --</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>8</td>
<td>App. 22</td>
<td>App. --</td>
<td>App. 1</td>
<td>7</td>
<td>3</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Ref. 1</td>
<td>Ref. 2</td>
<td>Ref. 1</td>
<td>Ref. --</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2002</td>
<td>11</td>
<td>App. 33</td>
<td>App. 7</td>
<td>App. --</td>
<td>8</td>
<td>4</td>
<td>68</td>
</tr>
<tr>
<td></td>
<td>Ref. 2</td>
<td>Ref. 2</td>
<td>Ref. 1</td>
<td>Ref. --</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>10</td>
<td>App. 25</td>
<td>App. 1</td>
<td>App. 1</td>
<td>8</td>
<td>20</td>
<td>72</td>
</tr>
<tr>
<td></td>
<td>Ref. 3</td>
<td>Ref. 2</td>
<td>Ref. 2</td>
<td>Ref. 1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>13</td>
<td>App. 19</td>
<td>App. 2</td>
<td>App. 4</td>
<td>7</td>
<td>15</td>
<td>65</td>
</tr>
<tr>
<td></td>
<td>Ref. 1</td>
<td>Ref. 3</td>
<td>Ref. --</td>
<td>Ref. --</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>2</td>
<td>App. 5</td>
<td>App. --</td>
<td>App. --</td>
<td>--</td>
<td>--</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>Ref. 1</td>
<td>Ref. --</td>
<td>Ref. --</td>
<td>Ref. --</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The statistics contained in this table must be applied with caution because it concerns only requests addressed to the President of the Tribunal of First Instance in Beirut. The Court register does not differentiate between domestic and international arbitration, but the officer in charge of this register confirmed that the majority of the cases registered concern domestic arbitration.

The number of arbitrations conducted by the CCIAB from 1999 till 2004, including both domestic and international, are stated in the table below:

Table 2: CCIAB Arbitrations

<table>
<thead>
<tr>
<th>Year</th>
<th># of Cases</th>
<th>Domestic Arbit.</th>
<th>Int’l Arbit.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>8</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>2000</td>
<td>16</td>
<td>15</td>
<td>1</td>
</tr>
<tr>
<td>2001</td>
<td>19</td>
<td>17</td>
<td>2</td>
</tr>
<tr>
<td>2002</td>
<td>15</td>
<td>15</td>
<td>--</td>
</tr>
<tr>
<td>2003</td>
<td>17</td>
<td>17</td>
<td>--</td>
</tr>
<tr>
<td>2004</td>
<td>4</td>
<td>4</td>
<td>--</td>
</tr>
<tr>
<td>Total</td>
<td>79</td>
<td>75</td>
<td>4</td>
</tr>
</tbody>
</table>
4. MEDIATION AND OTHER ADR MECHANISMS

4.1 Cultural Aspects of Mediation in Lebanon

4.1.1 A Traditional Practice of Mediation

The practice of ADR in Lebanon results from traditional practices influenced by the Arab and Muslim culture. This means that while a third person is usually used for the resolution of conflicts, this third party is often related to the parties. The mediator is personally involved in the process and uses social and subjective arguments to resolve the dispute. Parties do not give importance to the academic status or the scientific qualifications of the third person. Consequently, the appointment of the mediator relies on the mediator’s relationship to the parties and the mutual respect they have for that person. These characteristics of traditional mediation can be interpreted as either an obstacle to the development of ADR or an incentive for it. Actually, the main obstacle generated by such a traditional culture of ADR is its inability to deal with the scientific and cognitive culture and practice of ADR mechanisms: in traditional mediation, the third person is never a professional mediator or arbitrator. Nevertheless, the traditional culture can provide incentives because it comprehends the basic principles of mediation, such as the appointment of a third person who acts as a facilitator to help the parties try to arrive at a negotiated settlement of their dispute.

4.1.2 A Traditional Conception of the Role and Characteristics of the Mediator

Age and experience (reputation) are the two main characteristics typically required for mediators to be accepted by the local business community. The family of the mediator can also enter into consideration in Lebanon, especially because the mediator’s family origin plays a role in supporting reputation. In fact, the prerequisites for a mediator to be accepted by the local business community are a combination of objective and subjective characteristics, the latter being based on a traditional conception of ADR practice.

4.2 Social Awareness of the Scientific Practice of ADR

The degree of awareness of ADR mechanisms among the different economic, social, and professional sectors is extremely unequal, as detailed below.
4.2.1 Within the Legal Profession

The degree of awareness by the legal profession can basically be divided into three categories: lawyers who are unaware of ADR mechanisms; those who have basic knowledge of ADR but seem to be suspicious about non-judicial dispute-solving methods or reluctant to adopt and accept them as being as valid as the judgments provided by national courts (this category is keen on litigation or direct negotiation for dispute resolution); and finally, those who have a good knowledge of ADR methods but encounter many obstacles in promoting the recognition of the usefulness of such mechanisms.

4.2.2 Within the Business Community

The degree of awareness of the business community concerning ADR mechanisms is insufficient for widespread utilization of ADR. The general tendency is to resolve conflicts through litigation or direct negotiation. Medium and large firms also have recourse to arbitration. Consequently, the low degree of awareness of ADR mechanisms amongst the business community is generated by the lack of sensitization to the mentioned mechanisms.

4.2.3 Within Government Circles and Public Agencies

The degree of awareness among government circles and public agencies depends on the existence of a legal framework for ADR in the law that governs their activities. For instance, the degree of awareness is high within the Ministry of Economy and Trade because a law on consumer protection exists and contains specific provisions on mediation. It is worth noting that the Investment Development Authority of Lebanon (IDAL) refers, in the Law on Investment Development, to amicable settlement of disputes resulting from certain contracts.

4.2.4 Within the Law Student Community

ADR is not a part of law diploma studies. Nevertheless, and as mentioned below, there is a specialized master program in the French section of the Lebanese University – Faculty of law and political and administrative sciences.

---

138 See section 2.3.2, supra.
139 See section 2.3.1, supra.
140 Article 18 of the Investment Development Law.
4.2.5 Within the Construction Industry

The construction industry is aware of the importance of ADR mechanisms and events and workshops on the subject are frequently organized by the Order of Engineers and Architects in Beirut.

4.3 The Legal Framework of Mediation

4.3.1 Specific Laws

4.3.1.1 Labor Law

A law promulgated in 1964 concerning labor collective contracts, mediation, and arbitration contains seventeen articles \(^{141}\) on mediation in conflicts related to this type of contracts. Those articles determine the mediation process and its consequences as follows: all conflicts related to collective labor contracts are subject to mediation in order to reach a negotiated solution. \(^{142}\) The mediator is the president of the department of labor and professional relations at the Ministry of Labor or any other person delegated by the general director of the Ministry. \(^{143}\) Any party to a labor collective conflict can request mediation by the Ministry, and the Ministry is entitled to propose such mediation even if none of the parties has requested it. \(^{144}\) The mediator can be assisted by whomever the mediator wants to help in the mission and has the right to conduct any investigation believed necessary in order to solve the conflict. The parties are bound to provide the mediator with any requested information. \(^{145}\)

To conduct the mediation, the mediator listens to the parties and verifies their allegations and documents and provides them with suggestions and possible solutions to the conflict. \(^{146}\) If an agreement is reached, it is registered in the minutes of the mediation procedure. Such an agreement has the effect of a binding contract for the parties. \(^{147}\) If no agreement is reached, the conflict should be settled by arbitration. \(^{148}\) The duration of the mediation process should not exceed two weeks from the date of the first session. However, the process can be

---

\(^{141}\) Articles 30 to 46 of the Labor Collective Contracts, Mediation and Arbitration Law (LCCMA).

\(^{142}\) Article 31 LCCMA.

\(^{143}\) Article 31 LCCMA.

\(^{144}\) Article 33 LCCMA.

\(^{145}\) Article 40 LCCMA.

\(^{146}\) Article 42 LCCMA.

\(^{147}\) Article 43 LCCMA.

\(^{148}\) Article 44 LCCMA.
Lebanon extended upon agreement of the parties. The mediator can also ask for an extension of the process that cannot exceed one week. 149

4.3.1.2 Consumer Protection Law

The Consumer Protection Law was promulgated in February 2005; it comprises fourteen articles 150 on mediation in consumer matters. Even though this law is valuable in its promotion of effective dispute resolution mechanisms, it does not enhance the promotion of mediation in general given that the process is not confidential. Pursuant to the law, parties to the mediation can get a copy of the minutes and all the documents provided by each party during the process. Moreover, the mediator is a public functionary and has the power to communicate to the Public Ministry any detected breach of the law committed by the parties 151 which means that a conflict of interests exists. Consequently, the mediator is neither impartial nor independent.

4.3.2 Enforceability

4.3.2.1 In Compliance With the Specific Laws

The abovementioned law on collective labor contracts, mediation, and arbitration grants the agreement resulting from mediation the effects of a contract. Moreover, in case of its non-execution by one of the parties, the other party should be entitled to ask for damages in court. 152 The party refusing the execution may suffer a penalty or imprisonment. 153

4.3.2.2 In Compliance With the Code of Obligations and Contracts

The signing by the parties of a settlement agreement putting an end to their dispute is binding on the parties in accordance with the Lebanese Code of Obligations and Contracts. Such an agreement can be enforced before the executive court. 154 Therefore, the agreement generates contractual obligations by virtue of the Lebanese legal framework without any need for a specific law on mediation to enhance its enforceability. In all cases, there is no specific local law on mediation in the country, even though a legal framework should be enacted to govern the whole process of mediation.

149 Article 45 LCCMA.
150 Articles 83 to 96 Consumer Protection Law (CPL).
151 Article 95 CPL.
152 Article 62 LCCMA.
153 Article 63 LCCMA.
154 Article 847 LCCP.
4.3.3 Evaluation of the Legal Framework Opportunities

There is no legal obstacle to mainstreaming mediation in the country. Mediation already exists as a private (ad hoc) mechanism through the CCIAB (Chamber of Commerce, Industry & Agriculture of Beirut). Any private entity can develop such a mechanism.

A judicial process for mediation does not exist. The LCCP (Lebanese Civil Code of Procedure) refers (in Articles 375, 456 and 460) to conciliation as one of the judge’s missions. But such a judicial mediation process needs a specific legal framework giving the power to the judge to appoint a third person to handle the mediation and/or conciliation. Such a legal amendment would not only promote the development of judicially instigated mediation but would also benefit the judicial system itself. Because the parties may disclose confidential information during the mediation process which they might refuse to reveal to the judges, the separation between the mission of judging and that of mediating would serve an important role in preserving the impartiality and the independence of the judges.

4.4 Private Initiatives

4.4.1 Events and Academic Formation

Before the commencement of the European Union-funded ADR MEDA Project in 2005, training or ADR presentation workshops in Lebanon were rare. Nevertheless, two successful events did take place in the country. The first one was held by the Beirut Bar Association in December 2002 in collaboration with IFOMENE (Institut de la Formation à la Médiation et la Négociation– Institut Catholique de Paris FASS – Faculté des Sciences Sociales et Economiques). This event was in fact the first session of training entitling the participants to access mediators’ courses at the Faculté des Sciences Sociales et Economiques de Paris.

The second event was held by the ESA (Ecole Supérieure des Affaires-Beirut) in March 2004 in collaboration with the ICC (International Chamber of Commerce). This event was in fact a seminar on the practice of arbitration and mediation in IP (Intellectual Property) matters.

Concerning academic developments related to mediation, it is worth noting that the French Section of the Lebanese University in Beirut, Faculty of Law, French Section created a major in 2000 in Litigation, Arbitration and ADR in collaboration with the University of Panthéon-Assas, Paris II. This major is identical to the one existing in Paris at the aforementioned University. It comprises a seminar of 25 hours based on theory concerning ADR techniques and a seminar of 25 hours (workshops) related to the practice of ADR provided by the faculty of the ESSEC Iréné (Institut de Recherche et d’Enseignement sur
le negotiations en Europe). At this moment, about 80 to 100 persons (students or lawyers) have obtained the Diploma (20 students per year). A Masters in ‘Intercultural Mediation’ also exists at the Saint-Joseph University in Beirut.

4.4.2 ADR or Mediation Services Provided in the Country

There are people trained and theoretically qualified as mediators in the country, but they are not known as mediators. Nevertheless, those people know each other.

The existing service providers of ADR in the country are the Chamber of Commerce, Industry & Agriculture of Beirut (CCIAB) and of Tripoli (CCIAT). Those institutions set out Rules of Optional Conciliation in order to facilitate the amicable settlement of civil and business disputes of domestic and international character. Recently, a Lebanese Association has been established under the name ‘Médiateurs sans frontières’ which aims at enhancing mediation.

4.5 Strategy of Promotion of ADR

4.5.1 General Steps

Promoting mediation and other ADR mechanisms necessitates a holistic strategy based on the following issues:

− establishment of centers with the capacity to handle and conduct mediation processes credibly; and
− development of first level training courses by the above-mentioned centers to accredit mediators and organize continuing trainings by the accredited mediators.

Once center formation and accreditation is achieved, a productive promotion of mediation and other ADR mechanisms can begin; otherwise, any thought of promoting mediation proceedings would be ineffective due to the lack of credible institutions able to conduct such proceedings if sought by parties willing to solve their dispute through mediation.

Promotion of mediation proceedings requires:

− organizing events aiming at sensitizing the potential beneficiaries of such mechanisms (SMEs); and
− conducting technical seminars, discussion panels, workshops, training of specialists, and normalization and dissemination of contractual instruments.
4.5.2 Government Support

Creating links with the government would facilitate the implementation of laws and regulations concerning mediation.

4.5.3 Foreign Investors’ Interests

Encouraging foreign investors to refer their business disputes to mediation proceedings and informing them of the relevant existing ADR centers in the region (after their establishment) would encourage the local business community to refer to mediation.
Chapter 6
Morocco

Yasmine Essakalli
Zineb Idrissia Hamzi
Redouane Taarji
Reda Oulamine

1. INTRODUCTION

Morocco is in the western part of North Africa. Mauritania lies to the south, Algeria to the east. Much of its coastline is on the Atlantic Ocean, but east of the Strait of Gibraltar, its coastline shifts to the Mediterranean Sea. The country has an area of about 446,550 square kilometers.

Morocco’s population, according to a 2007 estimate, numbers about 33,757,175 people. The majority of the inhabitants are Arabs, many of Berber origin, and most are Sunni Muslims. There are also small Jewish and Christian populations.

Starting in the early twentieth century, Morocco became a French protectorate, with Spain exercising power over desert areas of the country. In 1956, Morocco gained its independence from France, and shortly thereafter, Morocco regained control over the Spanish-controlled desert regions.

Morocco is a constitutional monarchy and is properly known as the Kingdom of Morocco. It has an elected Parliament, and, as discussed in more detail below, an independent, multi-level judiciary with some specialization in its courts.¹

2. COMMERCIAL DISPUTES

Due to its thousand-year-old history, its geographic location, and its stable political policy, Morocco has always been called on to play an important role in the international scene. Since the decline of the Soviet Union, the departure point of the current international economic leap, Morocco has been working to

¹ The information in this introduction is culled from a variety of sources that provide basic information about countries around the world, including: The Middle East Information Network, Inc. at <www.mideastinfo.com>; The World Factbook at <www.cia.gov>; and <www.wikipedia.org>, all last visited on June 4, 2007.
G. De Palo & M.B. Trevor (eds), Arbitration and Mediation in the Southern Mediterranean Countries, 125–144.
Arbitration and Mediation in the Southern Mediterranean Countries

improve its economic and financial structures in order to keep pace with its international partners and such international developments as the plans drawn up by the counsels of the International Monetary Fund and World Bank. Moreover, to open up to the broader world and guarantee both international and regional integration and welfare, Morocco sponsored the GATT conference in Marrakech in 1994, where the agreement which resulted in the establishment of the World Trade Organization was signed.

The need for modernization has also led to a restructuring of the country’s administrative and justice systems, which gave birth to the adoption of new laws to encourage privatization and to adopt a regional policy. In addition, the change ratified the policy of decentralization in accordance with the recommendations of the Marrakech Convention. In particular, new laws resulted relating to privatization, the reorganization of the financial market, the legal framework for investments, and the law of the stock market. Of particular interest, the Dahir (King’s Decree) 1.96.83 of August 1, 1996, established the Commerce Code – a modern instrument to assure stability in the commercial field.

2.1 Commercial Litigation

2.1.1 Commerce Code Definition

Morocco’s Commerce Code is specific, autonomous, and distinct from the Civil Code. The Commerce Code applies to merchants and to commercial activities under the terms of its first clause, which broadly stipulates: ‘The present law governs acts of commerce and merchants.’ Thus, under the Code, the phrase ‘commercial litigation’ includes all the litigation of which the object is commercial or in which one of the parties is a merchant. Such litigation is inherent to the exercise of commercial activity and to the obstacles impeding commerce daily. These obstacles are both internal and external and result from a merchant’s relationships with many entities such as employees, customers, suppliers, and banks.

This report gives an outline of commercial legislation, principally focusing on Clause 5 of the law relating to the creation of the commerce courts.

2.1.2 Commercial Litigation in the Court System

There are three levels of courts in the Moroccan system: courts of first instance, appeals courts, and the Court of Cassation, a Supreme Court which addresses questions of law only. Within this system, there is a separate system of commerce courts, with a commercial court at both the first instance and appellate court levels.
Clause 5 of the law creating the commerce courts stipulates that: ‘The commerce courts are competent to hear’:

i. actions relating to commercial contracts;
ii. actions between merchants related to their commercial activities;
iii. actions relating to effects on commerce;
iv. disagreements among those associated with a commercial corporation; and
v. disagreements regarding commercial funds.

Article 2 of the commercial law establishes that the courts will rule ‘in commercial matters in accordance with the laws, habits and uses of the trade, or with the civil law insofar as it does not contradict the fundamental principles of the commercial law.’ It is not easy to give a definition or to draw up a precise list of all the types of litigation which could occur as the result of the exercise of a commercial activity, given the complexity and broad scope of such activities. This breadth is confirmed, indeed, by certain articles of the commercial law, such as Article 6, which stipulates that: ‘subject to the provisions of Chapter II of Title IV …’, the quality of ‘merchant’ is acquired by the usual or professional exercise of activities such as:

i. the purchase of furniture or pieces of furniture in order to resell them after having worked on them or in order to rent them;
ii. the leasing of furniture for sub-leasing;
iii. the purchase of buildings in order to resell them in the original state or after transformation; and
iv. the search and exploitation of mines and quarries.

In general, a person engaging in activities ordinarily considered to be those of a merchant, even if the person has been banned from such activities, will be considered a merchant for purposes of qualifying a dispute for treatment in the commercial court system, absent specific proof that the person should not be considered a merchant.

2.2 Legislative Framework of Commercial Litigation

In an effort to promote commerce, investments, and exchanges on both a national and international basis, the Moroccan legislature has adopted laws aimed at protecting both commerce and merchants. In addition, there are a number of texts in the form of Dahirs (King’s Decrees) and other laws and decrees that have been issued pursuant to signed international conventions.

While there have been recent changes in the law affecting commercial enterprises, Moroccan law has addressed commercial relationships, entities, and
transactions for many years. Among the texts of such laws, we draw attention to the following as examples:

- the *Dahir* on obligations and contracts of August 12, 1913: This *Dahir* contains general rules relating to civil and commercial corporations, their relationships with other corporations, and the dissolution of corporations;
- the former Commerce Code of August 12, 1913 addressing the status and different types of corporations; and
- the *Dahir* of August 1, 1996, putting into effect Law No. 15.95 relating to the new Commerce Code that consists of 5 chapters covering merchants, commerce funds and contracts.

Morocco has also promulgated important texts in the field of the rights of businesses and the money market, for example:

- the *Dahir* 1.00.71 creating the Moroccan Office of Patent Rights; and
- the *Dahir* 1.93.147 relating, *inter alia*, to credit institutions.

### 2.3 International Conventions

Among the conventions relating to international trade signed by Morocco, one can distinguish three types:

i. Conventions related to establishing uniform international rules of commerce without affecting internal laws, including the 1919 Convention Relating to the Regulation of Aerial Navigation, the 1957 European Agreement Concerning the International Carriage of Dangerous Goods by Road, and the Berne Convention of 1890 relating to the transportation of merchandise.

ii. Conventions extending to the standardization of internal laws affecting commercial transactions and commercial paper, such as the United Nations Convention on International Bills of Exchange and International Promissory Notes of 1988, and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the ‘New York Convention’).

iii. Bilateral conventions dictating commercial relations between partners regarding development in the domains of customs, imports, and exports.

Morocco has ratified several international commercial conventions such as:

- The New York Convention (*Dahir* of February 19, 1960);
Morocco


Bilateral conventions are numerous and include:

− The commercial convention of signed indexation between Morocco and Tunisia in 1973 (Dahir of the August 30, 1975);
− The Morocco-Syrian convention relating to commercial exchanges and economic cooperation signed in Damascus (Dahir of November 14, 1974); and
− The convention of brotherhood, friendship, and mutual aid between Morocco and Saudi Arabia (Dahir of May 13, 1960).

2.4  Mechanisms for Resolution of Commercial Litigation

2.4.1  The Creation of the Commercial Courts

To perfect this modernization and to ascertain that this legal arsenal be properly applied, it was necessary to create specialized jurisdictions for commerce by means of Law 53.95 of January 6, 1997. The first article stipulates: ‘it is created under the terms of the present law of the commercial courts and the usual course of trade.’ This law instituting the jurisdictions of trade is presented in the form of a code made up of 25 articles, divided into eight titles.

2.4.2  The Constitution of the Commercial Courts

Article 2 of Law No. 53.95 of January 6, 1997 sets out the composition of the first instance commercial courts, and Article 3 of the Law sets out the composition of the courts of commercial appeal. Both levels of court are organized into multiple chambers according to the nature of the dispute, but such designation is not exclusive and different chambers may address a variety of subjects. Hearings at each level are conducted by three judges. Each court is headed by a president.

2.4.3  Competences and Distribution

Title 3 of the law establishing commercial courts is divided in two chapters which distinguish between subject matter jurisdiction, notably in sections 5, 6, 7, 8 and 9, and territorial jurisdiction in sections 10, 11 and 12. Six commercial
Arbitration and Mediation in the Southern Mediterranean Countries

courts were originally established, in the principal cities of Morocco: Casablanca, Rabat, Fès, Tanger, Marrakech and Agadir. Two courts were later added in Meknes and Oujda. Three courts of commercial appeals have been established in the cities of Casablanca, Fès and Marrakech.

Statistics relating to the workload of the courts indicate that the distribution of the workload is perfectly proportional to the economic importance of the cities which are the major cities within the court’s jurisdiction. Thus, the commercial court of Casablanca leads the Moroccan commercial courts in the number of cases that come before it. That statistic is not surprising in light of the fact that Casablanca is the economic capital of Morocco and the territorial jurisdiction of its commercial court extends beyond its limits to include other cities having considerable economic importance.

3. Arbitration

3.1 Statutes Relating to Arbitration

Sources of arbitration in Moroccan law are both national and international.

3.1.1 National Sources

3.1.1.1 Current Status of Domestic Legal Mechanisms

Arbitration is not a new institution within Moroccan law. The August 12, 1913 Dahir that made provisions for the Code of Civil Procedure referred to arbitration. Arbitration was also referenced in the Code of Civil Procedure enacted on September 28, 1974. Nevertheless, domestic law governs only ad hoc arbitration and makes no reference to institutional arbitration. An assessment of the Moroccan arbitration system indicates gaps and shortcomings, and thus, the system is still on a different plane from the international standards governing arbitration. Even the existing legislation governing ad hoc arbitration is insufficient.

The current Code of Civil Procedure deals with arbitration in 21 sections (sections 306 to 327); the same provisions apply to both domestic and international arbitration cases. Further, section 306 of the Code limits the matters that may be addressed by arbitration, excluding matters such as:

- disputes relating to deeds or properties which fall within public law, such as concessions and land grants by the State and contracts entered into with the State. While this rule deals only with domestic arbitration, Moroccan jurisprudence has confirmed that the same exclusion applies
to disputes which arise between public law institutions and their co-contractors within the framework of international commerce;

− disputes concerning the performance of a fiscal law due to the public character of said law;

− disputes relating to the dissolution of companies;

− disputes arising out of the application of corporate by-laws, such as proceedings about the liability of partners against directors or managers or the invalidity of the deliberations of a general meeting, and generally litigation between corporate partners; and

− disputes concerning donations, various legacies, and the status and capacity of persons.

The current Code of Civil Procedure also authorizes the parties to a commercial deal to appoint the arbitrator(s) for *ad hoc* arbitration in advance. But in order for this appointment to be valid, the arbitration clause must be handwritten and specially approved by the concerned parties.

The use of arbitration has been extended to include other fields thanks to some special legal provisions:

− collective industrial disputes, which are governed by a conciliation and arbitration procedure in pursuance of a *Dahir* issued on January 19, 1946, whose provisions have inspired sections 557 to 585 of the new Employment Code. This Code imposes the Labor Board’s recourse to arbitration in the framework of a conciliation procedure prior to any legal proceedings;

− a recent promotion of the use of arbitration is set forth in the Act establishing the commercial courts, discussed above. Section 5 of this Act includes a list of the cases falling within the jurisdiction of the commercial courts and encourages recourse to arbitration. It reads ‘the parties may agree to submit the abovementioned disputes to arbitration procedure.’

3.1.1.2 Outlines of the New Draft of the Arbitration Code

A complete draft arbitration code dealing with institutional arbitration and *ad hoc* arbitration, and governing recourse to international arbitration, has been developed. The draft is currently under examination by the Secretariat General of the Government. This draft gives arbitration a complete seat in the mechanism of dispute settlement and may have a psychological impact by pointing out the fact that the procedure is an ordinary and simple way of settling disputes.

The draft is based on proven methods: the UNCITRAL Model Law of 1985 on International Commercial Arbitration (but adopting a methodological
Arbitration and Mediation in the Southern Mediterranean Countries

approach and different wording), the French Civil and Civil Procedure Codes, and the experience of the International Chamber of Commerce (‘ICC’). The draft adopts a dualist system, distinguishing domestic arbitration from international arbitration, as is done in the French, Swiss, Algerian, Tunisian, Senegalese, Mauritanian, and Lebanese systems. It focuses on promoting a broad conception of the matters subject to compromise and arbitration.

Unfortunately, some issues have not been addressed, such as multilateral arbitration, joinder of different causes of action, acknowledgment of the role of *lex mercatoria* (international commercial practices and customs), or the definition of the international public order.

3.1.2 International Sources

Paradoxically, arbitration is often used in Morocco in the international field despite the non-existence of an domestic statute governing this matter. On the international level, the State of Morocco was the second country to adhere to the New York Convention. Morocco also adhered to the European Convention of International Commercial Arbitration of April 21, 1961 (the ‘Geneva Convention’) as well as to the Convention of 1952 on the execution of decrees and arbitration awards between Arab States. Morocco was among the first countries that adhered to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1695 (the ‘Washington Convention’). This Convention was signed on October 11, 1965. In addition, the first case submitted to the International Center for the Settlement of Investment Disputes (‘ICSID’ in English or ‘CIRDI’ in French) in 1972 involved a Moroccan claim against the American companies Occidental Petroleum and Holiday Inn. Other disputes involving Moroccan public institutions (for example, Office Chérifien des Phosphates, Office National de L’Electricité) have been settled by arbitration institutions abroad, namely the arbitration tribunal of the ICC.

Morocco has also signed the model regulation on international commercial arbitration, in the draft approved by UNCITRAL in 1985. Morocco has been a member of this commission and has participated in the drafting of this regulation.

Further, Morocco has concluded, with several countries:

− judicial cooperation agreements providing for the acknowledgment and execution of arbitration awards by the signatory states; and
− investment agreements giving the choice to the foreign contracting party to have recourse to Moroccan courts, to the arbitration of the CIRDI, or to the *ad hoc* arbitration governed by the UNCITRAL.
Morocco entered into an agreement with France for the reciprocal encouragement and protection of investments on January 13, 1996. This agreement provides for two mechanisms to settle disputes depending on their nature. When a dispute between a party and an investor from the other state has not been settled amicably within six months, the investor may ask the dispute to be submitted either to the competent jurisdiction of the party involved, or to the CIRDI, provided that the option be final once the institution is informed. The option thus made available by this bilateral agreement diverges from the usual terms of investment agreements, which do not contemplate recourse to international arbitration. But it tracks the provisions already applied with Algeria and some countries from Latin America.

Nevertheless, despite the efforts made by the Moroccan legislature during the last decade to improve the investment climate, difficulties persist in implementing and integrating the provisions of these international conventions into the national legislation.

3.2 Impact of Arbitration in Morocco

3.2.1 Arbitration as Regarded by Local Business Community and the Legal Profession

At the level of international commerce, Moroccan economic operators, including but not limited to operators in the public law, have adapted to the necessity of observing contractual arbitration clauses, which have become a standard condition in international contracts. But at the domestic level, recourse to arbitration is not widespread for several reasons. Arbitration is perceived as expensive and slow. This slowness is generally the consequence of an insufficient mastery of the arbitration procedure and its rules in Morocco. The lack of remedy against arbitration awards also frightens off potential users, as well as the limited recognition for these awards.

In addition, Moroccan economic operators face difficulties with the tax administration, which openly denies the judicial value of arbitration awards. Section 66 of Income Tax Act exempts dismissal compensation and damages ordered by decree from taxation, and this exemption is recognized by the tax administration for court decrees, which are considered as having judicial value.

But the tax administration does not treat arbitration awards in the same fashion. As recourse to arbitration has become increasingly frequent, thousands of awards have been rendered recently, granting compensation and damages in industrial cases. These awards are often delivered and become enforceable pursuant to a decree delivered by the presiding justice of the court of first instance. Yet, the tax administration does not recognize the judicial value of these awards and therefore, the compensation granted is not subject to the exemption in Section 66. This is a paradox: on one hand, the legislature and the
public authorities try to promote arbitration; on the other hand, the tax administration is determined to slow down and limit the extent of its use.

3.2.2 The Current Policy for Promoting Arbitration

During the last decade, widening awareness and use of international arbitration have developed, together with a concerted effort by the public authorities to encourage recourse to arbitration as part of the policy for the promotion of external investments. For example, there is an agency for external investments within the Ministry of Commerce and Industry which is in charge of facilitating and promoting foreign investments in Morocco.

At the same time, several Moroccan universities have introduced arbitration and mediation in their degree courses. Law schools in Casablanca and Rabat have established a second degree (third degree in Morocco) with a major in arbitration and mediation.

3.3 Existing Arbitration Institutions and Their Efficiency

Existing ad hoc arbitration in Morocco cannot be measured exactly, but the multiplication of arbitration institutions in charge of promoting institutional arbitration is noteworthy.

3.3.1 Existing Arbitration Centers: Their Status and Organization

3.3.1.1 Centers

Several centers with connections to international arbitration exist in Morocco:

- The Maritime Arbitration Chamber in Morocco, founded on May 27, 1980, was the first center for private arbitration. It is officially accredited to conduct arbitration or conciliation concerning conventions, agreements, and other maritime activities in Morocco, or between Morocco and foreign countries, and possibly between foreign countries. This Chamber, situated within the premises of the representative of P&I Club (an organization providing protection and indemnity in the international maritime trade), has not, to this day, settled a dispute.
- Morocco houses the Commercial Arbitration Arab Center, created by the Amman Convention of April 14, 1987.
- An Arbitration Tribunal was created in 1998 on the initiative of the ICC-Morocco. Pursuant to its articles of incorporation, this Tribunal is limited to the settlement of domestic disputes. Should the parties to an agreement turn to the Tribunal in an international arbitration case, the
Morocco

Tribunal must refuse to acknowledge jurisdiction in deference to the jurisdiction of the International Arbitration Tribunal of the ICC in Paris.

Arbitration mechanisms have also been created within the Chambers of Commerce, Industry and Services (‘CCIS’) in several economic centers in Morocco:

− The International Arbitration & Mediation Center (‘CIMAR’) in Rabat, founded by the CCIS in Rabat on April 28, 1999, which began its activity in 2001.
− The Chamber of Commerce, Industry and Services in Casablanca (‘CCISC’) has offered, since May 2003, arbitration and mediation services to economic operators. But since its creation, this center has settled only one case, in April 2005.
− The Conciliation & Arbitration Center of Marrakech, created in July 16, 1999, whose operation and efficiency are very limited.

Finally, on July 7, 2005, within the CCIS in Agadir, the President of the Agadir Chamber, the President of the Commercial Chamber of Las Palmas, and the President of the Commercial Chamber of Santa Cruz in Tenerife signed a partnership agreement aimed at the creation of the Atlantic Court of International Arbitration-Agadir/Canary Islands to settle any possible commercial disputes.

3.3.1.2 Status

These arbitration centers generally have the status of independent non-profit institutions endowed with legal capacity and financial and administrative autonomy. According to their regulations, based on the arbitration regulation of UNCITRAL (at least as regards the Center of Rabat), their mission is to organize arbitration of domestic or international disputes resulting from economic, commercial, or financial relationships to which the State, public institutions, or local communities are parties.

3.3.1.3 Organization

Existing arbitration centers did not opt for a uniform organization model. Some, such as the Center of Rabat, are more structured than others, for instance, the Center of Casablanca. One of the rare similarities at this level consists of the fact that the centers enjoy relative independence from the chambers of commerce to which they belong.
Mediation and arbitration centers belonging to chambers of commerce generally are organized along the lines of:

- A board of directors composed of the president of the chamber and members appointed by the general meeting whose powers are:
  - to attend to the normal course of the center’s operation;
  - to work out modifications to the regulations and approve them; and
  - to appoint mediators and arbitrators and accredit the rolls;
- An executive department composed of an executive officer and a secretary appointed by the president of the chamber on the nomination of the board of directors, in charge of:
  - keeping the rolls of mediators and arbitrators;
  - receiving mediation and arbitration requests, replies of parties and documents relating to disputes, and assuring follow-up on the files; and
  - determining mediation and arbitration fees and other administrative costs; and
- A body of mediators and arbitrators.

The above organization is the one set out by the regulations for the CIMAR; the organization of other centers may vary.

The Center of Casablanca is unusual in its organization. Its members must pay a subscription fee. The Center is governed by a board of directors composed of members elected by the general meeting of members. It is presided over by the president of the CCISC. The executive office is composed of a deputy president, a managing deputy president, a general secretary, an assistant general secretary, a treasurer, and the treasurer’s assistant.

### 3.3.2 Conditions Required to be Appointed as Arbitrator

To the best of our knowledge, only CIMAR has set precise criteria for the appointment of arbitrators: it only retains experts. According to the internal regulations of the Center, an arbitrator or mediator must have worked as a merchant, jurist, or manager of a business for at least seven years, should have a university degree at least equivalent to a bachelor’s degree, and must be at least 36 years old. This period of required work experience is increased to ten years should the person not have a university degree, and the minimum age requirement is raised to 50 years of age. Regulations of other centers do not require, for the most part, that the person have precise university training or predetermined professional experience.

As regards arbitration clauses, regulations of these centers do not recommend any special provisions, except for the ICC-Morocco which
Morocco

recommends those proposed by the ICC. As far as arbitration costs are concerned, regulations of the existing centers vary.

3.3.3 Statistical Data of Arbitrations Conducted

The current trend is characterized by the limited number of domestic arbitrations. There are no official statistics concerning the number of arbitrations conducted by the different Moroccan centers, but adding the number of cases processed by the two centers of mediation and arbitration in Rabat and Casablanca yields about 20 cases. This number is dwarfed by the 600,000 files processed every year by the courts, of which 100,000 fall within the jurisdiction of the commercial courts.

To this day, arbitration activity is limited. The CIMAR has received 19 files: 8 financial, 7 commercial, 2 real estate, and 2 contractual. The CCISC has offered, since May 2003, arbitration and mediation services to economic operators. But, since its incorporation, it has only resolved one case, in April 2005.

To conclude, it appears that Moroccan businesspeople are reluctant about mediation and arbitration, and they do not appreciate what they perceive to be interference of third parties in their private business.

3.4 Role of the Judge in Arbitration

3.4.1 Role of the Judge in the Appointment of Arbitrators

Parties rarely appoint the arbitrator(s) in the arbitration clause. They generally appoint them once the dispute arises. Real problems of arbitration in Morocco begin at this first stage. Despite the pre-existence of an arbitration clause, it appears (from the few cases submitted to arbitration) that a party resists appointing its arbitrator or simply takes no action on the matter. In practice, the clause rarely provides for the appointment of one arbitrator. Generally, each party may appoint its own arbitrator. Frequently, the voluntary appointment of arbitrators fails because of the refusal or the inertia of a party. In this case,

'should a party refuse in a dispute to make this appointment, the other party may ask the presiding justice of the competent court, which will thereafter deliver the arbitration award enforceable, to render a final decree appointing thereby arbitrators' (Section 309 of the Moroccan Civil Procedure Code).

This solution is more efficient than the compulsory enforcement of the arbitration clause. Nevertheless, it has only a limited influence on the actual use of arbitration. First, it does not divert the threats of challenge to and removal of arbitrators, as provided for in Section 313 of the Moroccan Civil Procedure Code. Once this first difficulty is resolved, arbitrators sometimes cannot come to
an agreement and the appointment of a third arbitrator becomes necessary. The judge will appoint this third arbitrator when the arbitrators appointed by the concerned parties fail to do so (Section 315 of the Moroccan Civil Procedure Code).

3.4.2 Role of the Judge in Enforcing the Arbitration Awards

The enforcement role is substantial. Recourse to a judge is necessary to obtain the *exequatur* of an arbitration award resulting from domestic or international arbitration. Pursuant to the provisions of the Civil Procedure Code, the judge must first ensure that the arbitration award is not contrary to Moroccan public policy. This condition often leads parties who have already accepted the arbitration clause to nonetheless plead its nullity at the time of enforcement. Moroccan judges are less and less inclined to admit such a plea and generally deliver the requested *exequatur*.

Nevertheless, because the arbitration award is also subject to appeal, opposition, retraction and cassation, the enforcement thereof may be significantly delayed. The appellate remedy does not address the tenor of the award. The judge only verifies that the *exequatur* decree did not confirm an award that is in violation of public policy, and ensures that the arbitration subject does not relate to any matter excluded from arbitration and that it is based on an arbitration clause which complies with the conditions required for its validity. In practice, the parties overuse this right to appeal the *exequatur* decree.

4. Mediation and Other ADR Mechanisms

4.1 Legal Statutes of Conventional Mediation or Comparable Legal Modes / Techniques For Settling Disputes

4.1.1 General Theory

As discussed below, various legal theories exist to allow the parties to agree to mediate rather than to submit a dispute to the courts or to arbitration, and there is draft legislation to make such legal authorization explicit. The actual use of mediation in Morocco, however, is extremely limited.

4.1.1.1 Conditions for Agreements to Mediate

Contrary to the legal or arbitral cause of action, there is no legal provision that allows mediation or sets forth the requirements for an agreement to mediate. Due to this silence in Moroccan statutes, the agreement to mediate remains
Morocco

governed by the law common to obligations and by general contract validity conditions. It appears from Section 2 of the Dahir making provisions for the Code of Obligations & Contracts (Civil Code) that to be valid, a contract must satisfy four conditions: capacity, consent, object, and cause. The parties agreeing to mediation must first be capable of entering into such an agreement, and must therefore be able to compromise and prove their capacity to waive their rights in the event of a dispute.

The second element required for the validity of the mediation agreement is consent. There is no mediation without a free consent of the parties. A party cannot reach a compromise against its will or in its absence. Therefore, consent confirms the prominent role of the will of the parties and their actual participation in the amicable settlement process. Consent must be expressed by the parties with full knowledge of the facts. The recourse to mediation must not be the result of error, marred by fraud, or obtained through violence.

Section 2 of the Code of Obligations and Contracts requires that the contract have ‘a certain object that is the contract object.’ The object must exist, be determined, and be licit. It may be defined as the obligation that a party undertakes towards another party. The mediation agreement generally aims at creating the obligation on the parties to cooperate and to contribute to the mediation process with a view to reaching a solution of the dispute.

The last element required for a contractual obligation to be valid is the existence of a legal cause to create an obligation. This constitutes the reason that motivated the parties to enter into a contract. As regards the mediation agreement, the parties must control the dispute and reach a solution without recourse to the courts or arbitration tribunals.

Contrary to the requirements for the substance of the mediation agreement, no procedure is required by law for entering into the agreement. Nevertheless, the parties, as with any contract, generally witness the mediation agreement in writing so that they may determine the extent of their obligations. An amicable process is used to appoint the third party mediator.

4.1.1.2 A Bill on Mediation under Discussion in the Parliament

A bill on mediation is currently before the Moroccan Parliament. This bill, to be codified as part of the Code of Obligations and Contracts, sets forth some provisions relating to conventional mediation in Part 3, comprising Sections 327-52 to 327-67. The bill proposes a definition of a mediation agreement in section 327-53:

‘the mediation [agreement] is a contract whereby the parties agree to appoint a mediator in charge of facilitating the conclusion of a compromise to put an end to the dispute resulting or to result.’
Mediation may be entered into before or after the dispute arises, even during legal proceedings. The bill requires a deed as condition precedent for the agreement to mediate. The parties must witness their understandings in writing, by deed or private agreement, or else in minutes drawn up in the court. The bill requires a formal proceeding, failing which the agreement would be null.

Once there is a formal written agreement, state courts must ‘refuse jurisdiction until the mediation process is fully implemented or the mediation convention is annulled’; ‘the court cannot automatically resume jurisdiction.’ The draft legislation provides for a period of three months for the closing of mediation. This period may be extended by the parties should the need arise. The legislation retains the principle of confidentiality, limited to the person of the mediator. It enables the appointment of a mediator, who may be a natural or legal person. It enables the mediator to call for the assistance of experts and third parties, but is vague on the possibility of caucusing privately with the concerned parties. The bill limits the mediation object to the search for a compromise and gives it the normal effects thereof.

4.1.2 Existing Mechanisms: Judicial Conciliation and Compromise

Moroccan law does currently provide for some mechanisms for the amicable settlement of disputes.

4.1.2.1 Judicial Conciliation

Moroccan law includes some statutes setting forth compulsory or optional procedures for conciliation, be they judicial or legal:

- the preliminary conciliation procedure set by the Dahir of May 24, 1955 relating to commercial leases;
- procedures in cases of divorce set forth in the Civil Procedure Code of September 18, 1974 and confirmed by the New Family Code of February 3, 2004 in section 81;
- the Labor Code in its Chapter VI relating to settlement of collective industrial disputes, and its section 41 concerning the individual industrial dispute; and
- the Code of Commerce of August 1, 1996 in its Chapter regarding business difficulties.

4.1.2.2 Compromise

In section 1098, the Moroccan Code of Obligations and Contracts reads:
Morocco

‘the compromise is a contract whereby the parties put an end to or foresee a dispute, each waiving its claims on the other, or the assignment of a value or right to the other.’

In some situations, the parties cannot put an end to their dispute and may not reach a mediation agreement unless they reciprocally waive their rights and claims. In such a case, the mediation agreement includes ‘reciprocal waiver’: this is what we call a compromise. In Morocco, the compromise is addressed by sections 1105, 1106 and 1112 of the Code of Obligations and Contracts, which prohibit the parties from rescinding the compromise, even if there is mutual consent, and provide that ‘the compromise cannot be contested due to error de jure, or due to wrong, except for fraud.’ The consequences of a compromise lead some legal experts to define the compromise as a specific contract having the effects of a judgment. Mediation processes do not, however, always lead to a compromise because mediation agreements do not always include reciprocal waiver.

4.2 Institutional Framework of Mediation

4.2.1 Institutions

Morocco currently counts a number of centers proposing commercial mediation for the settlement of commercial disputes, as listed below:

The cities of Agadir and Meknes:

- Creation of centers, low activity for several years.

The city of Casablanca:

- Arbitration Tribunal of the International Chamber of Commerce (‘ICC’);
- Mediation and Arbitration Center within the Chamber of Commerce, Industry and Services in Casablanca (‘CCISC’).

The city of Rabat:

- International Arbitration & Mediation Center (‘CIMAR’);
- Confédération Générale des Entreprises du Maroc (‘CGEM’);
- Creation of a commission on mediation and ADR.
Arbitration and Mediation in the Southern Mediterranean Countries

The Maritime Arbitration Chamber in Morocco:

- This Chamber appears not to have been in operation for several years.

Despite the variety of these centers, mediation practice remains virtually nonexistent. Therefore, we cannot confirm whether mediation is used in settling commercial disputes.

4.2.2 History, Local Uses, and Customs

In Morocco, the role of the conciliator can be compared to that of the Amin, the head of a traditional craft corporation elected by his peers and not by the parties in dispute. The Amin used to intervene to settle the dispute outside the authority of a judicial body.

Before the protectorate era, Moroccans used to avoid the Makhzen judge and instead submitted their disputes to Oulemas or Fkihs (Muslim jurists) whose knowledge came from the Chraa (Muslim Law). They were accredited due to their full knowledge and experience as regards professional uses and customs and they were of good morality. Also, representatives of tribes, appointed due to their ethical qualities and their knowledge, discussed issues relating to disputes between members of the community within the Jmaa (meeting) and proposed conciliation or arbitration as they saw fit.

The appearance of modern courts has influenced Moroccans to go to trial, abandoning these amicable modes of settlement for state justice. Society has gone ‘judicial’ and citizens prefer recourse to the judge who remains, for some, the only ‘legal’ and final means of settling a dispute. Amicable remedies are sometimes considered useless or dilatory.

5. **Concluding Observations**

5.1 Current Situation

While the use of arbitration is fairly extensive in Morocco, although mainly in the international arena, the use of mediation is not. With regard to the mediation situation, it can be noted that the bill relating to conventional mediation introduced in the Parliament indicates that the public authorities are genuinely interested in this amicable settlement mode. They appear willing to promote ADR with a view to unblocking and reducing the overloaded state courts, and some associations and chambers of commerce are also willing to promote ADR.

But, as noted above, the institutions that have offered ADR services have not met with success. In addition, there is a lack of statistics as to the success rates of attempted mediations or other mechanisms such as judicial conciliation and
compromise. Without these tools to understand interactions between the various proceedings, professional practices, and the operation of courts, it is difficult to analyze the current situation.

5.2 Obstacles Blocking Recourse to Commercial Mediation

Moroccan culture does not appear to be an obstacle to the use of mediation. The role of the mediator may be compared to that played historically by the Amin, and therefore, theoretically, the notion of a third party helping to resolve a dispute should not be an alien notion to the people of Morocco.

But Moroccan citizens do not trust this ‘private’ mode of settling disputes, and there is lack of trust in the independent third-party mediator, as opposed to a judge appointed by the State. People are wary of this ‘liberal justice,’ which might employ different language and which might not be confined to closed procedures that mean ‘security’ for some citizens.

Generally, this behavior and these perceptions arise from lack of knowledge about what mediation is. In particular, there is widespread lack of knowledge in such areas as:

− how the mediation process works;
− what a mediator is;
− the advantages and disadvantages of mediation;
− the moment, place, and grounds for recourse to this remedy;
− the rights, obligations, qualities, and competences of the mediator;
− the legal value of the final agreement of mediation; and
− the extent of the parties’ roles in settling the dispute.

This ignorance about mediation stems from a lack of information on the part of the citizenry, the public authorities, and professional institutions. Reasons for this lack of knowledge include:

− mediation is not included in school courses;
− few seminars are organized on mediation for and by law professionals who are members of chambers of commerce or bar associations, or who are presiding justices;
− there is a lack of publicity and promotion concerning the success of this process;
− there are currently no regulating statutes; and
− there is no training in this field.
5.3 Proposals to Promote Commercial Mediation in Morocco

Proposals for promoting commercial mediation in Morocco include:

- establishing a legal framework for conventional mediation (in progress);
- drafting a code which would:
  - enable defining rules for mediators, professionals, and public authorities,
  - enable mediators to be bound by a predetermined framework, and
  - enable the accreditation of professionals.
- disseminating information on mediation;
- developing a national roster of practicing mediators;
- developing an information guide enabling professionals to acquire full knowledge of mediation. This guide could be drafted jointly by the Ministry of Justice, professional associations, and professional chambers;
- spreading this guide via Internet, TV, and the press;
- encouraging actions to promote commercial mediation through conferences, booklets, books, and TV programs; and
- considering commercial mediation as a service offered to businesses.
Chapter 7
Syria

Nasim Ahmad Awad
Mohammad Anas Ghazi
Mazen Khaddour

1. INTRODUCTION

The Syrian Arab Republic is located in the Middle East, bordering the Mediterranean Sea. Syria is bounded by Turkey, Iraq, Lebanon, Jordan and Palestine. The population of Syria is approximately 19,300,000 souls (July 2007 estimate). The main ethnic group is Arab (90.3 percent); Kurds, Armenians and other ethnic groups make up the remaining 9.7 percent of the population. Ninety percent of the population is Muslim, and ten percent is Christian (in various denominations). The official language is Arabic; Kurdish, Armenian, Aramaic and Circassian are also spoken.

Syria has been an independent republic since 1946, and is controlled by a parliamentary legislative system. The country is divided into 14 provinces (governorates) and the capital is Damascus. The Bath party has been the leading party in Syria since 1963; the party is currently led by Bashar al-Assad, who became the President of Syria in 2000. The basic civil court system has three levels: courts of first instance, courts of appeal, and the Court of Cassation.

The Syrian economy grew by an estimated 2.9 percent in real terms in 2006, led by the petroleum and agricultural sectors. The Government of Syria has implemented modest economic reforms in the past few years, including cutting lending interest rates, opening private banks, consolidating some of the multiple exchange rates, and raising prices on some subsidized items, most notably, gasoline and cement.\(^1\)

---
\(^1\) The information in this introduction is culled from a variety of sources that provide basic information about countries around the world, including: The Middle East Information Network, Inc. at <www.mideastinfo.com>; The World Factbook at <www.cia.gov>; and <www.wikipedia.org>, all last visited on June 4, 2007.

G. De Palo & M.B. Trevor (eds), Arbitration and Mediation in the Southern Mediterranean Countries, 145–160.

2. COMMERCIAL DISPUTES

Syria, the cradle of civilization, has always been a center of commerce and trade. Damascene businesspersons have long been renowned as exceptional traders, and Syrians have traded with almost all the countries of the world. Syrian traders also have a longstanding reputation for skill and honor. They have historically considered themselves bound by their spoken word, an attitude that remains important today. The fact that Syria is famous, since ancient times, for domestic and international trade suggests the prominent role that trade has played in the economic life of the country.

There are no official statistics available about the share of domestic and international trade in the national economy, but it is certain that trade plays a large role because many Syrians work in trade. The bulk of this trade is conducted by small- and medium-sized companies; of the big companies the largest number are family companies, usually owned by one family or a limited group of families.

As the volume of domestic and international trade has grown, the impact of commercial disputes has emerged as a significant issue, as has the need to find suitable mechanisms to solve these disputes as quickly and inexpensively as possible. Trading parties do typically enter into agreements to regulate their relations, but such agreements do not normally stipulate the manner of resolving disputes.

Although the Syrian Commercial Code provides for all types of commercial activities, it should be noted that this Code was passed in 1949 and has not been changed to date. A new draft is being prepared and is likely to be enacted in the very near future. This new law will take into consideration all aspects of modern commercial transactions.

2.1 General Commercial Disputes

Under the current Syrian legal system, there is no separate, specialized court to judge commercial disputes. In certain cases, commercial disputes are referred exclusively to one or two of the first instance courts. In Damascus, the number of such lawsuits that are heard per year is about 1500 cases. But judges hearing commercial cases do not receive any commercial training; they are general jurisdiction judges who adjudicate all types of cases. Therefore, there are no general statistics or data on existing commercial disputes.

The government has realized that it should have specialized commercial courts to judge all disputes expeditiously. Under the current system, resolution of commercial disputes takes the same length of time as resolution of

---

2 Originally due to be passed in 2006, this Code may be enacted sometime in late 2007 or early 2008.
normal cases. This slow pace has a negative impact on the Syrian economy, and companies are frustrated when it comes to litigation in Syria.

2.2 Specific Types of Commercial Disputes

With regard to specific types of commercial disputes, techniques vary. Although the Commercial Code includes bankruptcy provisions, the courts hardly ever judge a bankruptcy case. Most of the cases judged at the court relate to financial disputes resulting from alleged breaches of contract or disputes about the terms of a contract. Because private banks and insurance companies have recently emerged, however, the number of bankruptcy cases is likely to grow.

Cases involving the public sector, especially those relating to procurement, are judged by the Administrative Court. These public contracts can be characterized as having a commercial nature due to such features and consequences as delay penalties, bid and performance bonds, failures to adequately perform the contracts, and increases in the price of material either by virtue of the State itself or in the international market.

Special labor courts are well established in Syria. These courts usually judge all disputes between employers and employees relating to remuneration and employment conditions. Disputes relating to dismissal are resolved by a specialized committee; the committee is composed of a judge, a representative of the employees, a representative of the employers, a representative from the Ministry of Labor and Social Affairs, and a representative of the governorate.

Resolution of investment disputes is governed by Syria's most important investment law, Law No. 8 of 2007. This decree introduced new methods of dispute settlement between investors themselves and between investors and public entities. The new forms of dispute settlement are:

i. by amicable settlement; or

ii. if an amicable settlement is not reached within three months from the date of one party sending a written request to the other party to settle the dispute amicably, the parties may choose from the following options:
   − recourse to arbitration;
   − recourse to Syrian courts;
   − recourse to the Arabic Investment Court established by the Unified Convention for the Investment of Arabic Capital in Arabic Countries of 1980; or
   − settlement of the dispute according to the terms of the convention signed between Syria and the country of the investor.

3 This is also the most prominent law encouraging investment.
3. ARBITRATION

There is no arbitration center in Syria, either domestic or international, to resolve disputes, and there are no special arbitration tribunals for certain types of trade. In certain cases the parties themselves may nominate an arbitrator to address their dispute. However, in most cases this process fails to resolve the dispute. The nominated arbitrator is often unaware of the legal requirements for the arbitration process, and any arbitration not concluded in accordance with the legal requirements may not be enforced. In such a case, the parties usually find themselves in deeper trouble and eventually have to resort to the court system.

Chambers of Commerce do sometimes provide arbitration services for their members, but these proceedings remain in the form of amicable settlements.

Despite these limitations, arbitration has started to play a growing role in dispute resolution whether the dispute is related to domestic contracts, international contracts, state relations, or international commercial relations. In Syria, individuals and businesspeople are increasingly in favor of referring their disputes to arbitration due to such advantages as the quick resolution of disputes. The avoidance of lengthy and complicated judicial procedures is regarded, despite the associated costs, as vital to the business community, especially in light of changing circumstances such as the fluctuation of currency exchange and the enactment of new laws that have a great impact on prices and the material value of objects.

Syria does not have a special law for arbitration; the rules and regulations applicable to arbitration are contained in the Code of Civil Procedure. The Code derives from Egyptian pleading law, which was in turn derived from French law, but the Syrian Code contains some modifications that do not change its essence.

Recourse to arbitration is not obligatory in Syria. It is done voluntarily on the agreement of the disputing parties. They may agree (and the same applies to state departments) to arbitrate in Syria or any international or regional arbitration center, and the same procedure governs the choice of applicable law.

According to Syrian law, if a dispute goes to court and the parties' contract stipulates that any dispute arising in connection with the agreement shall be finally settled by arbitration, and if so demanded by the defendants, the Syrian courts are obliged to halt the legal proceedings and refer the parties to arbitration. The request, however, must be made by the defendants when attending the first hearing and before any other defense is raised.

4 Passed by Decree No. 84 of 1952, Articles 506–534.
5 Articles 144–148, Code of Civil Procedure (‘CCP’).
3.1 Issues Not Subject to Arbitration

Arbitration is not allowed in questions relating to personal status, nationality, and questions that may not be subject to conciliation. These questions include:

- disputes related to custody arrangements, which a lawmaker designs for the benefit of the minor;
- disputes and matters related to citizenship;
- disputes related to the validity of marriage; and
- disputes related to criminal responsibility.

3.2 Arbitration Requirements

Syrian law stipulates that arbitration must be agreed to in writing, i.e., through an arbitration clause or arbitration agreement. An arbitration clause may stipulate that any dispute may be referred to arbitration, but an arbitration agreement must clearly describe the areas to be covered by arbitration.

It is imperative that an uneven number of arbitrators, usually three, be named to settle potential disputes. The arbitrator’s acceptance of the appointment must be in writing unless the arbitrator is appointed by the court.

3.2.1 Appointment of Arbitrators

The arbitrators may be appointed by the parties either before or after the dispute has arisen. The parties may nominate the arbitrators and determine their number in the initial agreement or in the arbitration agreement. The usual practice in Syria is that the arbitration agreement stipulates that each of the contracting parties nominate an arbitrator and that the nominated arbitrators in turn nominate the presiding arbitrator. However, in most cases, the nomination process reverts to the court of competent jurisdiction that would originally be concerned with hearing that dispute.

Such reversion occurs when the parties have reached no agreement on selection of arbitrators or if one or more of the selected arbitrators is unavailable due to refusal, resignation, detention by another matter, or dismissal. If the parties have not prepared a stipulation for such circumstances, then one of the parties will make a nomination request to the court. The parties are summoned to the court and asked to nominate their arbitrators. If a party refrains, the

---

6 Article 507, CCP. Conciliation refers to any out of court or in court settlement, with or without the presence of a third party to facilitate.
7 Article 506, CCP.
8 Article 511, CCP.
9 Article 513, CCP.
remaining party or parties will nominate an arbitrator on behalf of the refraining party and will nominate the chair arbitrator. The number of arbitrators then nominated by the court must be the same as that agreed upon by the disputing parties, and the judgment issued by the court nominating the arbitrators is not subject to any form of appeal.

There is also an exceptional way of appointing the arbitrators when contracts between governmental sector and private sector are involved. Under the Syrian law of procurement, the head of the arbitration panel must be a judge of the State Council, nominated by the head of the Council, or a judge nominated by the Minister of Justice, and the other members of the panel must be representative of each of the public departments and the contractor.

There are no available lists of qualified arbitrators in Syria, but there are generally known arbitrators who enjoy a good reputation in both the legal profession and the business community. Arbitrators are usually legal professionals, retired or working judges, or known businesspeople. In addition, foreign arbitrators may be nominated.

3.2.2 The Arbitration Process

The location of the arbitration is agreed upon between the parties or left to the later decision of the arbitrators. If the arbitrator is not exempted from the terms of the Code of Civil Procedure and other legal rules, the arbitrator is required to issue a resolution that conforms to that Code.

When the parties do not stipulate a time for the deliverance of the award, the arbitrators must deliver the award within three months of the date of their acceptance of the appointment. Otherwise, each party has the right to seek a court order to appoint new arbitrators.

All documents relating to the dispute must be submitted to the arbitrators 15 days before the date set for the final decision. If one party fails to submit its evidence, the arbitration is carried out on the basis of the other party’s documents alone.

3.2.3 The Award

The arbitral award must be reached by a unanimous or majority decision and it should be delivered in writing. The award must be accompanied by a copy of the arbitration agreement, a summary of the parties’ positions and their documents, the reasoning for the decision, the date and place of the decision’s issuance, and the signatures of the arbitrators.

The arbitral award is subject to appeal to the ordinary court of appeal unless:
Syria

i. the arbitrators were instructed to perform a conciliatory act, because the inclusion of such an instruction implies that the decision of the arbitrators is final and binding and may not be subject to appeal;
ii. the award was issued by the court of appeal; or
iii. both parties previously waived the right of appeal.

3.2.4 The Confidentiality Rule of Arbitration Proceedings

Arbitration proceedings are private and open only to the parties involved. Once the dispute is resolved, however, the situation changes. Upon enforcement of the award, discussed below, the arbitration is no longer confidential and outside parties may have access to information about the proceedings.

The same openness applies when arbitration awards are challenged. The sessions of the court hearing the challenge are open because the arbitration proceedings have moved from the private sphere to the court's jurisdiction.

3.2.5 Enforcement of Awards

The party seeking enforcement must apply to the court where the award was registered (the court originally having jurisdiction over the case). In addition to the arbitration award, the arbitration agreement must be submitted. The award, when final, is not enforceable without a decision made, in most instances, by the president of the court of first instance acting in the capacity of judge of expedited proceedings.

To seek enforcement of the award, one of the interested parties may bring either an arbitration award which is not subject to appeal, or an award which is subject to appeal but for which the time limit for appealing has expired, to the court where the award was registered. The other party must be notified. The president makes the enforcement decision after hearing the other party in a hearing held in compliance with the same procedure that applies for expedited proceedings.

The president of the court does not examine the merits of the case; the president's role is restricted to determining whether the award meets the requirements of the law and does not exceed the limits of the law. More specifically, the president of the court must verify whether the award contains the various matters required by law, namely: a summary of the claims and arguments of the parties, the reasons for the award, the decision, the date and place where the decision was made, and the signature of the arbitrators. The president of the court must also ascertain that the rights of the defense have been respected and that the award does not relate to nationality, personal status, or any matter that may not be subject to arbitration. In addition, the president of the court must ensure that the arbitrators have not exceeded either the scope of the mission stated in the agreement to arbitrate or the period fixed for the
Arbitration and Mediation in the Southern Mediterranean Countries

proceedings. Finally, the president must verify that the agreement to arbitrate is joined to the award.

Arbitration awards issued in foreign countries are enforced if they are final and executable in the country in which they were made, and they are subject to the same conditions that are required in that country for the enforcement of Syrian judgments. According to Syrian law, enforcement of foreign arbitral awards is subject to the same regulations applicable to foreign judgments.

3.2.6 Additional Enforcement Procedures and Appeal

Before the initiation of proceedings, a stamp duty must be paid on the amounts contained in the award – this is considered a part of the arbitration cost. The stamp duty is currently set at 0.4 percent of any amount figured in the award.\(^\text{10}\) The claimant may request a temporary seizure order against moveable or non-moveable assets of the defendant before notifying the defendant.\(^\text{11}\)

With regard to challenges to a domestic award enforcement decision, the decision of the expedited matters judge is subject to appeal only and not to cassation (appeal to the highest court) according to the procedures associated with expedited cases. The decision of the court of appeal is final and must be executed.

With regard to enforcement of foreign arbitral awards, under Article 528 of the Code of Civil Procedure, Syria has opted for the criteria of the place in which the arbitral award was made. Therefore, if an arbitration award is issued in Syria, then the laws applicable to domestic arbitration awards are applied. If the arbitral award is issued outside Syria, then the rules applicable to the enforcement of foreign judgments and awards are to be applied.

Therefore, in order to enforce a foreign arbitration award, a case should be initiated at the court of first instance. The party seeking enforcement has to submit the award and the agreement to arbitrate, both translated into Arabic and legalized from the country in which they were issued and from the Syrian Embassy in that country. The amount of time needed for enforcement will depend on the process itself because the decision of the court of first instance is subject to appeal and the decision of the court of appeal, unlike with domestic arbitration awards, is subject to a further appeal to the Court of Cassation.

Usually, all concerned parties follow all possible forms of appeal and recourse, especially if one of the parties is a state party.

\(^\text{10}\) Stamp Duty Law No. 44 of 2005. The stamp duty is a duty to be paid by law to the Ministry of Finance on all contracts, deeds, documents, companies, and judgments in order to obtain the stamp of the Ministry.

\(^\text{11}\) Article 312, CCP.
3.3 International Conventions

Syria is a member country of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the ‘New York Convention’). The accession was made when Syria was part of the United Arab Republic by decree No. 171, dated February 2, 1959, and no reservations were made when Syria ratified the treaty.

Article 3 of the New York Convention states that the enforcing country must not apply more onerous conditions to foreign awards than those stated in the Convention. But, despite being a party to the Convention, Syria contradicts Article 3 and applies more onerous conditions to foreign arbitration awards. As noted above, enforcement of these arbitration awards is subject to three judicial stages: first instance, appeal, and cassation. In contrast, as also described above, domestic arbitral awards are subject to only two stages of litigation and the enforcement case is considered and treated as an expedited matter. Therefore, it might be more difficult and take longer to enforce an arbitration award rendered outside Syria than an arbitration award rendered within Syria. As a consequence, if a party opts for foreign or international arbitration, this party might be wise to include the stipulation that, regardless of the seat of arbitration, the issuance of the award is to be made in Syria.

Syria is also a signatory to the Riyadh Arabic Treaty on Judicial Collaboration of 1983, according to Law No. 14 of 1983. The Treaty came into force in Syria on October 30, 1985. The Syrian government has also concluded a number of bilateral agreements with other countries. The agreements recognize the execution of arbitration awards issued in any of these countries.

Such conventions include:

- Article No. 9 of the Syrian/Romanian Convention of 1979;
- Article No. 18 of the Syrian/Algerian Convention of 1981; and
- Article No. 32 of the Syrian/Czech Convention.

All of these conventions provide that the execution of arbitral awards between the respective countries be pursuant to the stipulations of the related convention.

3.4 Arbitration Centers in Syria

To date, there are no arbitration centers or organizations in Syria that meet international standards for the settlement of commercial disputes. This lack leads individuals and corporations to form private arbitration tribunals on an ad hoc basis. These private fora are prevalent and accepted in Syria for dispute resolution.

There is also a National Committee of the International Chamber of Commerce (‘ICC’). Although this Committee does not play the role of an
arbitration center, it does provide certain assistance and required information with respect to any ICC arbitration.

3.5 Other Types of Arbitration

There are other types of arbitration enforced by the law for settling disputes arising between parties.

The Syrian Code of Civil Procedure is the main basis for dispute resolution. Successive regulations, however, have introduced several types of exceptional judiciary, each with special rules of dispute resolution. Some are partially dependent on the Code; others rely on a different authority. Some regulations consider arbitration a mandatory part of certain contracts and disputes; others leave this determination to the general rules.

The following are the most important laws and regulations related to arbitration that are applicable in Syria:

- Family law, generally derived from Islamic Sharia, requires referral to arbitration in the case of a lawsuit of separation for divorce of the married couple.
- Legislative decree No. 80, issued September 27, 1953, related to commercial contracts and sales of the Ministry of Defense applicable to police, made reference to law No. 5 DD of March 21, 1952, whose Article No. 25 in turn refers the resolution of all disputes related to delivery under these contracts to an arbitrational committee.
- Law No. 134 DD of September 4, 1958, related to agricultural work, refers to settling disputes by reconciliation and arbitration under Section 4, Chapter 1.
- Unified Labor Law No. 91 of 1959 stipulates under Article No. 188 and subsequent articles the mandatory referral to arbitration in cases of collective disputes between workers and employers.
- Law of State Council No. 55 of 1959 provides for the voluntary use of arbitration in commercial disputes in which a state department is one of the parties to a contract with natural persons or legal entities, local or foreign, for supplying, construction or other works.
- Legislative decree No. 288 of 1969, related to the contracting system of the administrative sector departments, states the right of the administration to agree to arbitration in accordance with the rules of the administrative judiciary.
- Property Seizure Law No. 20 of 1974, whose Article No. 23 refers to the use of arbitration to estimate the value of lands seized in case of dispute about the amount of compensation estimated by the seizer.
As demonstrated by this selection of laws and regulations related to arbitration in Syria and the fields of activity covered by these laws, the use of arbitration for dispute resolution in Syria is extensive. A number of different aspects of the citizens' lives, from family relationships to relationships with employers to commercial relationships, may involve arbitration.

3.6 Cost of Arbitration

Because of the absence of arbitration centers in Syria, there is no fixed cost for arbitration. The cost is usually determined by the appointed arbitrators. In general, those costs are much higher than those for referring the dispute to the jurisdiction of the court. As compared to some of the international centers, however, the costs are similar. For example, costs at the Dubai International Arbitration Center are almost the same as in Syria.

Arbitration fees are usually set at 10 percent of the approximate value of the dispute, not exceeding approximately USD 40,000, whatever the value of the dispute might be. The cost of enforcing the award, whether domestic or foreign, is about 0.5 percent of the value of the dispute.

3.7 Number of Arbitrations

The number of arbitration proceedings heard before the Civil Court of First Instance of Damascus is about 35 annually, and the number is the same for requests for enforcement of awards.

The number of arbitration proceedings heard before the State Council, in which a state department is one of the parties, is about 100 annually. There are no requests for enforcement of awards for these proceedings because all of these arbitration awards are challenged by the interested state department before the Supreme Administrative Causes Court. Then the department concerned directly executes the award, without need of further judicial proceedings.

3.8 Training

In Syria, there is no training or qualification of persons to become arbitrators as there are no arbitration centers. It is possible to appoint a judge as an arbitrator or as head of an arbitration committee. As mentioned above, in disputes where one of the disputing parties is a state department or one of the establishments of the administrative sector, the law requires that the arbitration committee be headed by a consultant of the State Council nominated by the head of the State Council, or a judge nominated by the Minister of Justice.

There are no graduate or post-graduate university programs on dispute resolution or arbitration. The only formal education in this area is for law
Arbitration and Mediation in the Southern Mediterranean Countries

students, who study matters relating to arbitration that are addressed in the Code of Civil Procedure.

There is no promotion in Syria of the idea of settling disputes through arbitration; usually, disputes are resolved through court proceedings. However, as noted above, there is a new tendency in the business community to avoid settling disputes by reference to the usual procedures. More commercial contracts, even those with state departments and establishments of the administrative sector as parties, are starting to include an article stipulating recourse to arbitration in case of any dispute related to the contract.

4. MEDIATION AND OTHER ADR MECHANISMS

4.1 Traditional Practices

Mediation, in general, is an approach to dispute resolution that may not be perceived or separated from the culture and identity of the country where it is used and is highly dependent on the psychological attitude of the country's residents. Syria is a country whose culture has historically stressed the high value of collective responsibility and commitment to the group.

The conciliation, or Sulha, is the traditional Arab way of resolving conflict and disputes. It works because of the collective responsibility of the extended family. This responsibility and commitment to preserve the honor and reputation of the family prevents all members of the family from breaking the customs and laws of the Sulha.

The Sulha is usually used in disputes addressing such issues as family honor, killing and other physical harm, and monetary disputes. The Sulha is often undertaken by a prominent figure in the family or community who acts as a mediator. The outcome of the mediation process is often voluntarily implemented by the concerned parties and the process is considered an effective and efficient way of resolving disputes.

Nowadays, because of development and diversification of communities, cases where individual goals conflict with collective ones are happening with increasing frequency. Sub-cultural differences in religion, organizations, and gender role perceptions, and further differences within various groups are increasing and have negatively affected the binding nature of the Sulha.

Traditional mediation is a process that manifests itself in almost all aspects of Syrian society due to its basis in custom and practice. However, such mediation remains an informal process which is not codified and has no binding nature. Also, traditional mediation is relatively confined to the informal societal sector and thus is not directly involved in commercial dispute resolution.
Syria

4.2 Degree of Awareness of Mediation Generally and in the Legal Community

Syria does not have formal ADR or mediation service providers. Neither mediation nor other ADR methods are yet perceived as useful methods of dispute resolution by the legal or business communities.

The degree of awareness of ADR is, in fact, relatively low within the legal profession. Lawyers may, in certain cases, try to contact the other party to discuss the possibility of settling their dispute. However, and due to the fact that the rather slow character of dispute settlement in the court system effectively allows deferral of any unfavorable judgment, defendants are usually unwilling to reach a settlement. Lawyers do not typically bring in a third party to help facilitate settlement.

4.3 Amicable Mediation in the Business Community

In the business community, businesspeople may refer their disputes to a prominent member of the business community or to a businessperson they both trust. This process is sometimes used as the last step before recourse to court. In addition, the Syrian governorates usually have Chambers of Commerce and Industry, and the Board of these Chambers (usually comprising 12 businesspersons elected for a four-year period) may provide certain mediation and conciliation services to try to solve the disputes between their members.

It is understood that commerce is based on trust. Therefore, usually those businesspeople who have referred their dispute to a member of the community will try to safeguard their reputations within the community by accepting and respecting any resolution reached through mediation.

4.4 Mediation and ADR within the Public Sector

As for the public sector, although various laws provide for methods of dispute resolution or settlement and, in certain cases, mandatory arbitration, public officials are often reluctant to accept any form of informal resolution of a dispute. Such dispute resolution is avoided by public officials because of the fear of being accused of having any form of interest in such dispute settlement. As a result, public officials would often rather subject themselves to a binding court judgment or a binding arbitration award, even one that may carry harsh consequences for the public sector.

Overall, in various sectors, the parties in a dispute may sometimes request the assistance of a jointly approved third party to resolve their dispute. In other cases, a third party may intervene between the parties in dispute and try to act as a mediator. This person usually exercises moral pressure on the parties. But a third party asked to serve as a mediator may end up in an embarrassing
situation because of the fear of creating further unwanted differences between the parties or alienating a party.

4.5  Regulating ADR

Because mediation and other ADR methods stem from cultural aspects of Syrian society, neither the government, academia, nor the Syrian Bar Association has attempted to regulate or elaborate on these practices. In 1995, the Faculty of Law at Damascus University did, however, invite the French Association of Henry Capitan to Syria to give lectures on ADR and mediation.

As a consequence of the lack of centers, formal training, and university programs, there is an absence of well-trained and qualified mediators. Those who undertake the task of mediation are therefore acceptable by virtue of their position in society, their life experience, their knowledge, and the respect shown towards them by virtue of their personality. It is understandable that the parties to a conflict usually turn to a person mutually known and respected, who is considered neutral by both parties and who usually has certain authority or the ability to exert moral pressure.

4.6  ADR in Certain Areas of Law

Certain laws\textsuperscript{12} do refer in their terms to mediation in particular cases; however, such mediation is sometimes not practiced or has no binding nature. For example, Article 129 of the Code of Civil Procedure provides that conciliation court judges must try to reconcile the parties before starting to judge the dispute. This endeavor, in fact, does not really take place and judges tend to oversee cases without even meeting the parties, probably due to the increasing volume of cases.

Furthermore, labor laws in Syria provide for the establishment of a committee that is entrusted with dispute settlement in cases of dismissal of employees.\textsuperscript{13} This committee usually meets with the parties in order to arrive at an acceptable solution to the problem. The recommendation of the committee is usually made during the meeting with the parties and is often reflected in a report written during that same meeting. Such a report, however, is not binding on the parties.

A divorce case may also involve mediation.\textsuperscript{14} Typically, family disputes reach a court only after all forms of family mediation have taken place and failed to resolve the matter. When a divorce case is initiated, the judge usually grants the parties a one-month time period for reconciliation. If by the

\begin{thebibliography}{9}
\bibitem{12} Syrian Civil Code and Law No. 49 of 1962 regarding dismissal of employees.
\bibitem{13} Law No. 49 of 1962 regarding dismissal of employees.
\bibitem{14} Legislative Decree No. 59 of 1953 – Family Law.
\end{thebibliography}
end of this period reconciliation has not been achieved, the judge orders the
parties to mediate. But in most cases, the parties claim that there is no relative
who can undertake such action. Thereafter, the judge usually appoints a person
to act as a mediator for the parties. The court typically chooses this mediator
from a list of lawyers with experience in this area. The mediator meets
individually with each party and then with both of them. If unable to achieve a
settlement, the mediator will write a report to the court identifying the problem
between the parties and the percentage of fault by each party. This report,
although not binding on the judge, is usually used by the court to determine the
compensation to be paid to the wife out of the legal entitlements.

4.7 Conciliation in the Code of Civil Procedure

The Syrian Code of Civil Procedure includes some articles on conciliation in
general.15 The Code provides that conciliation is an agreement by which the
parties solve their dispute or avoid a potential dispute, and that such conciliation
is reached by each party giving certain concessions to the other. The law
requires that the parties to conciliation must be those who have the legal
capacity to undertake it. Conciliation is not permitted in matters relating to
personal status or public policy. The conciliation must be reduced to writing or
be in an official document. Such conciliation is normally binding on the parties
and may be enforced before the courts and executed if approved in the outcome
of the case and by virtue of a final judgment. Therefore, it can be concluded that
the parties to a mutual conciliation may voluntarily execute its obligation under
the conciliation agreement, but may refrain from implementing such conciliation
until it becomes binding by virtue of a court order.

5. CONCLUDING OBSERVATIONS

Syria needs to work on improving the use of arbitration and other ADR
mechanisms. Such action will require enactment of certain specified regulations
and legislation, entry into various international arbitration treaties, simplification
of the processes associated with such mechanisms, recognition of the outcome
of these mechanisms, and, finally, establishment of specialized centers to
undertake and oversee them. To accomplish these goals, members of different
groups in Syria must be made aware of the importance of such processes, and
the whole society must be encouraged to take advantage of the services provided
by these centers once they are established.

15 Legislative Decree No. 84 of 1949 – Civil Code.
Arbitration and Mediation in the Southern Mediterranean Countries

The legislative process in Syria is rather slow, and to date it seems that no real steps have been undertaken to introduce legislation covering ADR processes.

Syria has recently enacted a number of new pieces of legislation aimed at opening up the country and attracting foreign investment. These regulations have had a positive impact on the economy. However, Syria also needs to facilitate the utilization of ADR mechanisms, as it has become apparent that recourse to traditional channels of justice can be a lengthy and unpredictable process. Finally, Syria must present itself as a country where foreign awards are easily and rapidly implemented.
Chapter 8
Tunisia

Sara Carmeli
Sophia Feriani

1. INTRODUCTION

Tunisia is located on the North African coast of the Mediterranean Sea. It is bordered on the west by Algeria and by Libya on the South. The Sahara Desert lies in the southern part. The capital and largest city of Tunisia is Tunis, with 1.7 million inhabitants. Arabic is the official language, and while some businesspeople speak English, Italian or German, French is usually the language of commerce.

Islam is the State religion and almost all inhabitants are Muslims (98 percent), with small numbers of Roman Catholics, Jews, Greek Orthodox, and Protestants (1 percent). Tunisia has a population of 10,175,014 according to a 2006 estimate, most of whom live in the coastal region; the arid central and southern parts contain less than 30 percent of the population.¹

A French protectorate from 1881, Tunisia achieved independence and sovereignty on March 20, 1956. The constituent assembly declared Tunisia a Republic on July 25, 1957, and the Constitution was adopted on June 1, 1959 and amended in 1988.² The legal system is based on the French civil law system and Islamic law. According to the principle of separation of powers, the executive power consists of the Chief of State, the Head of the Government (Prime Minister), and the Cabinet (the Council of Ministers appointed by the President). The legislative power is handled by the Parliament (the Chamber of Deputies, and the Chamber of Advisors, inaugurated in August 2005). Public courts have the judicial power (courts of first instance, courts of appeal, and the Court of Cassation).

In 1987, President Zine El Abidine brought Tunisia into a new era, the ‘Change’,³ focused on certain main objectives: democratic reform; promotion of human rights; sustained economic growth; integration of Tunisia into the world

¹ Data about location, language, religion, and population are taken from: <www.arab.de/arabinfo/tunisia.htm>, last visited on June 4, 2007.
² Historic profiles of Tunisia are published on: <www.infoplease.com/ipa/A0108050.html>, last visited on June 4, 2007.

G. De Palo & M.B. Trevor (eds), Arbitration and Mediation in the Southern Mediterranean Countries, 161–182.

Arbitration and Mediation in the Southern Mediterranean Countries

economy; improvement of the living standards of all Tunisians; promotion of human resources through education, training, and improved living conditions; a new status of women as real partners with men; a foreign policy directed toward integrating Tunisia in the Maghreb (Northwestern Africa); inter-Arab consensus-building and cooperation; and Euro-Mediterranean co-development. Tunisia has actively contributed to the search for a just and lasting peace in the Middle East and demonstrated a strong commitment to seeking negotiated solutions to the conflicts shaking Africa.

Tunisia is committed to a free trade regime and export-led growth, underlined by its accession to the World Trade Organization in 1995. In the same year, Tunisia became the first country south of the Mediterranean to sign an association and free-trade agreement with the European Union. The Association Agreement with the European Union envisages the progressive elimination of trade barriers to non-agricultural goods, services, and investment. This agreement will come into full effect in 2008. The European Union has been providing assistance in upgrading the economy, particularly in infrastructure and the private sector.

After a period where Tunisia followed a socialist economic model with close state control of the economy, Tunisian authorities are now increasing private sector involvement in the economy, particularly in telecoms and banking. The Tunisian economy has enjoyed investment-grade ratings from international institutions and has been keen to attract foreign direct investment with tax and employment reforms. Major foreign investors are France (24 percent), Italy (23 percent), Spain (8.5 percent), Germany (8.5 percent), Great Britain (5.5 percent) and the United States of America (4.5 percent). In order to promote socio-economic progress through the dissemination of learning, a number of measures have been undertaken, including a comprehensive reform of the educational system based on free public education at all levels of learning and compulsory schooling until the age of 16.

Since 1987, various steps have been taken to consolidate the new status of women, who today enjoy full rights and assume a major role in progress development, thanks to their involvement in the various sectors of work, production, investment, and politics. In Tunisia today there are seven women in the Cabinet, and they represent 22.7 percent of the Chamber of Deputies and 15 percent of the Chamber of Advisors, demonstrating the enormous effort made by the Tunisian government to improve women’s participation in social life.

4 For a deep analysis of the country’s economic profile see the report on ‘Tunisia’ drafted by Intercontinental Exchange (ICE) in collaboration with the Italian Ministry of Foreign Affairs in 2006. See also the report by the Tunisian American Chamber of Commerce on: <www.tacc.org.tn/en/tunisia_eco.asp>, last visited on June 4, 2007.
2. **ARBITRATION**

Until relatively recently, the ADR movement did not play an important role in Tunisia. From among the private alternatives to public justice, the legislature has paid attention only to arbitration; mediation, discussed briefly below, is not well known or practiced in Tunisia. Arbitration, however, is now widely practiced within the business world.

### 2.1 The Arbitration Code of 1993

The Tunisian legislature introduced a comprehensive reform of the arbitration system in 1993, fifteen years after the very first projects concerning the reform of arbitration procedures. The Arbitration Code, Law No. 93-42 of April 26, 1993 ("Code"), superseded prior legislation on the subject contained in Articles 258 to 284 of the Civil and Commercial Code. The new Code was largely inspired by the UNCITRAL Model Law of 1985 on International Commercial Arbitration, on the one hand, and the Swiss and Belgian legislative systems on the other.

This reform arose within the larger movement of the modernization of Tunisian legal proceedings related to the economy. The aim of the movement is to disseminate arbitration culture and to consolidate cooperation and partnerships with national and international institutions. Therefore, part of the 1993 Code was the establishment of a Center for Judicial and Legal Research (Centre d'Études Juridiques et Judiciaires), with the goals of improving national legislation in light of economic and social development and raising the Tunisian legal system to the higher standards existing in other states. The latter goal is partially hindered, however, by the fact that only the Arab version of the Arbitration Code is considered the official one in the country.

### 2.2 Overview of the Code

The Code is divided into three chapters. Chapter One (Articles 1 to 15) establishes the common principles that apply to arbitration. Domestic arbitration is covered in Chapter 2, Articles 16 to 46, with Article 13 distinguishing between *ad hoc* and institutional arbitration. International arbitration procedures are covered in Chapter 3, Articles 47 to 82.

Arbitration is defined in Article 1 as

>a private procedure to resolve certain categories of disputes by an arbitration tribunal empowered by the parties to a dispute to solve their controversy through the application of the arbitration agreement."

Article 2 provides that the arbitration agreement is the
The arbitration clause is also defined in Article 3 as:

‘The obligation of the parties to a contract to submit all disputes that may arise in connection with the agreement to arbitrate.’

The arbitration agreement is the agreement by which the parties to a dispute already in existence decide to submit the controversy to arbitration.

An arbitration agreement must be in writing (Article 6), as had already been required by the earlier Civil and Commercial Procedural Code, and it can be concluded by the parties during a legal proceeding pending before the courts (Article 4). All disputes, except those listed in Article 7 and discussed below, may be submitted to the arbitration tribunal, which may be made up of one or more arbitrators (Article 5).

This chapter will focus, first, on the laws set up by the reform of 1993 concerning domestic and international arbitration; second, on the international conventions signed by Tunisia; and third, on the centers for arbitration existing in Tunisia. Finally, the chapter will touch briefly on mediation and other ADR methods.

2.3 Domestic Arbitration

2.3.1 The Arbitration Agreement

2.3.1.1 Formal Conditions of Validity

As noted, an arbitration agreement must be in writing. But the details of this requirement demonstrate the influence of UNICTRAL in its development. Any kind of writing is valid, not only a formal agreement, but also an exchange of correspondence between parties, and even a request made in a summons by one of the parties and not contested by the counterpart is considered to be an arbitration agreement. The arbitration agreement may also be contained in the general conditions of a sale or in standard commercial agreements drafted by companies.

In practice, the formal writing requirement does not seem to be a fundamental requisite of validity for the arbitral agreement. Indeed, the law does not establish that the arbitral agreement is null and void if not in writing. But proof of the existence of the arbitration agreement will be fundamental if a party wishes to challenge an arbitration award in front of a court, or if an arbitration tribunal has to judge about a plea to the court’s jurisdiction.
Tunisia

2.3.1.2 Substantial Conditions of Validity

The arbitration agreement may refer either to civil or commercial matters (Article 16). Some exceptions are nevertheless foreseen by Article 7, which lists a number of disputes that cannot be solved by arbitration:

- matters related to public order;
- disputes related to nationality;
- controversies concerning personal status of persons unless monetary aspects are involved;
- matters that cannot be the object of a transaction; and
- disputes involving the State and certain other government entities, with the exception of disputes deriving from international relationships, or economic, financial, or commercial order, all of which are regulated by Chapter 3 of the Code.

The arbitration agreement is null and void if it does not specify the nature of the dispute and the names of the arbitrators, or does not indicate such information in a way that avoids possible misunderstandings (Article 17). It can be duly signed only by persons whose civil rights have not been restricted (Article 10).

If a dispute pending before an arbitration tribunal is brought before a public court, the latter must declare its incompetence to resolve the controversy (Article 19). This provision is enforced by the Tunisian courts. In 1995, the Supreme Civil Court (Court of Cassation) quashed a judgment rendered by a court of appeal which had declared its competence to resolve a dispute even though the parties had signed an arbitration agreement.

It is important to note that there is some difference between the official version of the Arbitration Code (the Arabic version) and the unofficial version (the French one) when it comes to the rules governing the validity of the arbitration agreement.

2.3.2 The Arbitrator

2.3.2.1 Conditions Required for Appointment as an Arbitrator

Only an individual person who fully enjoys civil rights may be appointed as an arbitrator. If the parties have chosen a legal entity rather than an individual, the entity’s power is limited to appointing the members of the arbitration court.

Impartiality and independence are the major qualities arbitrators must possess to accept an appointment. By its judgment No. 5139 of February 20, 2001, the Court of Cassation has decided that arbitrators have a specific obligation to inform parties if they have doubts about their impartiality and independence. An arbitrator may also refuse the appointment if unable to
Arbitration and Mediation in the Southern Mediterranean Countries

properly carry out the arbitration procedure, and the appointment can be challenged by the parties.

Once duly informed of the identity of the arbitrators, parties must manifest their express consent to the appointment (Article 22). Once having accepted the appointment, the arbitrator may not decide to give up the task undertaken and is responsible for all damages in case of resignation.

Judges and public functionaries may be appointed as arbitrators (Article 10), subject to prior authorization by the entity with which they are affiliated. But, despite the express requirement of Article 10 and initial court of appeals decisions finding the authorization to be an essential condition of the validity of the appointment, recent court of appeals decisions have determined that even if such authorization was never obtained, the arbitration is still considered valid.

2.3.2.2 Composition of the Arbitration Tribunal

The arbitration tribunal may be composed of one or more arbitrators (Article 5), but their number must in any event be uneven (Article 18). The president of the tribunal is designated by the parties themselves or by the other arbitrators. If the parties or the arbitrators are unable to come to an agreement on the president, the president of the appropriate court of first instance will appoint one. The appointment order cannot be appealed.

If the parties opt for institutional arbitration, the rules of the institution will regulate the procedure for the formation of the arbitration tribunal.

2.3.2.3 Revocation of and Challenge to an Arbitrator

Although the competent court of first instance has the power to decide upon a revocation of or challenge to an arbitrator, Tunisian law has established different procedures for the two situations.

Revocation of an arbitrator may occur when the arbitrator cannot fulfill the mission due to legal or other reasons – there is no comprehensive list. Revocation may be declared absent a public court proceeding only if there is unanimous consent of the parties; otherwise, the more diligent party may ask the competent judge to pronounce the revocation of the arbitrator, and the decision cannot be appealed. The judge has three months to declare the revocation of an arbitrator.

Conversely, if the parties have any doubt about the impartiality or independence of an arbitrator, or if the arbitrator lacks the skills required by the arbitration agreement, the arbitrator may be challenged. Such a challenge is limited to the same conditions as those applied for a challenge to a judge. The challenge must be filed with the court of first instance for the location of the arbitration procedure and will be examined according to the civil and commercial procedural rules.
Tunisia

The arbitration process is suspended until a decision on revocation or challenge of the arbitrator has been reached.

2.3.3 The Arbitration Tribunal

2.3.3.1 The Procedure

The Tunisian legislation recognizes complete freedom regarding the arbitral procedure. Public justice will intervene only in exceptional cases in order to make the whole procedure easier and quicker. If parties have decided on ad hoc arbitration, the procedure will be set by the arbitrators themselves, who must respect the fundamental principles of the civil and commercial rules with specific reference to the right to defense (Article 13). If institutional arbitration has been chosen, then the arbitrators are obliged to follow the rules of the center to which the dispute has been submitted. For instance, the Tunis Center for Conciliation and Arbitration, created in June 1996 and discussed below, has its own rules that apply to all disputes submitted to the Center.

The arbitration procedure must be quick: parties are free to decide a deadline by which the tribunal must render the arbitration award. If no deadline has been designated, the award must be rendered at the latest within six months from the date of acceptance of the appointment by the arbitration tribunal (Article 24).

While the legislature has regulated the timing of the procedure, it has neglected to regulate the cost of the procedure. The lack of rules on the remuneration of arbitrators and the wide demand for arbitration have favored arbitrators whose fees are quite high.

Parties to the dispute may challenge the jurisdiction of the arbitration tribunal, which has the power to decide with an order that cannot be appealed by the parties (Article 26). Parties may also raise a demurrer, attacking the validity of the action itself, which is beyond the power of the arbitration tribunal to decide (Article 27). In case of a demurrer, the arbitration tribunal will suspend the procedure and wait for the decision rendered by the competent court. Only the final arbitration award may actually be appealed, and only if parties have so decided expressly in the arbitration agreement (Article 32, part 2).

In order to verify the allegations made by the parties, the arbitration tribunal has been empowered by the legislature to use all means 'to show the truth,' such as the use of court-appointed experts, witnesses, and discovery of documents. The arbitration tribunal also has the power to seek an order from a court to compel all such means of proof (Article 28).
2.3.1.2 The Law Applicable to the Arbitration Procedure

When deciding the dispute, the arbitration tribunal generally has to apply rules of law. The law applicable to domestic arbitration encompasses the whole legislative system in effect at the time of the procedure. Application of the rule of law is not compulsory, however, if the parties have appointed the arbitrators as ‘amicable compositeurs’ of the dispute. In the latter case, the arbitration tribunal may decide the dispute according to principles of fairness and reasonableness (Article 14).

2.3.1.3 Termination of the Arbitration Tribunal

According to Article 20 of the Code, the arbitration tribunal may terminate its functions because of death, impediment, refusal of, discharge of, or challenge to one or more arbitrators. The arbitration tribunal may also dissolve if the deadline for the arbitration award has expired. Nevertheless, the parties may decide to continue the arbitration by removing these causes of impediment.

If the parties reach an agreement during the arbitration, the arbitration tribunal decides upon the termination of the proceedings (Article 15). Upon request of the parties, and if the arbitration tribunal agrees, their agreement may be reproduced in the arbitration award rendered according to the following rules.

2.3.4 The Arbitration Award

Article 30 of the Code establishes the conditions of validity for the arbitration award. The arbitration tribunal may determine the award once it has deliberated and reached a majority. The arbitration award must comply with Article 123 of the Civil Procedure Code unless the arbitrators have been appointed as amicable compositeurs, in which case, as noted above, principles of fairness govern the award.

The arbitration award must be signed by the majority of arbitrators, although the signature of the award by the president is sufficient if the signatures of the majority cannot be obtained.

The arbitration award has the value of a final judgment.

2.3.4.1 Enforcement of the Arbitration Award

Article 33 describes the enforcement of an arbitration award. The arbitration tribunal will transmit a copy of the arbitration award to the parties within 15 days of the date of deliberation. Within the same deadline, the arbitration tribunal must deposit the original arbitration award and the arbitration agreement at the clerk’s office of the court of competent jurisdiction. The party having a
direct interest in the process will notify its counterpart about the award so that the deadline for appeal will start running.

The parties may execute the arbitration award freely. If this is not the case, enforcement of the award will be ordered by the president of the competent court of first instance or by the president of the competent district court through the exequatur. A party wishing to obtain the exequatur must submit a motion to the competent court, which will recognize the award if no impediment has been discovered.

2.3.4.2 Modifications to the Original Award

The arbitration award may need a modification, either due to a formal problem or due to its content. Formal modification of the award, to correct calculation errors or mistakes in redaction, may be done directly by the arbitration tribunal (Article 34) or upon a specific motion brought by one of the parties within 20 days of the service of the arbitration award.

If the content of the arbitration award is not clear enough, the arbitration tribunal, upon a motion by a party to the dispute, may furnish a specific interpretation of one or more aspects of the award. In addition, if a ground for the decision is omitted from the original arbitration award and a party so requests, the award may be supplemented by additional language.

All modifications introduced to the initial award are considered an integral part of it. But there is no deadline for the modification of an award. This lack is contrary to the fundamental intent of the 1993 reform to make arbitration a fast alternative system of dispute resolution.

2.3.5 The Right to Challenge the Arbitration Award

2.3.5.1 The Appeal of the Arbitration Award

Article 39 of the Code regulates the appeal of arbitration awards. The availability of appeal is limited: awards rendered by arbitrators acting as amicale composites are not appealable, and other arbitration awards cannot be appealed unless so agreed by the parties in the arbitration agreement. The Tunisian courts have affirmed this rule (Court of Appeal, Sentence No. 90, June 5, 2001).

If an arbitration award may be appealed, the petition is brought before the competent court of appeal, which applies the rules of civil procedure. The court of appeal may uphold the arbitration award of the arbitration tribunal, in which case it orders the exequatur; or it may set aside the award and decide the case judicially. Arbitration awards that have been appealed to a court of appeal may not be further appealed (Article 40).
2.3.5.2 Reversal of the Arbitration Award

The competent court of appeal may reverse an arbitration award only if one of the following conditions, established by law in Article 42 of the Code, is fulfilled:

- the award was rendered without a prior arbitration agreement or outside of any arbitration agreement;
- the award was rendered on the basis of an arbitration agreement which was null and void, or beyond the deadlines established by the agreement or by law;
- the award resolved matters not requested by the parties;
- the award violates public order principles;
- the award is irregularly composed; or
- fundamental civil procedural rules were not respected.

A petition to the court of appeal for the reversal of the arbitration award must be filed within 30 days from the notification of the award. Thus, the legislature has established that, once this time expires, no petition may be filed. Contrary to what has been established by legislation, however, in Sentence No. 54671 of June 11, 1998, the Court of Cassation ruled that a petition for the reversal of an arbitration award may be filed even if the deadline has expired.

Once the petition is filed, the court of appeal has three options: (1) quash the arbitration award; (2) suspend the decision if the subject matter of the award is related to pending affairs; or (3) dismiss the petition and order the *exequatur* of the arbitration award.

When addressing the petition for the reversal of the arbitration award, the court of appeal must follow the rules established for any kind of appeal before that court. Ordinarily, the court verifies that the formal aspects of the arbitration procedure, such as the composition of the arbitration tribunal and the rules to be followed during arbitration, were done correctly. If parties want, however, the appellate court may also address the substance of the dispute itself (Article 44).

If the court of appeal dismisses the petition, the sentence of dismissal will also function to order the *exequatur* of the arbitration award. But the petition to the court of appeal does not stay the arbitration award (Article 43). This means that two legal actions may be filed: one for obtaining the *exequatur* (Article 33), and one for the reversal of the arbitration award (Articles 42, 43, and 44).

Different scenarios may thus play out:

- if the *exequatur* of the arbitration award is not ordered by the competent judge and an appeal is possible (Article 33), enforcement of...
the award is possible only after the court of appeal has dismissed the petition for reversal of the arbitration award;  
− if the competent judge orders the *exequatur*, this order may not be appealed, but the award may be dismissed; or  
− if enforcement of the arbitration award is ordered either by the judge of the *exequatur* (President of the competent jurisdiction) or by the court of appeal, a petition to the Highest Civil Court is then admitted, while petition of arbitration award to the Highest Court is forbidden (Article 45).

2.4 International Arbitration

2.4.1 Definition of International Arbitration

An arbitration procedure is considered international, and is therefore resolved under the applicable provisions of the Code, if the place of arbitration is in the Territory of Tunisia (Article 47) and if one of the following conditions established by Article 48 is fulfilled:

i. the parties to the arbitration agreement, at the moment of its signature, have their places of business in two different countries;

ii. one of the following places is outside of the country where the parties have their place of business:
   a. the place of arbitration, if agreed to in the arbitration agreement or if it can be determined according to the arbitration agreement; or
   b. any place where contractual obligations have to be carried out or the place where the dispute has the strongest link;

iii. the parties have agreed in the arbitration agreement that the object of the agreement itself has links with more than one country; or

iv. in general, the arbitration deals with international commerce.

The party’s place of business is determined, if necessary, by considering the place that has the closer link with the place of the arbitration. If the party has no place of business, the party’s residence is taken into consideration.

2.4.2 International Arbitration Agreement

The formal requirements for an international arbitration agreement are governed by general principles established in Article 6 of the Code. The agreement must be in writing. Any document signed by the parties where reference to an arbitration agreement is made, however, constitutes a valid arbitration agreement. An agreement for international arbitration is not subject to the strict
rule that requires a domestic arbitration agreement to specify the nature of the dispute and the name of the arbitrator(s) or be null and void (Article 17).

If the arbitration agreement is a provision of a contract (then referred to as a compromissory clause), the clause is severable. In other words, if the contract is declared null and void by a court, the court order does not affect the validity of the compromissory clause as a method to solve disputes related to the contract (Article 61).

The role of the courts with regard to international arbitration agreements is quite limited and is governed by Articles 52, 53, and 54. If a dispute that is the object of an arbitration agreement is brought before a court, the court must declare the controversy out of its jurisdiction unless it determines that the arbitration agreement is null and void or cannot be enforced. Absent such a determination, the parties are limited to an arbitration procedure to settle the dispute.

Furthermore, if a dispute is pending before an arbitration tribunal pursuant to an arbitration agreement, the parties cannot submit the same dispute to a court, which has no power whatsoever to decide the pending controversy (Article 53, to be considered in conjunction with Article 19). Nevertheless, during an arbitration proceeding pursuant to an arbitration agreement, a party to a dispute may ask the tribunal to order 'precautionary measures.' If the tribunal orders such measures and a party fails to comply, the tribunal may seek the assistance of the first president of the competent court of appeal (Article 54). The rules do not specify what precautionary measures may be taken beyond that they be 'necessary.'

2.4.3 Rules Concerning the Arbitrator

2.4.3.1 The Appointment

Parties are free to decide the number of arbitrators as long as that number is uneven (Article 55.1). If the number is not determined in the agreement, then the tribunal should be made up of three arbitrators (Article 55.2). Arbitrators may be of any nationality (Article 56.1).

Parties are also free to decide the appointment procedure (Article 56.2). But if one party does not follow the agreed-upon procedure, the parties or the arbitrators cannot come to an agreement on such a procedure, or finally, if an arbitration institution does not comply with its mission, the concerned party may ask the first president of the competent court of appeal to take any necessary measures to resolve the issue (Article 56.4). This rule thus limits the effect of any dilatory behavior or inactivity of any party.

If any procedure is left undetermined by the parties, the Code is applied (Articles 56.3 (a) and (b)): 
Tunisia

– If the arbitration tribunal is composed of three arbitrators, each party has the right to appoint one arbitrator and the two appointed ones will choose the third arbitrator. If one party fails to appoint its own arbitrator, or if the two appointed arbitrators fail to appoint the third one, the concerned party may ask the first president of the competent court of appeal to appoint the missing arbitrator.

– If the arbitration tribunal consists of one arbitrator and the parties are unable to agree on the appointment, the first president of the competent court of appeal will, upon the request of one party, appoint the arbitrator.

– Orders rendered by the first president of the competent court of appeal appointing arbitrators cannot be appealed (Article 56.5).

2.4.3.2 Revocation Of and Challenge To an Arbitrator

An arbitrator may be challenged by the parties only if the arbitrator cannot guarantee full impartiality and independence or if the arbitrator does not have the qualities or skills required or agreed upon by the parties (Article 57.2). Once appointed, and for the duration of the arbitration procedure, the arbitrator has the duty to inform the parties if – for any reason – continuing independence or impartiality cannot be guaranteed.

Parties are free to determine the procedure to challenge an arbitrator (Article 58.1). Absent such an agreement, the party wishing to challenge an arbitrator must submit a letter to the arbitration tribunal within 15 days of the tribunal’s establishment or from the date the party is aware of the reason that could affect the impartiality or independency of the arbitrator. In the letter, the party must explain the reason(s) for the challenge. If the challenged arbitrator resists the challenge, or the opposing party does not accept the challenge, the party may petition the Court of Appeal of Tunis to examine the challenge (Article 58.3). During that time, the arbitration procedure is suspended (Article 58.3).

If the arbitration proceeding is being conducted by an arbitration institution, the Court of Appeal is not competent to decide a challenge petition (Article 58.4).

Arbitrators who cannot complete their mission for whatever reason (legal or material) may decide to put an end to their mandate. In addition, parties may decide to withdraw their request; but if there is no agreement, one party may ask the Court of Appeal of Tunis for the revocation of the arbitrator. Once rendered, the order cannot be appealed.

If the arbitrator has been appointed according to the rules of an arbitration institution, the revocation procedure will follow such rules (Article 59.1). The arbitrator who replaces the one dismissed will be appointed according to the same rules applied in making the first appointment.
Contrary to the challenge procedure, which is brought before the arbitration tribunal at the first step, the revocation proceeding is decided by the parties themselves or by the Court of Appeal.

2.4.4  *Rules of the Arbitration Procedure*

2.4.4.1  The Arbitration Tribunal

The Code empowers the arbitration tribunal to decide about its own competence to settle the dispute referred by the parties (Article 61). As mentioned above, the compromissory clause is considered a distinct contract from the whole agreement it is part of.

Tunisian judges have given a broad interpretation to Article 61, in the sense that the arbitration tribunal may decide not only about its own competence but also its own composition (as discussed above with regard to its ability to assess the independence and impartiality of the arbitrators) and the procedures required to submit the controversy to the arbitration tribunal (Court of Appeal, Sentence No. 5678, November 13, 1997).

The party wishing to challenge the jurisdiction of the arbitration tribunal must submit this challenge before any defense has been offered to the tribunal. The arbitration procedure is suspended if a challenge to the jurisdiction of the arbitration tribunal has been raised (Article 61.3).

The sentence rendered by the arbitration tribunal may be appealed to the competent court of appeal, which has three months to decide (Article 61.3).

2.4.4.2  Overview of the Rules of the Arbitration Procedure

The reform of 1993 has set up basic principles regulating the whole arbitration system which are contained in Section V, Articles 63 to 72: freedom of the parties to decide the best procedure to follow and the arbitrators to appoint; a fast procedure under the control of the courts who have to intervene if parties do not want to put into practice a valid arbitration agreement before concluded; and equality of the parties.

According to the principle of freedom, parties may decide the procedure to be followed, the place of arbitration, the language to be used in the procedure, the way to expose facts in the legal proceeding, and all means to prove them. If parties do not decide in advance on all aspects of the procedure, the arbitration tribunal will decide about all of them.

The arbitration tribunal will also determine how many hearings will be necessary (if any) to decide the dispute, whether to appoint a court expert, or whether to seek the collaboration of the competent first instance courts to obtain evidence.
Tunisia

2.4.4.3 The Law Applicable to the International Arbitration

A dispute submitted to international arbitration will be settled according to the law established by the parties in the arbitration agreement (Article 73.1). If the arbitration agreement does not establish the applicable law, the arbitration tribunal will make the determination (Article 73.2). The parties may also decide that arbitrators, instead of applying a certain system of law, may regulate the controversy through the application of principles of fairness and reasonableness (Article 73.3). In any case, the arbitrators have to apply the provisions of the contract and the trade usage applicable to the transaction (Article 73.4).

2.4.5 The Arbitration Award

2.4.5.1 The Award

The arbitration award is pronounced by the majority of the arbitrators, who must sign the award for its validity (Article 75.1). Unless otherwise agreed upon by the parties, or in the event that the parties have settled the dispute during the arbitration procedure, the award has to include the reasoning for the award (Article 75.2).

The parties, or the arbitration tribunal itself, may ask to rectify the award if material mistakes have been discovered, or an interpretation of the award or an additional award is required to better understand or complete the first arbitration award (Articles 77.1 and 77.2). The arbitration tribunal has to decide within 30 days of the petition or 60 days if the parties have introduced a petition for an additional award.

2.4.5.2 The Discharge of the Arbitration Award

International arbitration awards are subject to discharge (being set aside) only if one of two conditions established by the Code are fulfilled (Article 78.2):

i. the arbitration award is against the public order; or
ii. the party seeking the discharge proves that:
   – a party to the arbitration agreement was unable to sign the agreement or the agreement is not valid according the applicable law chosen by the parties or the rules of private international law;
   – the party was not duly informed about the appointment of one arbitrator or about the arbitration procedure, or the party could not defend itself;
Arbitration and Mediation in the Southern Mediterranean Countries

- the arbitration award deals with a controversy outside of the arbitration agreement or issues decided by the arbitrators had not been submitted to arbitration; or
- the composition of the arbitration tribunal or the rules followed during the procedure did not conform to the arbitration agreement, to the rules of the institutions appointed for the arbitration, or to the applicable law regulating the procedure.

According to the Code and the jurisprudence of the Court of Appeal (Sentence No. 102 of October 23, 2001), the only possible legal action against arbitration awards is the one to set aside the award. The competent judge to decide the petition for such a discharge of the arbitration award is the Court of Appeal of Tunis. Parties have three months to submit the petition for discharge to that Court, starting from the notification of the arbitration award. If the Court decides to refuse the petition for discharge, this refusal gives the *exequatur* to the arbitration award.

Petition for a discharge of the arbitration award may be avoided if parties have no residence or place of business in Tunisia. In this case they may agree – in the arbitration agreement – to renounce the right to any legal action before the courts concerning the arbitration award.

2.4.6 Recognition and Execution of Arbitration Awards

The arbitration agreement has the authority of *res judicata* and is enforced, as noted above, upon written request to the Court of Appeal of Tunis (Article 80). Recognition and enforcement of international arbitration awards are declared by the Court if:

i. the award is not contrary to the public order within the meaning of international law, and
ii. it is rendered on the basis of an arbitration agreement.

Recognition and enforcement of international arbitration awards may be refused if one of the aforementioned conditions for discharge is proven by the party against which the arbitration award is to be executed (Article 81).

The Court may suspend the request for recognition and enforcement of the arbitration award if a petition for its discharge has been introduced before a competent court, even in a foreign country (Article 82).

In other words, the *exequatur* may be refused by a Tunisian judge if a foreign judge has suspended or discharged the arbitration award in its own country.
The procedure to recognize and enforce an arbitration award follows the rules of an ordinary civil and commercial proceeding where the right to defense is guaranteed (Court of Appeal, Sentence No. 78, February 6, 2001).

### 2.5 International Conventions and Other Agreements

#### 2.5.1 International Agreements Ratified by Tunisia

Tunisia ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (the ‘New York Convention’) by Law No. 67-12 of April 10, 1967, and it will be applied if reciprocity is guaranteed. This means that Tunisia will recognize and enforce only arbitration awards rendered in the territory of a state which has signed the New York Convention and will apply the New York Convention only to disputes arising from relationships considered commercial according to Tunisian law.

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (the ‘Washington Convention’) was ratified by Tunisia on June 22, 1966, and it entered into force on October 14, 1966.

Finally, the Convention establishing the Arab entity to settle investment related disputes between a state and citizens of other countries was ratified with Law No. 72-71 of November 11, 1972.

#### 2.5.2 Other Agreements

Many bilateral and multilateral conventions have been signed by Tunisia. In particular, Tunisia has signed a bilateral agreement with France to protect their reciprocal investments. Article 8 of this agreement states that:

‘Any disputes related to investments made by one of the signatory States and a national or a company belonging to the other State will be settled on an amicable basis between the parties involved in such dispute.’

If the dispute has not been settled within six months of the date it was raised by a party, it is referred by one of the parties to the International Arbitration Center for investment disputes, established by the Washington Convention.

#### 2.5.3 The Code to Increase Investments

After adopting the 1993 Arbitration Code, Tunisia adopted, on December 27, 1993, a law aiming to promote investment in the country. Article 67 established the principle that Tunisian judges are competent to solve any dispute between a foreign investor and the Tunisian State, unless the parties have concluded an
arbitration agreement (or a compromissory clause). The judges may also activate an arbitration procedure ad hoc or as regulated by one of the following conventions:

- Bilateral agreements for protecting investments done by the Tunisian State and the state of the citizen party to the dispute;
- The Washington Convention;
- The Convention establishing the Arab entity to settle investment related disputes between States and citizens of other countries; or
- Any other convention signed by the Tunisian Government and duly ratified.

2.6 The Centers for Arbitration

2.6.1 The Center for Conciliation and Arbitration of Tunisia

The Tunis Center for Conciliation and Arbitration is a non-profit organization of private law which was set up on June 23, 1996 at the initiative of the local university, the Trade Union UTICA, Chambers of Commerce, and professional entities.

The two main goals of the Center are the formation and diffusion of the mediation, conciliation, and arbitration culture which has been created by the Tunisian legislature in order to set up and reinforce cooperation with other national and international institutions involved with arbitration.

An Executive Bureau manages the Center and appoints a Scientific Committee, made of 15 members, having the role – as an arbitration tribunal – of establishing the arbitration procedure to be conducted under the rules of the Center.

The Center has the specific mission to organize mediation, conciliation, and arbitration procedures according to its own rules, in order to settle all national or international disputes that have been referred to the Center.

2.6.1.1 The Arbitration Tribunal

The Center has its own regulations, according to which the arbitration tribunal is composed of one or three arbitrators appointed by the parties, or in absence of the agreement, by the Scientific Committee of the Center. Specific deadlines have been foreseen by the rules of the Center in order to ensure a fast procedure.

The arbitration tribunal is formally composed once all the arbitrators have accepted their mission and the parties have paid all administrative costs and fees for the arbitrators fixed by the Center.

Independence of the arbitrators must be guaranteed at every stage of the procedure. At the very beginning, even before the appointment, the arbitrator
Tunisia

must sign a declaration affirming the independence of each party. During the
procedure, the arbitrator has the obligation to inform the Center of any event that
might affect this independent position.

Lack of independence, impartiality, or required skills may be the basis
for a challenge to the arbitrator. The unanimous consent of all parties to the
dispute is required for removal of the arbitrator, and in the case of disagreement,
the Scientific Committee will make a decision not subject to appeal. The
challenged or dismissed arbitrator, or one who cannot continue the activity, will
be replaced.

If a judge or a public agent is appointed, the Scientific Committee must
obtain an authorization from the administration the person works for. If such
authorization cannot be obtained, the Committee will replace the arbitrator.

2.6.1.2 The Arbitration Procedure

Parties wishing to submit the dispute to an arbitration managed by the Center
must submit a written request containing the following information:

− the name, address, and position of each party;
− the arbitration agreement or compromissory clause;
− a brief description of the facts of the dispute, the reasons for the claim
  and its value, and any documentation proving the demand;
− all documents showing the payment of administrative fees of the
  Center;
− the place of arbitration, the applicable law, and the language of the
  procedure; and
− the number of arbitrators.

The arbitration procedure is regulated by the rules of the Center. If no provision
regulates a specific aspect of the procedure, the parties are free to decide how to
handle the situation. Ultimately, the arbitration tribunal should apply all rules
that ensure a fast, economic, and definitive solution to the controversy. The
president of the arbitration tribunal, or the arbitrator if there is only one, must
sign all documents of the arbitration procedure. The tribunal itself resolves any
challenges to the jurisdiction of the arbitration tribunal.

The arbitration tribunal hearings are not open to the public. Only
parties may attend them. To guarantee a fast procedure, parties have to exchange
all their documents and defenses without delay. The arbitration tribunal is
entitled to take any preventive or provisional remedies necessary for the smooth
and efficient functioning of the proceedings.

The decision is rendered according to the applicable law chosen by the
parties, or in absence of such a choice, by the law chosen by the arbitration
tribunal. If the tribunal is acting as amicable compositeur, it may apply the
principles of fairness. In any case, the tribunal must respect the provisions of the contract and take into account the trade usage for the type of transaction at issue.

2.6.1.3 The Arbitration Award

A draft of the arbitration award is sent to the Scientific Committee, which may recommend to the arbitration tribunal some formal modification, or may even highlight some legal aspects in need of better analysis by the tribunal.

The arbitration award must be written clearly in the language chosen by the parties, must be signed by the arbitrators, and is considered to be rendered in the place indicated by the parties in the arbitration agreement.

The arbitration award is confidential and definitive. Nevertheless, the arbitration tribunal may order an interpretative or additional sentence. If related to domestic arbitration, the arbitration award is served on the parties and left in the clerk’s office of the court of competent jurisdiction.

The arbitration award must establish the costs and fees of the arbitrators. Fees are calculated according to the value of the controversy, the complexity of the dispute and the arbitration, and the time spent by the arbitrators. Four different groups are established by the rules of the Center:

- up to USD 100,000 (minimum USD 2,000): 2 percent to 5 percent;
- USD 100,001 to 500,000: 1 percent to 2 percent;
- USD 500,001 to 1,000,000: 0.50 percent to 1 percent;
- more than USD 1,000,000: 0.10 percent to 0.50 percent.

Travel costs are also reimbursed, and decided upon in advance by the president of the tribunal.

Parties must enforce the arbitration award according to principles of good faith.

2.6.2 The Center for Internal and International Arbitration – ‘El Insaf’

The ‘El Insaf’ Center was established in 1995. Its activity is regulated by the Code of Arbitration of the Center, which is virtually a copy of the Arbitration Code of 1993. Rules concerning arbitration procedures, deadlines, and challenges to arbitrators or their dismissal are all inspired by the Code.

The principle of an expeditious proceeding is emphasized more here. The Center sets up the first court hearing within three days of a party’s request, or even within 24 hours if the issue is urgent. The arbitration tribunal has the power to appoint court experts or witnesses as needed.

There are limitations on the Center’s proceedings. The Center cannot handle arbitration procedures related to disputes listed in Article 7 of the Code,
discussed above. In addition, the arbitration procedure is suspended if a penal proceeding against a party is pending. The arbitration award is ordered by the majority of the arbitration tribunal or by the consent of the president. A party to the procedure may seek appeal and discharge of the arbitration award.

Administrative costs and fees of the arbitrators are annexed to the rules of the Center, along with application forms which are freely distributed.

3. MEDIATION AND CONCILIATION

As noted above, mediation is not well known or much practiced in Tunisia. The 1993 Code does not regulate mediation and the only formal provisions concerning mediation in Tunisia are found in the ‘Rules of Mediation and Conciliation’ adopted by the Center of Conciliation and Arbitration of Tunis (‘CCAT’) in 1996.

Under these rules, mediation and conciliation are not defined, but the roles and principles to be followed by the mediator and the conciliator are quite different. The mediator’s role is to help the parties find a reasonable transactional solution that they can accept. On the other hand, the conciliator’s role is guided by principles of impartiality and fairness. Both procedures, conducted by only one mediator or conciliator, are confidential. Mediators and conciliators establish the deadline within which parties must submit any defense to prove their rights or demands and, jointly with the parties, decide upon the venue of the mediation or conciliation proceedings. These proceedings may conclude because a settlement has been reached, the parties have decided to give up on the procedure, or it is impossible to continue the proceedings. A mediator or conciliator cannot be appointed as an arbitrator in the same dispute. Documents shown during mediation or conciliation cannot be used as evidence during arbitration, nor may any proposal made by a party. Fees of mediators and conciliators are established by the President of the Center according to the rules of the Center.

A conciliation model clause has been drafted by the Center, which states as follows:

‘Parties engage themselves to submit any dispute arising out or in connection of this contract to a mediator or conciliator appointed by the President of the Centre for Conciliation and Arbitration of Tunis and in respect of the regulation of the CCAT.’
4. OTHER ADR MECHANISMS

There are no other ADR techniques commonly known or used in Tunisia. The historical institution of the *Amin*, a person trusted by the parties to mediate the dispute, still exists in Tunisia, Algeria and Morocco. But the mediation role of the *Amin* is limited to the disputes which arise in the Souk between clients and manufacturers of artisan products. It is important to underline that the mediation role played by the *Amin* cannot be qualified as a commonly known ADR technique.
Chapter 9
Turkey

Murat Bayar
Çagdas E. Ergün
Burcu Tuzcu

1. INTRODUCTION

Located in Asia Minor and Eastern Europe, Turkey is a geographical bridge between Asia, Europe, and the Middle East. The country borders Greece and Bulgaria to the west; Georgia, Armenia, Azerbaijan and Iran to the east; and Syria and Iraq to the south. Turkey, a peninsula, also shares the Black Sea, the Aegean Sea, and the Mediterranean Sea with Romania, Ukraine, Russia, and Cyprus, while connecting the first two seas with its Bosporus and Dardanelles straits, two strategic trade and energy routes.

Founded as a republic in 1923 after the dissolution of the Ottoman Empire, Turkey is a parliamentary democracy which is a secular and social state of law. The president, elected by the unicameral Grand National Assembly, is head of the state and appoints the Council of Ministers on the nominations of the prime minister. The legislature is subject to the judicial review of the Constitutional Court and of the president, who has the authority to request a reconsideration of the laws enacted by the Grand National Assembly before their entry into force.

Turkey is a predominantly Muslim country with a population of around 71,158,647 (July 2007 estimate). Approximately 99.8 percent of that population is Muslim (mostly Sunni); the remaining 0.2 percent is mostly Christian and Jewish. The two major ethnic groups are Turks (80 percent) and Kurds (20 percent – estimated). The official language is Turkish, but Kurdish, Zaza, Azeri, and Kabardian are also spoken.

Turkey has adopted several economic reforms since the late 1980s and has gradually passed to a liberal economic system. Boosted by its candidate status in the European Union, foreign capital inflow made Turkey the 22nd country in 2005 among all EU recipient countries, which indicated a 13-spot jump from 35th place in 2004. In 2006 alone, the Gross Domestic Product (GDP) increased 5.2 percent in real terms and reached USD 8,900 on a per capita basis.

A member of several international organizations, including the North Atlantic Treaty Organization (‘NATO’), the Organization of the Islamic Conference (‘OIC’), and the World Trade Organization (‘WTO’), Turkey is
heading towards becoming a political and economic bridge between the East and the West.¹

2. COMMERCIAL DISPUTES

2.1 Importance of Trade and Commercial Disputes in Turkey

The Turkish economy has developed considerably since the 1980s because of liberalization and privatization processes. Both domestic and international trade have grown rapidly and many noteworthy changes have taken place in the structure of domestic and international trade. The Customs Union between Turkey and the European Union countries and the conclusion of the Uruguay Round² are the main factors shaping Turkey’s international trade policies and orientations today.³

In 2004, Turkish exports reached USD 63 billion, an increase of 33.6 percent over 2003. Imports recorded an annual increase of 40.7 percent, parallel to the boost in domestic production and amounting to USD 97.5 billion. Foreign trade volume reached USD 160.6 billion, an increase of 37.8 percent from the previous year. The export/import ratio decreased from 68.1 percent in 2003 to 64.7 percent in 2004. The foreign trade balance showed a deficit of USD 34.4 billion, registering an increase of 54.4 percent compared to 2003.⁴

2.2 Current Commercial Dispute Resolution Mechanisms and Legal Framework

2.3.1 Commercial Adjudication

Under Article 9 of the Constitution of the Republic of Turkey (the ‘Constitution’), the judicial power is exercised by the independent courts on behalf of the Turkish Nation.

The courts of justice are competent to resolve all disputes other than the ones that are subject to administrative jurisdiction, military jurisdiction, or

¹ The information in this introduction is culled from a variety of sources that provide basic information about countries around the world, including: The Middle East Information Network, Inc. at <www.mideastinfo.com>; The World Factbook at <www.cia.gov>; and <www.wikipedia.org>, all last visited on June 4, 2007.
² The Uruguay Round was the trade negotiation, lasting from September 1986 to April 1994, which transformed the General Agreement on Tariffs and Trade (GATT) into the World Trade Organization (WTO).
⁴ Source: Undersecretariat of Prime Ministry for Foreign Trade.
Turkey

The courts of justice are empowered to hear civil, commercial, and criminal cases. Criminal procedures are regulated under their own laws and criminal cases are tried before the criminal courts of justice. Civil and commercial cases and related procedures, however, are regulated collectively by the Code of Civil Procedure, No. 1086 (the ‘CCP’). The CCP is complemented by many other legal instruments, the most significant of which are:

- The Code of Execution and Bankruptcy, No. 2004,
- The Law on International Private Procedure, No. 2675,
- The Law on the Notices, No. 7201, and
- The Law on the Court of Appeals, No. 2797.

Although civil and commercial procedural laws are the same, some commercial cases are tried in the first instance before specialized three-judge commercial courts and not before the civil courts. But such specialized courts are available only in cities with a sufficiently high number of commercial cases, for example, Istanbul, Ankara, and Izmir. In the cities with no commercial courts of first instance, the civil courts are competent to try commercial cases. Moreover, the Court of Appeals (Yargıtay) has certain chambers which specialize in commercial disputes; hence, the appeals for the commercial disputes are tried before these specialized chambers.

Disputes considered to be commercial rather than civil include disputes arising out of transactions deemed to have commercial nature for both parties, disputes listed in Article 4 of the Turkish Commercial Code (the ‘TCC’), disputes arising out of issues regulated by the TCC, and bankruptcy cases initiated in accordance with the Code of Enforcement and Bankruptcy.

The table below covers statistics on the workload of the commercial courts of first instance for years 2000 to 2003.

---

5 The CCP was enacted on June 18, 1927 and enforced upon its publication in the Official Gazette Nos. 622, 623 and 624 (July 2, 3, and 4, 1927, respectively).

6 The availability of any court proceedings after a definitive judgment through the judicial process is very limited. It should be noted, however, that recent legislative changes through Law No. 5236 direct the establishment of intermediate (regional) civil appeal courts, which will function between the civil courts of first instance and the Court of Appeals to decrease the latter’s workload and shorten the length of the appellate process. Such courts are to be established by the Ministry of Justice at an unknown time in the future, so the system is not yet in effect.
2.3.2 International / Domestic Commercial Arbitration

Commercial disputes may also be resolved by arbitration, provided that the disputants mutually agree to it. In Turkey, both domestic and international arbitration are governed by law.

International arbitration is regulated by the International Arbitration Law, No. 4686, which took effect in 2001. The purpose of the Law is to regulate the procedures and principles of arbitration involving foreign parties. Until the promulgation of the International Arbitration Law, no other legal tool had dealt with international arbitration, and the only source for its regulation was the aspect of the CCP that dealt with domestic arbitration. Hence, the enactment of the International Arbitration Law filled a very important gap in Turkish law and commercial practice.

Apart from sources of municipal law related to domestic and international arbitration, Turkey has also been party to major arbitration conventions, as detailed under Section 3, below.

2.3.3 Mediation

In Turkey, the use of ADR techniques other than arbitration has been limited to a few areas. Labor law requires the representatives of employers and workers to apply to a mediator or arbitrator to resolve their collective bargaining deadlocks. There are also public entities that employ mediation, such as the Energy Market Financial Conciliation Center. Furthermore, attorneys may invite an adversary to mediation with the approval of their clients and only for individual – as opposed to public – claims. Despite the foregoing examples, mediation has not been used in commercial cases.

Please refer to Sections 4 and 5, below, for a discussion of ADR mechanisms other than arbitration.

---

Table 1: Workload of Commercial Courts of First Instance

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases from Last Year</td>
<td>36,780</td>
<td>43,426</td>
<td>48,954</td>
<td>55,610</td>
</tr>
<tr>
<td>New Cases</td>
<td>40,653</td>
<td>44,659</td>
<td>45,160</td>
<td>38,844</td>
</tr>
<tr>
<td>Reversed by Court of Appeals</td>
<td>1,469</td>
<td>1,552</td>
<td>1,499</td>
<td>2,261</td>
</tr>
<tr>
<td>Total</td>
<td>78,902</td>
<td>89,637</td>
<td>95,613</td>
<td>96,715</td>
</tr>
</tbody>
</table>

Source: Ministry of Justice of the Republic of Turkey.
3. **ARBITRATION**

3.1 **International Arbitration**

3.1.1 **International Arbitration Law**

The major legal resource in Turkey for the regulation of international arbitration, as mentioned above, is the International Arbitration Law, No. 4686 (‘IAL’), which dates back to July 5, 2001. The purpose of the IAL is the regulation of the procedures and principles of international arbitration. This new legal framework in Turkey for international arbitration prevents the laws promulgated for regulating domestic arbitration to be applied to arbitrations involving foreign elements.

The IAL was inspired by the UNCITRAL (‘United Nations Commission on International Trade Law’) Model Law of 1985 on International Commercial Arbitration and the Swiss International Arbitration Law. It was motivated by the desire to enable Turkey to harmonize its legislative framework with the developed trading countries of the West and to attract foreign investors.

The scope of the IAL is described under Article 1, which states that the IAL shall be applied to arbitrations:

- which contain foreign elements; and
- for which the forum of arbitration is Turkey; or
- for which either the disputants have agreed, or the arbitrator has decided, that the IAL is to be applicable.

As may be understood from the above explanation, under Article 1, the IAL may even be applied in arbitrations for which the forum of arbitration is not designated as Turkey.

The definition of foreign element, and therefore the scope of the IAL, is very broad. Besides the standard factors assessed for the determination of the existence of a foreign element, such as the residences of the parties or the place of performance, the existence of a foreign element is also determined using an economic approach, which scrutinizes the contract for other indicia of international character. This aspect is very important for foreign investors that establish a Turkish company because Turkish public and private sector entities

---

8 The International Arbitration Law, No. 4686 was enacted on June 21, 2001 and enforced upon its publication in the Official Gazette No. 24553 (July 5, 2001).

9 Factors besides the standard ones mentioned in the text, such as the involvement of foreign capital or loans involving foreign capital, or the international transfer of property, may also establish a foreign element.
Arbitration and Mediation in the Southern Mediterranean Countries

have been unreceptive to arbitration conducted abroad due to its cost, while foreign parties have been unreceptive to arbitration in Turkey.

The provisions of the IAL with respect to the arbitration agreement, the selection of the arbitrators, the authority of the arbitrators, the assistance to be provided by the courts, procedural matters, the conduct of the proceedings, and the rules of evidence are generally in line with the UNCITRAL Model Law or similar regulations, although there are some differences that may attract criticism. It is noteworthy, however, that there is a one-year limitation for the arbitrators to render their award, although it can be extended by mutual agreement of the parties, or by a court upon request of one of the parties, but not by the arbitrators. Moreover, the parties can initially decide on a different time period.

Furthermore, the parties can determine the rules applicable to the arbitral proceedings by reference to other laws or international or institutional rules, provided that mandatory provisions of the IAL are observed. As a result, it would be possible to conduct an arbitration proceeding in Turkey pursuant to the International Chamber of Commerce Arbitration Rules without risking that such arbitration would be categorized as domestic.

As for the fees of the arbitrators, unless otherwise agreed by the parties, the IAL directs that they be agreed upon between the parties and arbitrator(s) by taking into consideration the claim amount, the nature of the dispute, and the time limit for the arbitral proceedings. The fees for the arbitrator(s) may also be designated by reference to the estimates of arbitration institutions.

Although the IAL envisages a limited role for, and intervention by, the courts during arbitration proceedings, it sets forth two additional steps beyond the rendering of the judgment for an award to become final and enforceable. First, the award can be canceled on limited grounds if brought before the courts within 30 days beginning from the date of notification of the award. Second, the court’s decision with respect to cancellation requests may be appealed on the same grounds.

3.1.2 Introduction of Arbitration in Disputes Related to Concession Contracts

On August 13, 1999, the Turkish Parliament promulgated Law No. 4446,10 amending, among others, Articles 47 and 125 of the Constitution. Following months of public debate, this amendment came as the government’s proposed solution to the ‘lack of international arbitration’ issue, considered to be the major road-block in the development of public-financed projects in Turkey.

Law No. 4446, amending the Constitution of the Republic of Turkey, was enacted on August 13, 1999 and became enforceable upon being published in the Official Gazette No. 23786 (August 14, 1999).
Until then, arbitration had not been considered an appropriate way to settle disputes arising out of agreements for public services executed between the State or public authorities and foreign investors, especially those concerning large-scale investments or those requiring international financing and in-depth know-how. Law No. 4446, however, paved the way for the settlement of these disputes through both domestic and international arbitration.

In particular, Article 47 was amended to include a paragraph stating that the Parliament may regulate which services and investments performed and made by the state, state economic enterprises, and other public legal entities can, by way of private law contracts, be transferred to or performed by private individuals or entities. This provision allowed the public entities to execute private law contracts with private companies that include arbitration clauses.

The amendment to Article 125 of the Constitution dealt with the availability of international arbitration in concession contracts that are subject to administrative law (contracts for the provision of public services by private entities). The amendment inserted a new sentence in the first paragraph providing that disputes arising from concession contracts concerning a public service could be submitted to national or international arbitration.

Following Law No. 4446, Law No. 4501 came into force on January 22, 2000.11 It concerns the principles to be followed for the settlement of disputes by way of arbitration arising out of concession contracts for rendering public services. Law No. 4501 regulates only arbitration clauses/agreements in connection with concession contracts having foreign elements. Under Articles 2(a) and 3 of the Law, both institutional and ad hoc arbitration are acceptable, and the venue of arbitration may be within or outside Turkey.

It is necessary to mention a further important change in the legislation linked to concession agreements, that being the amendment of the Administrative Procedural Law by Law No. 4492,12 which prevents the initiation of any proceedings before administrative courts regarding concession agreements containing arbitration clauses.

3.1.3 **International Conventions on International Arbitration Ratified by the Republic of Turkey**

Turkey is a party to major international conventions in the field of arbitration. Under Article 90 of the Constitution, international conventions that come into force in compliance with the necessary procedures shall have the same force as the laws promulgated by the Grand National Assembly. Furthermore, pursuant

---

11 Law No. 4501 concerning the disputes arising out of concession agreements for rendering public services was enacted on January 21, 2000 and entered into force upon publication in the Official Gazette No. 23941 (January 22, 2000).
12 Law No. 4492 was enacted on December 18, 1999 and enforced upon its publication in the Official Gazette No. 23913 (December 21, 1999).
to Article 1 of Private International Law, No. 2675, private transactions involving foreign elements shall be regulated under domestic law, except those transactions that are subject to international conventions. Hence, in the event that an international convention is applicable to a particular case containing foreign elements, such convention shall take priority over domestic laws and regulations.

The following table contains brief information concerning the ratification of the major international arbitration conventions by Turkey.

<table>
<thead>
<tr>
<th>International Convention</th>
<th>Ratifying Instrument of the Republic of Turkey</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The New York Convention</strong></td>
<td>Ratified by the Council of Ministers’ Resolution No. 91/2151 on September 15, 1991; upon approval by Law No. 3731, enacted on May 8, 1991.</td>
</tr>
</tbody>
</table>

Turkey declared two reservations while ratifying the New York Convention. In the initial reservation, Turkey limited the applicability of the Convention for awards made in other contracting states according to the principle of reciprocity: for the award to be enforced in Turkey, the state where the award was rendered must be enforcing Turkish arbitral awards. This condition is fulfilled for all states party to the Convention. In the second reservation, Turkey limited the Convention to disputes commercial in nature.

13 The official Turkish Translation of the New York Convention was published in the Official Gazette No.21002 (September 25, 1991). The New York Convention took effect with respect to Turkey as of September 30, 1992.
14 Official Gazette No. 20011 (December 6, 1988).
Turkey

Pursuant to Article 25(1) of the ICSID Convention, parties to an investment dispute must give their consent in writing to ICSID jurisdiction, but this consent need not be expressed in a single written instrument. Although such consent may be, and often is, expressed in a dispute resolution clause in a specific investment agreement, in recent years the common practice has been for states to consent to ICSID arbitration in a bilateral treaty for the protection and promotion of investments. A foreign investor who qualifies under the terms of such a bilateral investment treaty may express consent subsequently, usually by submitting a Request for Arbitration to the Center.  

Turkey has signed bilateral investment treaties (‘BIT’) with more than 50 countries. All such treaties, except for the one signed with Germany in 1963, provide for specific procedures for the resolution of investment disputes. Although there are some differences in the dispute resolution procedures provided by these treaties, international arbitration is the dominant and usual mode of dispute settlement contained in them. In many of the treaties, arbitration under the ICSID Convention is the sole method of dispute settlement and ICSID arbitration remains an option even where the treaty provides an alternative forum such as ICC or UNCITRAL arbitrations.

3.1.4 The Enforcement of Foreign Arbitral Awards in Turkey

As mentioned above, Turkey is a party to the New York Convention, which took effect in Turkey on September 30, 1992. The Convention therefore covers enforcement of arbitration awards that are rendered in states that are party to the Convention. Before Turkey became a party to the New York Convention, Law No. 2675 on International Private Procedure provided the standards for the recognition and enforcement of foreign arbitral awards in Turkey. Law No. 2675 still applies to awards rendered in states not party to the New York Convention.

Pursuant to Law No. 2675, for an award to be enforceable, it must first become final and binding under the applicable procedural law. For example, for a foreign award to be deemed final, if the applicable procedural law requires attestation thereof by a court or preparation of an execution order, such award cannot be enforced pursuant to Law No. 2675 unless such conditions are observed. In contrast, pursuant to Article V of the New York Convention, for an award to be enforced, it is sufficient for it to become ‘binding’ with respect to

For the two cases which have been initiated against Turkey under the ICSID Convention, please see <www.worldbank.org/icsid/cases/conclude.htm> and <www.worldbank.org/icsid/cases/pending.htm>, last visited on June 4, 2007.

See also <www.worldbank.org/icsid/treaties/turkey.htm>, last visited on June 4, 2007, for an updated list of all BITs signed by Turkey.

See, e.g., the treaties with Spain (Official Gazette of December 1, 1997 – 23187) and Argentina (Official Gazette of March 30, 1995 – 22243).
Arbitration and Mediation in the Southern Mediterranean Countries

the parties. An award is binding when there is no other legal remedy against it; if so, no other document is required for enforcement under the Convention.

The procedures for enforcement of foreign awards under Law No. 2675 are very similar to the provisions of the Convention. However, Law No. 2675 requires that a standard of reciprocity be met before a foreign arbitral award can be recognized or enforced in Turkey. In other words, an arbitral award can be enforced only if the country in which the arbitral award is granted also recognizes and enforces Turkish arbitral awards, either as a matter of law, international treaty, or de facto court practice. The New York Convention has satisfied the reciprocity requirement with respect to all states which are party to it. However, such reciprocity conditions must be met for other, non-signatory countries.

Enforcement decisions are not reported unless they are appealed and then only if selected for publication in the journals reporting decisions of the Court of Appeals. Research of the limited precedents indicates that:

i. where the governing law is not Turkish, the courts examine the enforcement request within the limits of the Convention or Law No. 2675 without reviewing the merits;

ii. enforcement requests are more successful when the counter-party is not a Turkish governmental entity; and

iii. rejection decisions are mostly based on ‘public policy’ grounds.

Public policy is a very important issue for the enforcement of arbitral awards and in practice Turkish courts have a tendency to interpret its limits broadly. Two clear examples of contravention of public policy are (i) violation of due process, and (ii) cases where Turkish courts have exclusive jurisdiction or, in other words, the subject matter is not arbitrable. Although there is an early judgment by the Court of Appeals holding that an award issued in accordance with the ICC rules contravened public policy principles merely because of the application of such rules, this ruling was supplanted by a later decision holding that issuance of an award in accordance with the ICC rules does not contravene public policy.

Overall, enforcement of foreign awards has become significantly easier over time and especially since Turkey became a party to the New York Convention. In fact, enforcement has become the rule, not the exception that it was in the past.
3.2 Domestic Arbitration

3.2.1 The Legal Framework of Domestic Arbitration in Turkey

Domestic arbitration is regulated by Articles 516–536 of the Code of Civil Procedure (the ‘CCP’), enacted in 1927, which was based on the Code de Procédure Civile of Neuchâtel dated 1925. Although the laws of Switzerland have been completely altered in the meantime, the provisions of the CCP regulating arbitration have remained the same. Hence, the provisions have been subject to criticism as being anachronistic.

The first condition established by Article 517(2) is for a written arbitration agreement between the parties. The agreement should specify which types of disputes the parties agree to submit to arbitration.

The CCP arbitration system imposes no specific criteria for the qualification of arbitrator(s). There is no restriction on appointing natural persons or legal entities. The appointment shall be made directly in the arbitration agreement either by naming the arbitrator(s) or by stating how the arbitrator(s) are to be appointed in case a dispute arises. If the arbitration agreement does not address the appointment of arbitrators, under Article 520, the competent court shall designate them. If the number of arbitrators is also not assigned in the arbitration agreement, the court shall appoint three arbitrators. The appointed person(s) does/do not have any obligation to accept such duty. The arbitration fees shall be determined through mutual agreement of the parties and the arbitrators, or by the court in case of designation by the court.

Pursuant to Article 529 of the CCP, the arbitration proceedings must be completed within six months of the first meeting of the arbitration tribunal. This period may be extended only by party agreement or court judgment. If the time is not extended and the award is not rendered within the time limit, the arbitration proceedings are invalid and the dispute may be tried before the court, which may terminate any award made in the proceedings.

Under Article 532 of the CCP, once the arbitration award is rendered, it shall be submitted to the competent court, which notifies the disputants. The date of notification determines the beginning of the appeals period. An arbitration award under the CCP may only be challenged by an appeal to the Court of Appeals on the following grounds (Article 533):

- it was rendered after the time limit expired;
- the award addresses issues not raised by the parties;
- the arbitrator/arbitration tribunal resolved issues beyond its competency; or
- the arbitrator/arbitration tribunal did not render any awards on any of the claims of any party.
3.2.2 The Arbitration Institutions

3.2.2.1 Istanbul Chamber of Commerce (ITO) Arbitration

The ITO has established an arbitration center that is one of the most successful in Turkey. The center plays a national role and has its own arbitration rules, which are currently being revised. In recent decades, one of the major points of debate among the legal scholars and practitioners has been the need to establish a world-class international arbitration center in Turkey. While a bill to establish such a center has been drafted, opinions vary as to its optimum structure. Currently the ITO is working seriously on developing an international arbitration center. The ITO reports that the rules of the prospective center have been finalized and should be publicized in the near future.

Under current ITO rules, arbitral proceedings are confidential. There is an arbitrators list available. There are no training requirements, but sitting judges cannot become arbitrators.

To date, there have been 127 arbitrations conducted under the auspices of the ITO. Sixty-four of these matters have been arbitrated within the last eight years, and there were seventeen cases arbitrated in 2005. The ITO advises its members to insert an arbitration clause referring to the rules of its arbitration center in their contracts.

3.2.2.2 UCCET (TOBB) Arbitration

The Union of Chambers and Commodity Exchange of Turkey (UCCET) (Türkiye Odalar Borsalar Birliği – TOBB) and the trade and commodity chambers were authorized to establish an arbitration center to settle disputes arising between both foreign and domestic individuals and legal entities pursuant to Law No. 5174 (published in the Official Gazette No. 25479, dated June 1, 2004). The UCCET has established an arbitration center and its own arbitration rules. Pursuant to these rules, the award must be rendered within six months, but the deadline may be extended by the parties. Arbitration proceedings are confidential. There is an arbitrators list available and there are no training requirements. The UCCET advises the use of both an arbitration agreement and an arbitration clause.

To date, four arbitrations have been initiated under UCCET Arbitration.

3.2.2.3 Ankara Chamber of Commerce Arbitration

The Ankara Chamber of Commerce Arbitration Center is not in operation yet. According to information obtained from the legal department of the Ankara Chamber of Commerce, they are currently working on establishing the center and preparing its arbitration rules.
3.2.2.4 IZTO Arbitration

According to its website, the Izmir Chamber of Commerce has founded an ‘Arbitration, Conciliation, Arbitrator-Expert’ system as of 1996. Concrete data on the structure and conduct of that system is not available at this time.

3.2.2.5 Union of Turkish Bar Associations arbitration

There is no center in operation yet. The Union of Turkish Bars has established a committee to prepare its arbitration rules.

3.2.3 Training of Arbitrators

While arbitrators need not have a legal background, the Turkish legal community is the most focused on the training of arbitrators. There are, however, no specific academic title programs focused on the training of arbitrators. Nor must a person have specific training in arbitration to act as an arbitrator.

That being said, many law schools offer courses on international commercial arbitration within their academic programs, whether graduate or postgraduate. Domestic arbitration is a part of civil procedure classes. Moreover, although it is not counted as an academic title program, the Banking and Commercial Law Institute (co-founded by Ankara University and IsBank) has offered a certificate program on ‘Construction Agreements and International Commercial Arbitration’ for a decade. The Institute is well known for its work on improving the general understanding and recognition of arbitration. As an example, the symposiums that it has organized in the last thirty years have functioned as an important lobbying force for legislative developments on arbitration. Finally, within the last few years, the business community and law firms have also held spontaneous, independent conferences, meetings, and workshops to promote arbitration within their own domains.

4. MEDIATION AND OTHER ADR MECHANISMS

ADR techniques, which primarily involve mediation and facilitation, are intended to produce integrative or win-win solutions to both disputants. Originating in the United States, ADR plays an increasing role as an alternative to judicial resolution of disputes. Today, mediation centers are the main ADR providers for commercial and family disputes in the West.

Arbitration and Mediation in the Southern Mediterranean Countries

In Turkey, conversely, mediation is rarely utilized. Although the Attorneyship Law authorizes clients to settle a dispute by their own volition, statistics demonstrate that mediation under the Attorneyship Law is very rarely used. According to Article 35(A) of the Attorneyship Law, attorneys may invite the opposing party to mediation with the approval of their clients before a lawsuit has been filed or before hearings have commenced for an already-filed lawsuit. If the other party accepts the invitation and a consensus is reached, the subject of the mediation, its place and date, and the actions that each party will carry out are laid out in a protocol and signed together by the client, attorney, the other party, and opposing counsel. Such a protocol is considered a binding conclusive judgment settling the dispute. In addition, such protocols are considered awards under the terms of Article 38 of the Enforcement and Bankruptcy Law, which grants creditors the right to commence enforcement and bankruptcy proceedings against a debtor without encountering any objections of the debtor later.

In addition, the Labor Law requires the representatives of employers and workers to apply to a mediator or arbitrator to resolve their collective bargaining deadlocks. The table below summarizes a study of the official mediations completed by the end of each year in labor law conflicts.¹⁹

Table 3: Study of Official Labor Mediations by Years

<table>
<thead>
<tr>
<th>Year</th>
<th># of Mediations</th>
<th># of Disputes</th>
<th># of Workplaces</th>
<th># of Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>207</td>
<td>214</td>
<td>1,216</td>
<td>108,185</td>
</tr>
<tr>
<td>1997</td>
<td>206</td>
<td>206</td>
<td>1,995</td>
<td>197,213</td>
</tr>
<tr>
<td>1998</td>
<td>179</td>
<td>348</td>
<td>1,155</td>
<td>123,627</td>
</tr>
<tr>
<td>1999</td>
<td>154</td>
<td>166</td>
<td>1,184</td>
<td>106,084</td>
</tr>
<tr>
<td>2000</td>
<td>193</td>
<td>362</td>
<td>1,362</td>
<td>122,896</td>
</tr>
<tr>
<td>2001</td>
<td>174</td>
<td>174</td>
<td>4,506</td>
<td>186,046</td>
</tr>
<tr>
<td>2002</td>
<td>123</td>
<td>123</td>
<td>307</td>
<td>22,875</td>
</tr>
<tr>
<td>2003</td>
<td>162</td>
<td>162</td>
<td>1,760</td>
<td>57,998</td>
</tr>
<tr>
<td>2004</td>
<td>158</td>
<td>158</td>
<td>2,926</td>
<td>32,516</td>
</tr>
</tbody>
</table>

[Continued on next page]

Turkey

DISAGREEMENT

<table>
<thead>
<tr>
<th>Year</th>
<th># of Mediations</th>
<th># of Disputes</th>
<th># of Workplaces</th>
<th># of Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>455</td>
<td>538</td>
<td>1,328</td>
<td>122,821</td>
</tr>
<tr>
<td>1997</td>
<td>313</td>
<td>322</td>
<td>762</td>
<td>105,933</td>
</tr>
<tr>
<td>1998</td>
<td>394</td>
<td>513</td>
<td>1,470</td>
<td>200,516</td>
</tr>
<tr>
<td>1999</td>
<td>375</td>
<td>472</td>
<td>2,016</td>
<td>139,554</td>
</tr>
<tr>
<td>2000</td>
<td>399</td>
<td>529</td>
<td>1,707</td>
<td>205,666</td>
</tr>
<tr>
<td>2001</td>
<td>398</td>
<td>436</td>
<td>3,109</td>
<td>232,650</td>
</tr>
<tr>
<td>2002</td>
<td>327</td>
<td>570</td>
<td>1,507</td>
<td>223,434</td>
</tr>
<tr>
<td>2003</td>
<td>302</td>
<td>333</td>
<td>4,552</td>
<td>328,833</td>
</tr>
<tr>
<td>2004</td>
<td>343</td>
<td>582</td>
<td>1,278</td>
<td>234,816</td>
</tr>
</tbody>
</table>

There are also public entities that conduct mediations, such as the Energy Market Financial Mediation Center. This Center has recently been established as a part of the new energy legislation in Turkey.

Despite the above examples, ADR techniques have not generally been utilized in commercial cases.

4.1 Institutions and Professionals for ADR

4.1.1 Alternative Dispute Resolution Providers

Currently, the Ankara Bar Association’s Alternative Dispute Resolution Center is the only provider of ADR in Turkey. The Chamber of Commerce and other similar institutions have focused solely on arbitration. Founded in 2005, the Ankara Center aims both to provide ADR service and training and to create awareness about this field in Turkey, especially within the legal and commercial communities.

The future success of the Ankara ADR Center and other, upcoming institutions depends on a proper legal framework. The development of such a framework was accelerated by the beginning of accession talks between Turkey and the European Union on October 3, 2005. Even without this development, however, the current commitment to ADR by one of Turkey’s major bar associations, in its capital city, is an important sign that the profession expects changes in the law and is preparing for them.

4.1.2 Training in ADR

In the training arena, the situation is similar to that with providers. There is only one specific training program in Turkey that is concerned with ADR, the Masters in Conflict Analysis and Resolution offered by the Sabanci University Faculty of Arts and Social Sciences. This program offers several courses on ADR, including Advanced Conflict Resolution Practice and Third Party Roles in Peace Processes. However, the lack of a proper legal framework imposes limitations here as well, and this program makes no specific reference to law or commercial disputes, only to other types of inter/intranational conflicts. Still, ADR training centers in Sabanci University and elsewhere can be expected once relevant regulations are passed.

4.2 Awareness of ADR Mechanisms in Turkey

A brief survey about awareness of ADR mechanisms was conducted among people from the legal profession and business community in Turkey. A total of thirty-six lawyers and businessmen were contacted, based not on a random sampling of such factors as location, gender, but instead on accessibility and their significant activity in high stakes commercial cases and affairs. Twenty-three respondents fully or partially completed and returned their surveys.

The findings indicate that respondents:

− know about (either have heard of or worked with) the arbitration services of the Chamber of Commerce and similar institutions;
− have little to no idea about the number of cases and their comparison (in quantity) to those in developed countries;
− with two exceptions, did not know about Sabanci University’s Conflict Analysis and Resolution program, but were aware of some sporadic training seminars of bar associations or individual courses in law schools on arbitration;
− commonly identified arbitration and mediation as known ADR techniques, but not such techniques as facilitation, or med-arb (mediation/arbitration);
− generally have serious doubts about the applicability of mediation in Turkey, due to the difficulty of assuring the impartiality of mediators;
− noted the lack of a proper legal framework to promote ADR in Turkey; and

---

Turkey

− suggested the initiation of training programs for lawyers and businessmen, and the founding of mediation centers under the umbrella of the bar associations, once the legal framework is set.

Thus, the findings clearly point out that even the most active professionals need more information about ADR techniques and their applicability.

4.3 Other ADR Mechanisms

The research on other alternative dispute resolution mechanisms in Turkey is still at a nascent stage. Yet, Alims, Islamic scholars, are known to mediate some civil (i.e., family disputes) and commercial disputes in few Islamic groups.24 Although Turkey has a secular legal system, these Islamic groups live their lives entirely within the domain of the Shariaa’ rule, and perceive Alims as reliable third parties.

The use of Alims as mediators takes place mostly in rural areas in informal and private settings, so there is still limited information on the popularity of this method. But, in addition to religious concerns, the low cost, high speed and flexibility of having an Alim as mediator, rather than pursuing official litigation processes, are likely to make this approach popular in those limited settings.

Finally, this approach is attractive to the disputants in those few Islamic groups because it is culturally sensitive: Alims advise fraternity and forgiveness based on the principles and approaches of Islam, and they do so in a private setting. As discussed below, saving face is very important in the Eastern collectivistic cultures. In these few Islamic groups, an Alim is considered more reliable in protecting the harmony of the community, while looking after the outcome for both parties, than a judge or a professional mediator.

5. CONCLUDING OBSERVATIONS

5.1 Turkish Culture and ADR

All ADR techniques, especially mediation, require direct communication of disputants with each other most of the time. This need might not be a significant problem in the individualistic cultures of Europe and North America, but is potentially problematic in a collectivistic culture like Turkey.

Arbitration and Mediation in the Southern Mediterranean Countries

According to Triandis, et al., in individualistic cultures, personal goals have primacy over group goals, confrontation is accepted, and behavior is regulated by cost-benefit analysis. On the other hand, in collectivistic cultures, interdependence, harmony, hierarchy, and saving face are given much emphasis. In the latter case, therefore, people might be open to having an elder or head of the family mediate a dispute, but not someone from outside the culture. In other words, Turkish people might find it difficult, at least in the beginning, to share their private issues with a foreigner in non-commercial cases.

5.2 Legislative Framework for ADR in Turkey

In light of the cultural and current professional climates in Turkey, promotion of ADR is dependant on the will of the legislative body. Without proper regulatory arrangements, significant progress in this field cannot be expected. Currently, there are two drafts of proposed laws in the Ministry of Justice. The first concerns court-annexed dispute resolution mechanisms, which aim to prepare the legal infrastructure for ADR. The other aims to create a compulsory mechanism to direct certain cases to ADR processes before they can come before a court. Otherwise, there is no other specific law, except for those outlined above, on ADR in Turkey.

5.3 Strategy for the Future: How to Promote ADR in Turkey?

Based on the paper of Gürkaynak and Balas from Sabanci University, Istanbul, the strategy for promotion of ADR in Turkey might be as follows:

- Determine the insufficiency, if any, of Turkish courts in certain types of cases and the underlying causes by conducting interviews and surveys with legal practitioners and sociologists.
- Look for the problem of public access to courts for certain types of cases (if any).
- Define the legal and cultural framework on which ADR can be built in Turkey.
- Specify the vision and goals for the ADR program and assure the participation of all relevant and interested actors in the process.


26 Gürkaynak, Esra Çuhadar, and Balas, Alexandru, A General Look at Dispute Resolution Outside of the Court System and Examples from Various Countries for Its Integration Into Jurisprudence, Istanbul: Open Society Institute 2005.
Turkey

- Conduct pilot studies to test the applicability of ADR in Turkey and define its relationship to the court system clearly.
- Consider giving public notaries a supervisory role in the ADR system in order to lessen the workload of courts.
- Establish ethical expectations and a code of conduct for ADR professionals.
- Accredit certain centers to give formal training about ADR.

Therefore, promotion of ADR needs to be planned and implemented carefully. One of the most critical threshold requirements will be insuring the active participation of all relevant parties to seek a broad consensus, if not approval.
Chapter 10
The West Bank and Gaza Strip

Omar Rafiq Khader
Rana Bahu Toubassi
Ala’Eddin Touquan

1. INTRODUCTION

The area west of the Jordan River has been known as Palestine since ancient times. Palestine’s location forms an economic and cultural platform and a point of contact among three continents: Europe, Asia and Africa. While this region has been the site of serious strife and challenge for its citizens over much of the last century, this chapter will focus on the area’s economic challenges and relationships, and on developments in dispute resolution in the commercial arena.

The Palestinian territories include the West Bank and the Gaza Strip (‘WBGS’). The boundaries between the West Bank and the Gaza Strip and Israel are known as the Green Line. The boundaries with Jordan and Egypt follow the international border between the former mandate of Palestine and those states. The natural geographic boundaries for the West Bank and the Gaza Strip are the Jordan River and the Mediterranean Sea. The combined area of the West Bank and the Gaza Strip is 6,020 square kilometers; the West Bank covers 5,655 square kilometers, is 130 kilometers long and ranges between 40 and 65 kilometers in width, and the land area of the Gaza Strip is equal to 365 square kilometers, and varies in width from 5–12 kilometers.

The Palestinian population in the WBGS, including East Jerusalem, was projected by the Palestinian Central Bureau of Statistics to surpass 3.8 million in 2005 (2.4 million in the West Bank and 1.4 million in the Gaza Strip). The ethnic composition of the West Bank is approximately 83 percent Palestinian Arab and approximately 17 percent Jewish. Approximately 75 percent of West Bank residents are Muslim (mostly Sunni), 17 percent are Jewish, and 8 percent are Christian and other religions. The ethnic and religious composition of the Gaza Strip is less mixed; approximately 99 percent of the residents are Palestinian Arabs and approximately 98 percent of the residents are Muslim.

In 1993, with the signing of the Declaration of Principles and the Oslo Accords between Israel and the Palestine Liberation Organization (‘PLO’), limited Palestinian self-government through the Palestine National Authority (‘PNA’) was established over parts of the WBGS. According to the Palestinian
Basic Law which was signed by the President of the PNA in 2002, the structure of the PNA is based on three separate branches of power: executive, legislative, and judicial. The President of the PNA is directly elected by the Palestinian people. An amendment to the Basic Law was approved in 2003, stipulating that the President appoint a prime minister. The prime minister chooses a cabinet of ministers and runs the government, reporting directly to the President. The Palestinian Legislative Council (‘PLC’) acts as a parliament. It approves all cabinet positions proposed by the prime minister, and it must also confirm the prime minister himself upon nomination by the President.

Palestine is the Holy Land for three monotheistic religions: Islam, Christianity, and Judaism. Muslims venerate Palestine as the place where the Prophet Mohammed ascended to heaven, and Islam has dominated the culture of Palestine for the past 1400 years. The city of Bethlehem has long been a destination for Christian pilgrims from all points of the globe, and Jerusalem is still the world’s biggest religious attraction for Moslem, Christian and Jewish pilgrims.¹

2. COMMERCIAL DISPUTES

2.1 Economic and Investment Situation

2.1.1 The Prevailing Economic Situation in Palestine

Growth in the WBGS in the latter half of the 1990s was moderate. Real per capita GDP grew approximately 3 percent from 1994-99, with much of the growth concentrated in the construction and commerce sectors (retail and wholesale trade, hotels, and restaurants). Unemployment rates declined significantly from nearly 28 percent in 1996 to approximately 11 percent in 1999. At the same time, however, high levels of remittances from Israeli employment, restricted trade relations, and high levels of donor aid inflow contributed both to a shift towards non-traded goods and services and to a declining competitiveness in the trade sector as a result of higher costs of production, particularly domestic labor. High production costs also contributed in part to limited growth in private investment, which represented approximately 15 percent of GDP in 1999.

The Palestinian economy is a market-based economy with the private sector traditionally playing the leading role in its development, particularly with

¹ The information in this introduction is culled from a variety of sources that provide basic information about countries around the world, including: The Middle East Information Network, Inc. at <www.mideastinfo.com>; The World Factbook at <www.cia.gov>; and <www.wikipedia.org>, all last visited on June 4, 2007.
The West Bank and Gaza Strip

respect to employment. Before the onset of the Intifada in September 2000, there were approximately 80,355 private national businesses in the WBGS, accounting for nearly 80 percent of the domestic labor force. Average firm size was less than four persons, with gross average capitalization levels of 10,000 USD. In addition, there were an estimated 80,000 micro enterprises, represented mainly by family businesses involved mostly in trading, small-scale manufacturing, services, and agriculture.

Palestine, with its strategic location and need for widespread infrastructure development, is an untapped emerging market with enormous investment potential. The developing Palestinian economic strategy is export-oriented and outward looking. The economy has already begun the process of integrating with regional and international economies through a network of free trade agreements and trade associations. Current short-term goals focus on improving access to foreign markets and overcoming the obstacles that hinder the movement of people, goods, and services to these markets.

Investment in Palestine is being encouraged, not merely to increase the size of the economy but also to increase private-sector employment, generate income, and improve living standards. Increased per capita prosperity also has the potential to help stabilize tensions in the region, if achieved in tandem with a just political settlement. A just peace and prosperity within the WBGS is not only good for Palestine, but also for Israel and the Middle East as a whole.

2.1.2 Constraints Facing the Economic Situation in Palestine

Following the onset of the 2000 Intifada, the peace process in the Middle East collapsed. The succeeding years have seen extensive damage to Palestine’s infrastructure, industrial and agricultural sectors, and tourism. Among the consequences has been a seriously adverse effect on the economy. Closures have restricted the movement of both people and goods within the West Bank and between the Gaza Strip and the West Bank. Tens of thousands of Palestinians have lost their jobs. The Palestinian market has also lost much of its buying power and exports are down because of external closures. The cost of transportation has risen to the extent that Palestinian exports are no longer competitive in some Arab and European markets that Palestinian goods used to reach.

One characteristic of the Palestinian economy is that it has been tied to the Israeli economy since 1967. The income of the average Israeli is ten times higher than the income of the average Palestinian, but the cost of living is calibrated to the former because most of the goods Palestinians consume come from Israel. This linkage poses a huge burden on Palestinians. The Palestinian authority has established laws that would encourage direct imports from the outside in order to bypass Israeli middlepersons. But the events of recent years have made it difficult for Palestine to import directly from the outside.
The Palestinian authority is also trying to fight the dumping of cheap goods from the Far East into Palestinian markets and has made great strides in setting standards to protect consumers. The Palestinian authority currently exports to Israel, but at a big trade deficit, and it would prefer to export to Arab countries instead. Unfortunately, most Arab countries have yet to enact the 2001 Arab Summit resolution ending trade barriers and exempting Palestinian products from tariffs. Saudi Arabia, Jordan, the United Arab Emirates, Bahrain, Tunisia and Yemen, however, have opened their markets to Palestinian products. The Palestinian authority has a credible mechanism by which to verify the origin of its exported goods, enabling any Arab country to verify where the goods are coming from.

2.1.3 The Oslo Accords (Paris Protocol) and Its Effect on Local Investment

The Protocol of Economic Relations (the ‘Paris Protocol’ or ‘Protocol’) was signed in 1994 with the PLO and was incorporated into the Oslo Accords, which created the Palestinian Authority. The Protocol, signed in Paris on April 29, 1994, created a single customs envelope encompassing Israel, Gaza, and the West Bank. The Palestinian leadership opted to enter into this semi-customs union with Israel due to its recognition of the existing links between the Palestinian economy and the Israeli economy. The Paris Protocol formed an integral part of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of September 28, 1995 (the ‘Washington Agreement’). The agreement with Israel was entered into with the aim of achieving several goals:

i. to maintain some stability in the economic system by avoiding a rapid shift in the prevailing economic structure vis-à-vis Israel because the two economies have been unequal yet closely interconnected;
ii. to assist in the development of the Palestinian economy through the transfer of technology and technical expertise from Israel; and
iii. to expose the Palestinian economy to a highly developed economy in order to assist in growth and realization of potential while changing the relationship between the Palestinian and Israeli economies into a cooperative one.

The Agreement theoretically formed a free trade association between Palestine and Israel, while maintaining Israeli customs and trade policy as a minimum basis for Palestine. Unfortunately, the aims of the Paris Protocol were not realized due to a variety of factors related to the implementation of the protocol (because of successive Israeli governments and the differences in their policies) and the disparity in the two economies.
The West Bank and Gaza Strip

2.1.4 International Trade Agreements

The PLO has signed several preferential trade agreements on behalf of the Palestinian Authority with the goal of achieving a free market economy based on the concepts of globalization and liberalization. This process was intended to eliminate the dependence of the Palestinian economy on Israel and on Israeli importers and producers, which has led to a large imbalance of trade between the two countries. It was also intended to expand involvement in international trade by Palestine. The signing of various international trade agreements should enhance Palestinian export potential by increasing the competitiveness of Palestinian products in potential export markets. These agreements will also serve to open new markets to Palestinian businesses that have not been accessible to them for over 30 years.

2.1.4.1 Interim Association Agreement with the European Union

On February 27, 1997, on behalf of the PNA of the WBGS, the PLO signed the Euro Mediterranean Interim Association Agreement on Trade and Cooperation with the European Union. This Agreement provides for the following framework of trade relations between the WBGS and the European Union:

i. free trade on all goods from both sides;
ii. both sides retain the right to impose duties on agricultural goods;
iii. quotas on Palestinian agricultural goods entering the European Union; and
iv. technical assistance programs to aid in the development of the Palestinian economy.

Even though the Agreement grants duty-free access to WBGS products in the European Union, some WBGS agricultural products face quantitative restrictions upon import into the European Union. These restrictions are outlined in the annexes to the agreement. The quantities of Palestinian agricultural exports allowed by the Agreement are, however, large enough to make the European Union a significant market.

The Agreement is an outgrowth of the Barcelona Process, an initiative resulting from the Barcelona Declaration of 1995, which aims to create a free trade area between the European Union and the countries of the Mediterranean basin. It includes measures to protect specific infant industries and sectors undergoing restructuring or experiencing serious difficulties, particularly where those difficulties could lead to severe social problems in the WBGS.

Implementation of the Agreement has been difficult due to the strife in the region, and work on the implementation is still in progress.
2.1.4.2 Interim Association Agreement with European Free Trade Association

The agreement with European Free Trade Association (‘EFTA’) states is very similar in nature to the agreement between the PLO/PNA and the European Union. This subsequent agreement was signed in December 1998 in Geneva and provides for a free trade area between Palestine and the EFTA states. This agreement entails a detailed technical assistance program for the development of the Palestinian economy and aims at the following:

i. creation of free trade for all goods from both sides;
ii. both sides retain the right to impose duties on agricultural goods;
iii. quotas on Palestinian agricultural goods entering into EFTA markets; and
iv. technical assistance programs to help with the development of the Palestinian Economy.

2.1.4.3 Free Trade Agreement with the United States of America

The Free Trade Arrangements reached between the United States of America and the PLO on behalf of the PNA in the mid-1990s accord duty-free entry to WBGS products into the United States. These arrangements provided for the following:

i. free trade in goods and services resulting from a two way unilateral declaration of duty free access to each other’s markets;
ii. customs-free entry of Palestinian and American goods; and
iii. creating the possibility of regional cooperation in production through sophisticated mechanisms and rules that go beyond the scope of this summary.

2.1.4.4 Preferential Trade Agreement with Jordan

The trade agreement between the Government of the Hashemite Kingdom of Jordan and the PNA was signed on January 26, 1995.

The principal goal of the agreement is to achieve free trade of all goods, including agricultural goods and services. As a start the two parties agreed to four lists with products that will be receiving preferential treatment when imported from the other party. The PNA grants customs duty exemptions to 45 products originating in Jordan and contained in List 1 and to 32 products in List 2. Jordan grants customs duty exemptions in List 3 and exemptions from customs duties and other taxes of equivalent effect in List 4 to a total of 60 Palestinian products.
The agreement aims at exemption from all customs duties in processed foods, agricultural products and equipment, mechanical and electrical equipment, household items, and pharmaceutical and chemical products.

2.1.4.5 Preferential Trade Agreement with Egypt

The Technical and Economic Cooperation Accord between the Arab Republic of Egypt and the PLO was signed on January 25, 1994. A review of this agreement yields the following principal provisions:

i. cooperation in trade to increase the flow of products, facilitate the transit of goods, promote mutual participation in trade fairs, and improve relations between businessmen;
ii. customs-free trade on a large number of products of national origin;
iii. expansion of a free trade list currently being negotiated; and
iv. plans for the establishment of a free trade zone in the border region.

Article 1, Paragraph 4, stipulates that ‘any preferential treatment which the Palestinian Authority may extend to any other party, shall also be granted to Egypt.’ Since the PNA has granted preferences to Jordan, those preferences were also extended to Egypt through this provision. Conversely, the agreement does not include a reciprocal provision granting Palestinian products preferential treatment.

2.2 Commercial Disputes in Palestine

2.2.1 Resolution and Definition of Commercial Disputes in Palestine

There are no commercial courts in Palestine. Under Article 2 of the Code of Civil and Commercial Procedure, promulgated by Law No. 2 of 2001, regular courts resolve both civil and commercial disputes. The court system has two levels, with first-instance magistrate and district courts, and a Court of Appeals.

Regardless of the type of dispute, litigants in Palestine face significant obstacles such as slowness and non-enforcement of decisions. In Palestinian society, however, there are several traditional alternative procedures to resolve disputes, such as arbitration, mediation, and Sulha. These procedures are often used in commercial disputes in various Palestinian private sectors including banking, communications, insurance, and commercial contracts.

Disputes in the banking sector fall into two categories: contractual disputes, which are based on capital circulation including deadlines, terms, and guarantees; and accounting disputes, which depend on adherence to accounting banking procedures.
Disputes in the communications sector fall into the following categories: competition as a result of open market policy and terminating or limiting exclusive rights, and consumer-related disputes.

2.2.2 **Mechanisms for Commercial Dispute Resolution**

2.2.2.1 Commercial Dispute Resolution in the Banking and Insurance Sectors

Palestinian law includes mechanisms for commercial dispute resolution whose use and characteristics can vary according to the type of commercial activity involved. The speed of arbitration lends itself well to resolution of banking and insurance disputes; the ability of arbitration proceedings to be specialized for the type of dispute and arbitration’s binding nature are also well-suited for use in these business areas. In both these areas, inclusion of an arbitration clause or agreement within the underlying contract is a condition to the use of arbitration as a dispute resolution mechanism.

2.2.2.2 Commercial Dispute Resolution in the Communications Sector

The use of arbitration in communication disputes is still in the early stages. Nevertheless, when devising an arbitration mechanism in this sector, the following should be taken into consideration:

i. accelerated developments in communication technologies;
ii. economic cost;
iii. the need for transparency and confidentiality; and
iv. the need to deal with the technical variables of this sector.

3. **ARBITRATION**

3.1 **Institutional Arbitration Centers**

In Palestine there is one institutional arbitration center, ‘Tahkeem.’ The center was founded in 2001 as the first center for settling domestic and international commercial disputes in Palestine. It has two branches, one in Ramallah and the other in Gaza.

Tahkeem assists in the settlement of domestic and international disputes through arbitration and mediation. As for mediation in Tahkeem, the disputants may either agree to adopt Tahkeem’s procedural rules, which are provided in a list of regulations, or agree upon other procedural rules.
3.2 Other Arbitration Centers

There are several entities that deal with *ad hoc* arbitration, such as associations and chambers of commerce. Among those associations is the Engineers Association, which has been dealing with *ad hoc* arbitration for almost ten years now. The Association has a panel of specialized arbitrators from whom the disputed parties may choose.

3.3 Advantages of the Increased Use of Arbitration in Palestine

Because the Palestinian private sector is going through a crisis due to the unstable economic and political situation described above, there is a critical need for effective and timely commercial dispute resolution processes. The private sector prefers mechanisms which avoid delays in court procedures. Profits gained from a favorable court ruling after long procedures are less helpful than the same profit gained in less time. Therefore, people involved in commercial activities prefer faster, alternative procedures to resolve their commercial disputes, and arbitration’s speed can meet that need.

The following discussion addresses other advantages attributed to arbitration: cost, confidentiality, freedom of choosing the arbitration panel, execution of arbitral awards, and the certainty and transparency of the system.

3.3.1 Cost

Remarkably, although the claim is frequently made that arbitration costs less than litigation, no research has ever been undertaken to substantiate it. However, as an example, the cost of an arbitration case in Palestine at the Tahkeem center is as follows:

i. registration fees: non-refundable USD 200; and
ii. down payment: half of the administrative fees and arbitration fees listed by the Center.

Regardless of the relatively high cost of arbitration as compared to litigation, it saves time, which is an important element in commercial work.

3.3.2 Confidentiality

The Palestinian courts apply an open session principle that may reveal the trade secrets of the disputing parties. Arbitration hearings are limited to the concerned parties and therefore preserve the parties’ confidentiality.
3.3.3 The Parties’ Freedom to Choose the Arbitration Panel

The disputing parties have the right and freedom to choose the arbitration panel according to the nature of the dispute.

3.3.4 Execution of Decisions and Arbitration Awards

Decisions made by arbitration panels have the same legal weight as court rulings once they have been ratified by a competent court. The procedures to execute arbitrators’ decisions, however, are faster than those for court rulings.

3.3.5 A Certain and Transparent System for Conflict Resolution

Disputing parties value the fact that arbitration laws are modern laws that contain provisions to make it a certain and transparent system for conflict resolution.

3.4 Arbitration Law No. 3 of 2000

3.4.1 Historical Overview of the Arbitration Laws

Arbitration has developed in countries where the economy is an important factor of life. Originally, the Palestinian territories were not open to economic relations with neighboring countries; therefore, there was not much need to resolve disputes through arbitration. After signing the Oslo Accords and the Paris Protocol between the PNA and Israel, the Palestinians needed to build the foundation for developing the economic situation in Palestine. A quick and effective mechanism for conflict resolution, in particular, was needed to help attract foreign investors to Palestine.

In the year 2000 the Palestinian Arbitration Law No. 3 came into force after approval by the Legislative Council and signing and authentication by the head of the PNA. This Law unified the legislation in the WBGS and replaced previous laws that had prevailed. The Arbitration Law of 1926 and its amendments, the Foreign Awards Law of 1930 and its amendments, the Arbitration Procedures of 1935, the Law No. 18 for Executing Foreign Awards of 1952, and the Jordanian Arbitration Law No. 18 of 1953 were all replaced by the new Law.

3.4.2 Introduction of the Palestinian Arbitration Law

The Palestinian Arbitration Law No. 3 of 2000 (the ‘Law”) was adopted to serve the growing needs of the Palestinian people, and to coincide with global
The West Bank and Gaza Strip

developments and international trade. The legislature attempted to adopt modern foundations in order to avoid the negativity of the previous laws.

The Law consists of 58 articles divided into six chapters. Chapters include definitions; general provisions; descriptions of the arbitration agreement, arbitration panel, arbitration procedures, and arbitration awards; and concluding provisions.

Many of the provisions of this Law are similar to the provisions of Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the ‘New York Convention’), especially for issues related to accepting and implementing foreign arbitral awards. The Palestinian legislature aimed for a certain amount of consistency with the Convention so Palestine will be able to be a member state in the Convention when it regains its sovereignty as an independent state.

3.4.2.1 Types of Arbitration

According to the Law, arbitration is:

a. local – if it is related to international commerce but is taking place in Palestine;

b. international – if the issues in conflict are related to economic, trade, or civil issues according to the following cases:
   - if the headquarters of the parties involved in the arbitration are located in different countries at the time the arbitration agreement is concluded, but one of the parties has more than one headquarters, the one most closely related to the arbitration agreement shall be counted, and if one of the parties does not have a headquarters, its place of residence shall be considered;
   - if the disputed issue covered by the arbitration agreement involved more than one country; or
   - if the headquarters of every party are in the same country at the time the arbitration agreement is concluded but one of the following places is located in another country: the location of the arbitration agreement itself, as specified in the agreement; the location of the implementation of the essential part of the contractual agreement between the parties; or the location most closely linked to the issues in conflict;

c. foreign – if it is conducted outside Palestine;

d. private – if not organized by an institute specialized in arbitration; and

e. institutional – if conducted by an organization specialized in organizing and supervising arbitration whether it is inside or outside Palestine.
The Palestinian legislature was not successful in stating the difference between foreign and international arbitration. In Article 3 of the Law it was obvious that the legislature did not restrict international arbitration to that associated with a conflict related to international commerce. The legislature expanded the concept and included all the issues that are subject to arbitration whether commercial, economic, or civil once they fulfilled the required measures stipulated in the law.

However, Article 19 of the Law addresses what law should be applied in international arbitration:

i. The parties involved in international arbitration may agree on the arbitration law that should be applied to the dispute. If they do not agree, the arbitration panel will apply the Palestinian arbitration code.

ii. If the arbitration is international and conducted in Palestine and the parties have not agreed on the substantive law to be applied to their dispute, Palestinian conflict of law principles shall determine the substantive law, but the referral rules shall not be used unless they lead to the application of Palestinian law.²

In all cases, the arbitration panel shall take into consideration the standards usually applied to the relationship.

3.4.2.2 The Arbitration Agreement

According to the Law, an arbitration agreement is an agreement between two or more parties governing all or part of a dispute that has arisen or could arise between parties. The arbitration agreement must be in written form, the provisions of the agreement should not be contrary to public order, and the agreement should be legally feasible.

The Palestinian legislature made the arbitration agreement severable, so it will not be affected by the invalidation, rescission, or termination of the contract. The legislature also acknowledged the importance of the arbitration agreement in Article 7 of the Law. Accordingly, if one of the parties to the arbitration takes any legal action in court concerning a matter already assigned for arbitration, another party to the arbitration may request the court to cease any procedure. The court shall do so if it is convinced of the legitimacy of the arbitration agreement.

² It should be noted that this provision has raised some questions because it is not clear what the reference to 'referral rules' means.
3.4.2.3 The Arbitration Panel

The most significant aspect of arbitration is that it is subject to the will and agreement of the parties starting with the choice to use an arbitration panel and continuing through the choice of procedures and arbitrators. According to the Law, the arbitration panel shall consist of one or more arbitrators upon agreement of the parties. If the parties cannot agree on the members of the arbitration panel, each party will select an arbitrator and the arbitrators will select an umpire unless the parties agree otherwise. The arbitrator should be eligible and should enjoy civil rights. To be eligible, an arbitrator must:

− be of Palestinian nationality;
− have a good reputation and good conduct;
− not have been suspended by a disciplinary decision within the last three years;
− not be under sentence for any felony or misdemeanor impugning honesty or honor;
− not be in bankruptcy unless it has been discharged; and
− have academic and practical experience.

Upon the request of one of the parties, the competent court shall appoint an arbitrator or an umpire from the list of arbitrators certified by the Ministry of Justice. The Ministry of Justice is authorized to set regulations that determine the procedures and the conditions for certifying arbitrators. According to Article 14 of the Law, if one of the parties finds reason to challenge the arbitration panel or any of its members, the party should submit a written application within a period of 15 days. The application is submitted to the arbitration panel or to the arbitration institution if the arbitration is institutional.

The arbitration panel is authorized to settle issues related to:

− jurisdiction;
− the arbitration agreement;
− an application challenging the arbitration panel or one of its members; and
− rebuttal related to the arbitration presented to it.

Article 36 of the Law states that the parties to the dispute are entitled to authorize the arbitration panel to conduct reconciliation among them in accordance with the principles of justice. It is possible for the arbitration panel, upon request of one of the parties or sua sponte, to offer an amicable settlement of the dispute.
3.4.2.4 The Competent Court

In Article 1 of the Law, the Palestinian legislature defined the competent court, if the arbitration is local, as the court which originally examines the dispute presented to the arbitration panel. However, if the arbitration is international and conducted in Palestine, the competent court is the court of first instance which has territorial jurisdiction over the area where the arbitration is conducted. If the arbitration is foreign, the competent court authorized to record and implement the arbitration award is the Court of First Instance in Jerusalem (the capital of Palestine) or in its temporary headquarters in Gaza.

From the article above it is understood that by using the phrase ‘originally examines,’ the Palestinian legislature is referring to the provisions of the Code of Civil and Commercial Procedure that address territorial jurisdiction and jurisdiction based on the value of the claim. However, arbitration is not restricted to the jurisdiction procedures that exist in the law; the parties may choose the venue wherein they will resolve their dispute.

The court that monitors the arbitration procedures is the same court that is competent to resolve the dispute, regardless whether it had territorial jurisdiction or jurisdiction over the value of the claim. The court also approves or revokes the decisions of the arbitrators. The purpose for doing so is to ensure quick procedures for dispute resolution given that commercial courts do not exist in Palestine.

3.4.2.5 The Arbitration Period

The legislature granted the parties to the arbitration the right to determine the period for resolving their disputes. According to Article 38 of the Law, the arbitration panel issues its decision regarding the dispute on the date assigned by the parties. If the parties have not agreed to a deadline, the decision should be issued within 12 months after the date of the initiation of the arbitration procedures. It is possible, however, for the arbitration panel to extend the date for a period of not more than six months.

If the arbitration decision is not issued by the deadline, any of the parties may demand the competent court to issue an order to assign an additional date or cease the arbitration procedures. At this stage, each of the parties can file a suit with the competent court.

The decision shall be issued by consensus or by majority if the panel comprises more than one arbitrator, or by a decision of the umpire if a majority cannot be attained.
3.4.2.6 Enforcement, Objection, and Revocation

In Article 43 of the Law the legislature listed the grounds for filing an objection to the arbitration decision. Procedures for filing the objection are different from the procedures for filing an objection under Code of Civil and Commercial Procedure. The legislature also limited the period for objection to 30 days. According to Article 44 of the Law, the 30-day period starts from the date of the issuance of the decision if the parties were present during the sentence or from the date of the notification of the decision if the parties were not present.

If the 30-day period expires without an objection to the decision, the competent court, upon the request of one of the parties, shall issue a decision to enforce and execute it. The court’s decision is final and shall be implemented like all other court decisions. If the court rejects an objection, the decision is binding. If the court accepts an objection and revokes the decision, it may, if it deems it appropriate, return the dispute to the arbitration panel to re-examine the points assigned by the court.

3.4.2.7 Execution of the Award

After ratification by the competent court, the award shall acquire the power and effect of other court decisions and shall be implemented in the same manner. According to Article 48 of the Law, the court may refuse to implement the decision if it contravenes public order in Palestine or if it conflicts with applicable international agreements and conventions.

3.4.2.8 Implementation and Enforcement of Foreign Awards

The foreign award is the award or decision that settles the conflict, regardless of the nationalities of the parties or the arbitration panel. According to Article 3 of the Law, arbitration is foreign if conducted outside Palestine. The rules for implementing foreign awards are based on the New York Convention for recognizing and enforcing foreign awards.

Foreign awards are not enforced unless authenticated and certified by a Palestinian consular representative and translated into Arabic by an authorized legal translator. According to Article 48 of the Law, it is possible for the competent court to reject the implementation of a foreign arbitration decision if it contravenes public order or if it conflicts with international agreements operating in Palestine.

Article 49 of the Law allows the losing party in a foreign arbitration to seek an order from the competent court refusing to implement the decision if:

- it is proved that the decision had been invalidated or annulled before a court in the country of issuance;
Arbitration and Mediation in the Southern Mediterranean Countries

- the losing party proves that the decision has been appealed in the country where it was issued and remains unsettled; or
- a Palestinian court already issued a decision in conflict with the decision in a case involving the same parties and the decision addressed the same issue.

A foreign decision may not be implemented if one of the parties was not legally joined, if the arbitration panel or any of its members was not legally eligible, if the decision or its procedures were invalid in a manner affecting enforceability, or if the decision was obtained through cheating or deceit.

The decision of the competent court to implement or reject the foreign award shall be subject to appeal within 30 days starting from the date of the issuance of the decision if the parties were present during the issuance or else starting from the date of the notification of the arbitration award.

3.4.3 Constraints on Arbitration in Palestine

The following factors inhibit the development of arbitration in Palestine:

- the judiciary system prevailing in the WBGS;
- the lack of public awareness about the importance of arbitration in resolving commercial disputes;
- the fact that the rule of law ceases to exist in the WBGS, which discourages investors and the local population from undertaking commercial interactions and hence resolving their disputes through arbitration;
- the people’s tendency to resolve their disputes out of court by referring to Sulha because they do not trust the courts in resolving their disputes in a quick and efficient way;
- the lack of university and law school courses about arbitration;
- the need for more specialized institutions to promote and enhance the referral to arbitration for conflict resolution: there is only one institution in the WBGS that specializes in resolving disputes by arbitration; and
- the fact that Palestine still has not gained its sovereignty as an independent state, preventing it from being a state party to the international conventions that relate to arbitration.

Underlying all these reasons is also perhaps the most fundamental and difficult challenge: the failure to advance the economy in the WBGS due to the prevailing legal system, the lack of a stable legal framework, and the difficulty in enforcing judgments due to the current political situation. The PNA has failed to develop a regulatory environment that will attract needed levels of foreign
The West Bank and Gaza Strip

investment and provide legal guarantees and incentives that investors have come to expect.

3.4.4 Arbitration’s Potential Impact on Foreign Investment

In 1998 the PNA issued Investment Promotion Law No. 1 to achieve investment goals and priorities in Palestine by founding an entity – the Public Investment Promotion Authority – responsible for promoting, facilitating, and giving exemptions to invest in Palestine. This Law granted possible preferential treatment to investors based on nationality according to commercial or investment agreements. Furthermore, this Law, like other laws, was intended to provide a suitable and attractive environment for foreign investment.

Articles 39 and 40 included an arbitration clause for the resolution of disputes between investors and the PNA related to rights and duties implemented in this law.

It is worth noting the following:

i. In light of its primary relevance in dispute resolution, it seems significant that negotiation was mentioned twice: first, upon the request of either of the disputants according to the procedures in the regulations; and second, upon the request of one of the parties before starting any other mechanism. Overall, it is unclear whether the use of negotiation is mandatory or happens only upon request.

ii. While the law referred to regulations for the process, those regulations have not been enacted.

iii. The law gave arbitration and litigation the same level of preference for the foreign investor, and usually foreign investors do not prefer the litigation process.

3.5 University Programs on Arbitration Education in Palestine

There are several law faculties in the Palestinian universities, but none of these faculties offers any courses specifically about arbitration. However, in some courses the subject is covered. For example, in the ‘Private International Law’ course there is a section on the enforcement of foreign arbitral awards.
4. OTHER CONFLICT RESOLUTION METHODS IN PALESTINE: MEDIATION AND SULHA

There are two other kinds of conflict resolution methods in Palestine: mediation and Sulha. The difference between the two methods is that Sulha is more involved with crime-related conflicts in which the society as a whole has a greater interest. On the other hand, mediation covers a wider range of conflicts in which one or two persons are involved. Neither method is regulated under Palestinian law; however, both are widely used to avoid long procedures in court.

4.1 Mediation

Mediation is considered to be one of the established ways of resolving disputes in Palestine. It is usually conducted on a simple level based on good faith efforts and is a traditional custom in Palestinian society. It is not limited to any part of society or any particular kind of dispute. Because mediation is not regulated by law and is such an old and informal procedure, there are no statistics on its use.

Basically, mediation in Palestine is carried out by a neutral third party who works on narrowing the gap between the points of views of the disputants and facilitating their communication. Often, the process is not intended to achieve a binding resolution, but instead to achieve a settlement between the parties to facilitate final resolution before the courts. The advantage of mediation is that it is a simple and quick procedure, it usually does not take more than one to two sessions, and it does not involve the bureaucratic difficulties of litigation and arbitration. The mediator in Palestine is usually expected to have a neutral, patient and self-controlled personality with skills like good listening and the ability to create a collaborative negotiation atmosphere.

4.2 ‘Sulha Ashaeriah’ (Traditional Way to Resolve Disputes)

The other traditional way to resolve disputes in general is Sulha. It is a binding, obligatory, and firm process to end disputes, grounded in law but lacking the formality of the court system. It has roots in the tribal justice that prevailed in most communities before the institution of states and the rule of law, but modern law recognizes that certain types of disputes may be resolved through this system.

In the past, Sulha was carried out by senior citizens. During the first Intifada, some committees were established by the rebels to avoid courts under the occupation authority, and these committees also handle the Sulha. After the establishment of the PNA, new bodies such as governors, legal departments in the governorates, security services, and formal reform committees joined the traditional ones in the Sulha process.
5. **CONCLUDING OBSERVATIONS AND RECOMMENDATIONS**

A number of steps can be taken to improve the awareness and use of arbitration and mediation in Palestine. In particular, the following steps are recommended:

i. Raise public awareness of the importance and the advantages of resolving commercial disputes through arbitration and mediation.
ii. Teach arbitration and mediation in the law schools in the WBGS.
iii. Promote the role of the Ministry of Justice in authorizing arbitrators.
iv. Refer to the Palestinian Arbitration Law in international and trade agreements signed by the PNA.
v. Hold workshops on arbitration targeting lawyers and the business sector.
vi. Raise awareness of the importance of setting up new commercial dispute resolution centers that are monitored by the Ministry of Justice.
vii. Coordinate relations between the commercial sectors – private and governmental – to resolve commercial disputes in special arbitration centers.
viii. Train qualified arbitrators through cooperation with regional and international arbitration centers.
Appendix

Comparative Tables

Information contained in the following tables is derived from each of the country chapters. It has been presented succinctly in order to allow readers to compare jurisdictions at a glance. All attempts to summarize information, identify trends and make generalizations do so at the potential expense of accuracy and detail. The tables are not intended to serve as an exhaustive accounting of data. Readers seeking further particulars are referred to the relevant chapters of this book.

Moreover, the Training and Accreditation columns do not reflect a number of courses on arbitration and mediation that ADR Center has conducted in recent years for the benefit of the business and legal communities of each of the MEDA countries within the ambit of the European Commission-sponsored ADR MEDA Project (http://www.adrmeda.org).
### Arbitration and Mediation in the Southern Mediterranean Countries

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Primary Fields of Application</th>
<th>Type of Legal System</th>
<th>International Conventions and Other Agreements</th>
<th>Types of ADR Regulation</th>
<th>Court-related Referrals</th>
<th>Training and Accreditation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>Arbitration</td>
<td>Based on civil and Islamic law.</td>
<td>The New York Convention of 1958; the Washington Convention of 1995; the Convention Establishing the Inter-Arab Investment Guarantee Corporation*; numerous bilateral treaties</td>
<td>The Algerian Civil Code; the Civil Procedure Code.</td>
<td>Arbitration</td>
<td>Arbitration</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>The Civil Procedure Code contains basic criteria for arbitrations, but for the most part the parties' agreement is paramount. The Chamber of Commerce and Industry has created a Center for Arbitration and Conciliation that regulates conflicts economic in nature.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mediation</td>
<td></td>
<td></td>
<td></td>
<td>Mediation</td>
<td>Mediation</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Judges occasionally direct the parties to a mediator.</td>
<td></td>
</tr>
</tbody>
</table>

* According to [http://www.iaigc.org/index_e.html](http://www.iaigc.org/index_e.html) (last visited on June 4, 2007), Egypt, Jordan, Lebanon, Morocco, Palestine, Syria, and Tunisia are also parties to this Convention, although their accession is not mentioned in the respective chapters, and therefore does not appear in those countries’ tables.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Primary Fields of Application</th>
<th>Type of Legal System</th>
<th>International Conventions and Other Agreements</th>
<th>Training and Accreditation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Egypt</td>
<td>Arbitration</td>
<td>A civil law codified system based primarily on continental European legal models and Islamic law. The New York Convention of 1958; the Washington Convention of 1966; numerous bilateral treaties. Egyptian Law on Arbitral Jurisdiction No. 27/1994; the Proceeding Law.</td>
<td>Most industry laws and administrative / government agencies require parties to seek resolution of disputes through a specific department or a dispute resolution committee before going to court.</td>
<td>Arbitration The Arbitration Law sets forth basic requirements for arbitrators.</td>
</tr>
<tr>
<td></td>
<td>Mediation preferred for use in family, community and political conflicts.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>N/A</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Primary Fields of Application</td>
<td>Type of Legal System</td>
<td>International Conventions and Other Agreements</td>
<td>Types of ADR Regulation</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------</td>
<td>----------------------</td>
<td>-----------------------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>Israel</td>
<td>Arbitration</td>
<td>Mixed system based on what has remained of Ottoman law, English common law, and religious law. Influenced by American case law and statutory law.</td>
<td>The New York Convention of 1958; the Washington Convention of 1966.</td>
<td>The Arbitration Act of 1968; the Courts Act of 1984. Mediation is regulated by the Court Administration’s Advisory Committee on Court-connected Mediation.</td>
</tr>
</tbody>
</table>

(Continued on next page)
### Training and Accreditation

The Court Administration's Advisory Committee on Court-connected Mediation is charged with approving mediators and mediator training qualification. The Courts Regulations (Mediator Roster) requires certain criteria for inclusion. To qualify for the Mediator Roster, the training organization must have its curriculum approved by the Advisory Committee. Law faculties offer ADR courses.

### Court-related Referrals

Most cases going to mediation are court-referred.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Primary Fields of Application</th>
<th>Type of Legal System</th>
<th>International Conventions and Other Agreements</th>
<th>Types of ADR Regulation</th>
<th>Court-related Referrals</th>
<th>Training and Accreditation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Israel [Cont'd]</td>
<td>Mediation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>The Court Administration's Advisory Committee on Court-connected Mediation is charged with approving mediators and mediator training qualification. The Courts Regulations (Mediator Roster) requires certain criteria for inclusion. To qualify for the Mediator Roster, the training organization must have its curriculum approved by the Advisory Committee. Law faculties offer ADR courses.</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Primary Fields of Application</td>
<td>Type of Legal System</td>
<td>International Conventions and Other Agreements</td>
<td>Types of ADR Regulation</td>
<td>Court-related Referrals</td>
<td>Training and Accreditation</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------</td>
<td>----------------------</td>
<td>-----------------------------------------------</td>
<td>--------------------------</td>
<td>------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>Jordan</td>
<td>Arbitration</td>
<td>Based on French civil law and Islamic law. There are tribunals dedicated to other religious backgrounds, namely Christian.</td>
<td>The New York Convention of 1958; the Treaty on the Settlement of Investment Disputes in the Arab Countries; the Washington Convention of 1995; the Riyadh Arabic Treaty on Judicial Collaboration; the Arab Treaty on Commercial Arbitration; the Amman Arabic Treaty on Commercial Arbitration; various bilateral treaties.</td>
<td>Arbitration Law of 2001; Law of Mediation for the Settlement of Civil Disputes of 2003; Mediation Law of 2006. The Law of Personal Status stipulates the use of arbitration or mediation in separation or divorce cases.</td>
<td>Arbitration mainly voluntary and private.</td>
<td>The law imposes no training requirements on arbitrators or mediators, but practitioners are often retired judges, lawyers, or professionals of long experience, or, for informal mediation, well-known, respected, and elderly individuals.</td>
</tr>
</tbody>
</table>

**Arbitration**
- Arbitration traditionally known and accepted.
- Official departments and the government in general utilize arbitration, including the Transportation Department, the Law of Industry Chambers, and the Law of the Water Authority. Also used for family disputes.

**Mediation**
- Mediation traditionally known and accepted. Used primarily for family disputes and to resolve disputes surrounding car accidents and accidental killings.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Primary Fields of Application</th>
<th>Type of Legal System</th>
<th>International Conventions and Other Agreements</th>
<th>Types of ADR Regulation</th>
<th>Court-related Referrals</th>
<th>Training and Accreditation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mediation</td>
<td></td>
<td></td>
<td></td>
<td>The president of the First Instance Tribunal may be asked to appoint arbitrator(s).</td>
<td>The LCCP does not prescribe specific qualifications or training for arbitrators.</td>
</tr>
<tr>
<td></td>
<td>Mediation</td>
<td></td>
<td></td>
<td></td>
<td>N/A</td>
<td>In traditional mediation, the third person is never a professional mediator or arbitrator.</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Primary Fields of Application</td>
<td>Type of Legal System</td>
<td>International Conventions and Other Agreements</td>
<td>Types of ADR Regulation</td>
<td>Court-related Referrals</td>
<td>Training and Accreditation</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------</td>
<td>----------------------</td>
<td>---------------------------------------------</td>
<td>--------------------------</td>
<td>------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>Morocco</td>
<td><strong>Arbitration</strong></td>
<td>Based on civil law and Islamic law.</td>
<td>The New York Convention of 1958; the Geneva Convention of 1961 as well as the Convention of 1952 on the execution of arbitration awards between Arab States; the Washington Convention of 1966; numerous bilateral treaties. Morocco participated in drafting the model regulation on international commercial arbitration approved by UNCITRAL in 1985.</td>
<td><strong>Arbitration</strong></td>
<td>N/A</td>
<td>Only CIMAR has set criteria for the app't. of arbitration. Several Moroccan universities have introduced arbitration and mediation in their degree courses; for example, law schools in Casablanca and Rabat have established a second degree with a major in both subjects.</td>
</tr>
<tr>
<td></td>
<td><strong>Mediation</strong></td>
<td>Recourse to mediation is not widespread.</td>
<td>No legal provisions govern mediation; however, there is currently a bill before the Moroccan Parliament to regulate mediation to be codified as part of the Code of Obligations and Contracts.</td>
<td><strong>Mediation</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Primary Fields of Application</td>
<td>Type of Legal System</td>
<td>International Conventions and Other Agreements</td>
<td>Types of ADR Regulation</td>
<td>Court-related Referrals</td>
<td>Training and Accreditation</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------</td>
<td>----------------------</td>
<td>----------------------------------------------</td>
<td>-------------------------</td>
<td>------------------------</td>
<td>---------------------------</td>
</tr>
</tbody>
</table>

Use of arbitration extensive, especially for investment disputes and in contractual disputes where there is an arbitration clause. Also widely used in family disputes (especially divorce issues), disputes relating to agricultural work, labor/employment disputes, and expropriation. Issues not subject to arbitration include personal status, nationality, custody arrangements, citizenship, marriage, and criminal responsibility.

There are no arbitration centers or mediation service providers in Syria, and no graduate or post-graduate university programs on arbitration or dispute resolution. Hence, there is no training or qualification required. This has led to a lack of well-trained and qualified professionals.

[Continued on next page]
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Primary Fields of Application</th>
<th>Type of Legal System</th>
<th>International Conventions and Other Agreements</th>
<th>Types of ADR Regulation</th>
<th>Court-related Referrals</th>
<th>Training and Accreditation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Syria [Cont’d]</td>
<td>Mediation</td>
<td>Arbitration and Mediation in the Southern Mediterranean Countries</td>
<td>Use of mediation confined to informal societal sector but may be used in divorce cases.</td>
<td>Mediation remains an informal and non-binding process that has not been codified.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Primary Fields of Application</td>
<td>Type of Legal System</td>
<td>International Conventions and Other Agreements</td>
<td>Types of ADR Regulation</td>
<td>Court-related Referrals</td>
<td>Training and Accreditation</td>
</tr>
<tr>
<td>--------------</td>
<td>------------------------------</td>
<td>----------------------</td>
<td>---------------------------------------------</td>
<td>-------------------------</td>
<td>------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>Tunisia</td>
<td>Arbitration</td>
<td>Based on French civil law and Islamic law.</td>
<td>The New York Convention of 1958; the Washington Convention of 1966; numerous bilateral agreements.</td>
<td>Arbitration</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Mediation</td>
<td>Mediation not well known or much practiced.</td>
<td>Mediation is not regulated by law; however, the CCAT adopted the Rules of Mediation and Conciliation in 1996.</td>
<td>Mediation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Primary Fields of Application</td>
<td>Type of Legal System</td>
<td>International Conventions and Other Agreements</td>
<td>Types of ADR Regulation</td>
<td>Court-related Referrals</td>
<td>Training and Accreditation</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------</td>
<td>----------------------</td>
<td>---------------------------------------------</td>
<td>-------------------------</td>
<td>------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>Turkey</td>
<td>Arbitration</td>
<td>Civil law system blending elements of Swiss, French, German and Italian law.</td>
<td>The New York Convention of 1958; the Geneva Convention; the Washington Convention of 1966.</td>
<td>Arbitration</td>
<td>N/A</td>
<td>No specific requirements imposed by the Code of Civil Procedure. Many law schools offer courses on international commercial arbitration. Sabanci University offers a Masters in Conflict Analysis and Resolution.</td>
</tr>
<tr>
<td></td>
<td>Mediation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Arbitration and Mediation in the Southern Mediterranean Countries
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Primary Fields of Application</th>
<th>Type of Legal System</th>
<th>International Conventions and Other Agreements</th>
<th>Types of ADR Regulation</th>
<th>Court-related Referrals</th>
<th>Training and Accreditation</th>
</tr>
</thead>
<tbody>
<tr>
<td>The West Bank and Gaza Strip</td>
<td>Arbitration</td>
<td>Islamic law.</td>
<td>Palestine has not gained sovereignty as an independent state, preventing it from being a state party to relevant international conventions.</td>
<td>Arbitration</td>
<td>N/A</td>
<td>Arbitration is covered in several law sources.</td>
</tr>
<tr>
<td>Mediation</td>
<td>Mediation</td>
<td></td>
<td>Mediation not regulated by law.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>N/A</td>
<td></td>
<td>N/A</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Arbitration and Mediation in the Southern Mediterranean Countries
Index

ADR passim
Ad hoc arbitration 5, 9, 13, 33-34, 52-53, 55, 130-132, 134, 167, 189, 211
Africa 1-2, 17-18, 34, 90, 125, 161-162, 203
AKLAC (Dr. A. Kheir Law & Arbitration Centre) 34, 41
Alim (see also L’Alim) 99
Amman Arabic Treaty on Commercial Arbitration 79
Anglo-American common law 48
Ankara Bar Association’s Alternative Dispute Resolution Center 197
Appeal of arbitration awards 169
Appointment of arbitrators 30, 37, 56, 78, 136-137, 149, 193
Arab passim
Arabic Treaty on Commercial Arbitration 79
Arbitration passim
Arbitration/arbitral award passim
Arbitration award annulment 11-12, 32, 39, 53, 82, 100, 103-105, 108, 115-116, 217
Arbitration award enforcement (domestic and/or foreign) 11, 12
Arbitration award modification 169, 180
Arbitration/arbitral agreement (see also compromissory clause) 27, 30, 32-33, 36, 39, 164
Arbitration/arbitral agreement annulment 98-99
Arbitration amicable compositeurs 168-169
Arbitration center 4, 6, 13, 29, 33-34, 41, 54-55, 77, 93, 109, 134-135, 141, 148, 153-155, 177, 194, 210-211, 221
Arbitration/arbitral clause (see also compromissory clause) 2, 22-23, 30, 35, 52, 54-55, 76-77, 97-98, 101-104, 131, 133, 136-138, 149, 164, 189, 194, 210, 219
Arbitration fees and costs 136, 155, 193, 211
Arbitration/arbitral tribunal 5, 9-10, 12-14, 30-33, 35-37, 93, 97, 101-102, 104, 109-111, 132, 134, 139, 141, 148, 153, 163-170, 172-176, 178-181, 193
Arbitration procedure 5, 14, 32-33, 35, 52, 55-56, 77, 95, 99-100, 102, 104, 109-111, 131, 133, 163, 166-168, 170-175, 178-181
Arbitrator passim
Arbitration and Mediation in the Southern Mediterranean Countries

Arbitrator appointment 31-32, 35, 37, 48, 56, 72, 78, 100-101, 106, 110-111, 118, 131, 136-137, 140, 149, 150, 165-167, 172-173, 175, 178, 193
Arbitrator dismissal/disqualification 13, 57, 149, 166, 173, 179, 180
Arbitrator qualification 13, 16, 57-60, 100, 102, 118, 155, 193, 227, 229, 231
BCCI (Beirut Chamber of Commerce and Industry) 109, 111-113
Bankruptcy 20, 31, 49-50, 74, 78, 92, 147, 185, 196, 215
Beirut Customs Authority proceedings 113
Berber 1, 125
Bilateral investment treaties (BIT) 22, 191
Business community 25, 42, 60, 62, 93, 118-119, 124, 133, 148, 150, 156-157, 195, 198
CACI (Algerian Chamber for Commerce and Industry) 4, 15
CCAT (Center for Conciliation and Arbitration of Tunis) 181, 233
CCIAB (Chamber of Commerce, Industry and Agriculture of Beirut) 93, 117, 122-123
CCIAT (Chamber of Commerce, Industry & Agriculture of Tripoli) 93, 123
CCISC (Chamber of Commerce, Industry and Services in Casablanca) 135-137, 141
CIMAR (International Arbitration & Mediation Center in Rabat) 135-137, 141, 230
CIRDI (see also ICSID) 6, 9, 132-133
CRCICA (Cairo Regional Centre for International Commercial Arbitration) 22, 29, 34-35, 41, 44, 77
CRCICA branches 41
Center for Judicial and Legal Research (Tunisia) 163
Chambers of Commerce 54, 62, 97, 109, 113, 135, 142-143, 148, 157, 178, 211
Chraa 142
Christian 17, 26, 47, 49, 69, 73, 89, 145, 183, 203-204, 228
Civil code/law 5, 14, 73-75, 122, 126-127, 139, 158-159, 161, 224-225, 228-231, 233
Civil Procedure Code 6-8, 10-11, 13, 131, 137-138, 140, 168
Code Napoléon/Napoleonic Code 73, 229
Commercial Arbitration Arab Center 134
Commercial code/law 18-20, 30, 127, 146-147, 163, 185, 195
Commercial courts 20, 23-24, 93, 129-131, 137, 146, 185-186, 209, 216
Index


Commercial litigation 7, 49, 126-127, 129

Compromise 7, 13, 30, 57, 132, 139-142

Compromise judgment 57

Compromissory clause (see also arbitration/arbitral agreement) 5-7, 172, 174, 178-179


Confessionalisme 89

Confidentiality of processes 4, 15-16, 51, 55-56, 79, 93, 116, 140, 151, 210-211

Constitutional law provisions relating to arbitration and/or ADR 5, 7, 12-14, 26, 32, 50, 69, 72-73, 75, 80, 125, 129, 161, 183-185, 188-189

Consumer disputes 22, 61, 95-98, 119, 121, 206, 210, 229

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) 8, 11, 14, 53, 80-82, 109, 128, 132, 153, 177, 190-192, 213, 217

Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) (see also Washington Convention of 1965) 6, 22-23, 80, 109, 132, 190-191, 225

Court Administration’s Advisory Committee on Court-connected Mediation 59-61


Court of Cassation (see also Supreme Court) 23-24, 73, 80-84, 89, 94, 104-105, 145, 152, 161, 165, 170

Court of First Instance 23-24, 38, 50, 73, 81, 82, 84-85, 89, 93, 100-101, 103-104, 106-108, 117, 126, 129, 133, 145, 146, 151-153, 155, 161, 166, 169, 174, 185-186, 209, 216

Court specialization 21, 24, 74, 83, 125

Cultural aspects of mediation 40, 47, 58, 66, 90, 118, 123, 156, 158, 199-200, 203

DRB (Dispute Resolution Board) 45

Dahir 126-131, 138, 140, 230

Declaration of Principles and the Oslo Accords 203, 206, 212

District court 49-50, 53, 169, 209

Domestic arbitration 29, 55, 76, 109, 116-117, 130, 132, 137, 152, 163-164, 168, 172, 180, 186-187, 193, 195

Arbitration and Mediation in the Southern Mediterranean Countries

EFTA (Interim Association Agreement with European Free Trade Association) 208
EU (European Union) 21, 71, 122, 162, 183-184, 197, 207-208
Early neutral evaluation 65
Economic development 18, 70-72
Economic reform 18, 70-71, 145, 183
‘El Insaf’ Center in Tunisia 180
Enforcement of foreign arbitration awards 8, 26, 53, 80-81, 109, 128, 152-153, 177, 190-192, 213, 217, 219
Euro-Arab Chamber of Commerce 6
Euro Mediterranean Interim Association Agreement on Trade and Cooperation with the European Union 207
European Convention of International Commercial Arbitration (Geneva Convention) 132, 190
Evaluative mediation 43
Export trade 18, 48, 70-72, 74, 128, 162, 184, 205-207
FIDIC (International Federation of Consulting Engineers) 44
Family law 154, 158
Fkihs 142
Foreign investment 50, 75, 92, 134, 160, 219
French governance 125, 161
French law 6, 18, 73, 97, 131-132, 148, 228, 231, 233-234
GAFI (General Authority for Investment and Free Zones) 22
GATT Conference 126, 184
Government agencies 20, 62
Hague Conventions of 1899 and 1907 109
Hague Convention on Private International Law 53
Halachic law 65
ICC (International Chamber of Commerce) 4, 6, 77, 122, 131-132, 134, 136, 141, 153-154, 191-192
ICC-Morocco 134, 136
ICSID (International Center for the Settlement of Investment Disputes) 6, 22-23, 80, 109, 132, 190-191, 225
ICSID arbitrations 80
Improving use and awareness of ADR mechanisms 42, 44, 67-68, 83, 87-88, 118, 123-124, 133-134, 142-144, 159-160, 199-201, 221
Institutional arbitration 5-6, 10, 13, 29, 33, 76-77, 130-131, 134, 163, 166-167, 210
Index


International commercial arbitration 7, 10, 22, 27, 34, 36, 76-77, 131-132, 163, 187, 195

International conventions 3, 8, 27, 127-128, 133, 153, 164, 177, 189-190, 218

International Court of Justice 9

International Federation of Consulting Engineers (see also FIDIC) 44

International trade 1, 7, 29, 90, 128, 146, 184, 187, 207, 213

International investment passim

Investment disputes 6, 8, 22, 41, 49-50, 53, 75, 79, 109, 132, 147, 177, 190-191

Investment promotion 9, 134, 191, 219, 235

Islam/Islamic 17, 25-26, 40, 73, 154, 161, 183, 199, 204, 224-225, 228, 230-231, 233, 235

Israeli Bar Association 48, 54-56, 59, 62

Israeli Mediator Roster 60-62

Israeli Palestinian Interim Agreement on the West Bank and the Gaza Strip 206

Istanbul Chamber of Commerce (ITO) 194

Jahat 84

Jew/Jewish 26, 47, 49, 60, 65, 125, 161, 183, 203-204

Jmnaa 142

Judicial authority over arbitration and mediation 10-12, 16, 26, 32-33, 36-39, 52-64, 78-82, 84-86, 101, 103-08, 114-17, 121, 137-38, 148-53, 158-59, 166, 168-71

Judicial conciliation 140

Kibbutz 55

King (of country) 69-70, 72, 76, 126-127

Labor disputes 49-50, 58-59, 86-87, 95

Labor laws 73, 95, 158

L’Alim 99

Law of Deewan al-Mathalem 87

Lawyers/legal community 24, 42, 44, 55-57, 62, 72, 78, 84-85, 93, 107, 119, 123, 157, 159, 195

Legislative reform 72

Lex mercatoria 107, 132

Magistrate courts 49-50, 73

Makhzen judge 142

Maritime arbitration 41, 134, 141
<table>
<thead>
<tr>
<th>Term</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arbitration and Mediation in the Southern Mediterranean Countries</td>
<td></td>
</tr>
<tr>
<td>Maritime Arbitration Chamber in Morocco</td>
<td>134, 141</td>
</tr>
<tr>
<td>Maritime disputes</td>
<td>4, 41</td>
</tr>
<tr>
<td>Maritime law</td>
<td>92</td>
</tr>
<tr>
<td>Maritime trade</td>
<td>92, 134</td>
</tr>
<tr>
<td>Médiateurs sans frontières</td>
<td>123</td>
</tr>
<tr>
<td>Mediation</td>
<td>passim</td>
</tr>
<tr>
<td>Mediation enforcement</td>
<td>63</td>
</tr>
<tr>
<td>Mediation law/act</td>
<td>84-86</td>
</tr>
<tr>
<td>Mediation training</td>
<td>42, 61-62</td>
</tr>
<tr>
<td>Mediator</td>
<td>passim</td>
</tr>
<tr>
<td>Mediator qualification</td>
<td>16, 59-60, 118, 227</td>
</tr>
<tr>
<td>Ministry of Commerce</td>
<td>54</td>
</tr>
<tr>
<td>Ministry of Justice</td>
<td>23, 54, 59, 61, 72-73, 84, 144, 185-186, 200, 215, 221</td>
</tr>
<tr>
<td>Modernization</td>
<td>126, 129, 163</td>
</tr>
<tr>
<td>Monarchy</td>
<td>69, 125</td>
</tr>
<tr>
<td>Musalaha</td>
<td>40</td>
</tr>
<tr>
<td>Muslim</td>
<td>1, 47, 69, 89, 118, 125, 183, 142, 145, 203-204</td>
</tr>
<tr>
<td>NCMDR (Ministry of Justice’s National Center for Mediation and Dispute Resolution)</td>
<td>59-61, 64</td>
</tr>
<tr>
<td>NTRA (Egyptian National Regulatory Authority)</td>
<td>42-43</td>
</tr>
<tr>
<td>New York Convention of 1958 (see also Convention on the Recognition and Enforcement of Foreign Arbitral Awards)</td>
<td>8, 11, 14, 53, 80-82, 109, 128, 132, 153, 177, 190-192, 213, 217</td>
</tr>
<tr>
<td>Oulemas</td>
<td>142</td>
</tr>
<tr>
<td>Parliament</td>
<td>1, 4, 17, 20, 47, 80, 89, 94, 96-97, 125, 139, 142, 161, 188-189, 204, 230</td>
</tr>
<tr>
<td>Port Said Centre for Commercial and Maritime Arbitration</td>
<td>41</td>
</tr>
<tr>
<td>Privatization</td>
<td>21-22, 71, 126, 184</td>
</tr>
<tr>
<td>President (of arbitration center/ Chamber of Commerce)</td>
<td>135-36, 181</td>
</tr>
<tr>
<td>President (of arbitration tribunal)</td>
<td>5, 9, 12, 36-37, 39, 95, 97, 112-114, 166, 168, 179, 180, 181</td>
</tr>
<tr>
<td>President (of International Court of Justice)</td>
<td>9</td>
</tr>
<tr>
<td>President (of judicial court)</td>
<td>10, 11, 84, 100-02, 104, 106, 117,129, 151-52, 166, 169, 171-73, 229</td>
</tr>
<tr>
<td>President (of state)</td>
<td>1, 8-9, 17, 21, 24, 89, 145, 161, 183, 204</td>
</tr>
<tr>
<td>Prime Minister</td>
<td>1, 17, 21, 47, 69-70, 89, 161, 183, 204</td>
</tr>
<tr>
<td>Private mediators</td>
<td>84</td>
</tr>
<tr>
<td>Privatization of the economy</td>
<td>21-22, 71, 126, 184</td>
</tr>
<tr>
<td>Quran</td>
<td>26, 40</td>
</tr>
<tr>
<td>Reconciliation</td>
<td>40, 84, 154, 158-159, 215</td>
</tr>
<tr>
<td>Research on use of ADR</td>
<td>34, 68, 93, 163, 192, 199, 211, 233</td>
</tr>
</tbody>
</table>
Index

Riyadh Arabic Treaty on Judicial Collaboration 153
SME (Small and medium sized/scale enterprises) 48, 90-91, 94, 123
SME Development Agency 48
Settlement passim
Settlement of Investment Disputes in the Arab Countries Treaty 75, 79
Shariaa’ 25-26, 40, 73, 154, 199
Shi’a Muslim 89
Socialism/ Socialist 1-2, 7, 24, 162
Specialized courts 4, 19, 21, 24, 50, 129, 146-147, 185, 210
Sulha/Sulcha/Sulh 30, 40, 65, 84, 156, 209, 218, 220
Sunni Muslim 1, 17, 69, 89, 125, 183, 203
Supreme Court (or Supreme Court of Appeal) (see also Court of Cassation) 3, 12, 23, 49-50, 57, 62, 73, 89, 97, 106, 126
TCCI (Tripoli Chamber of Commerce and Industry) 109, 111-113
Tahkeem 26, 210-211
Tax consequences of arbitration awards 116, 133
Training in ADR 42, 59-62, 64, 66-67, 72, 84, 122-123, 136-143, 155, 158, 194-195, 197-199, 201, 223-235
Treaty on the Settlement of Investment Disputes in the Arab Countries 75, 79
UNCITRAL Model Law 27, 76, 131, 163, 188
Union of Chambers and Commodity Exchange of Turkey (UCCET) (Türkiye Odalar Borsalar Birliği – TOBB) 194
University courses in ADR 34, 66, 119, 122-123, 155, 158, 195, 198, 200, 218-219, 231, 234
WTO (World Trade Organization) 71, 183-184
Waqfs 73
Washington Convention of 1965 (see also Convention on the Settlement of Investment Disputes between States and Nationals of Other States) 8, 53, 75, 80, 109, 132, 177-178
Global Trends in Dispute Resolution

