
LEBANON COUNTRY CHAPTER

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INTRODUCTION

Lebanon's economic infrastructure is marked by its dependence on the service sector. Therefore, trade and manufacturing are leading sectors. A study handled by the Department of Central Statistics revealed that the volume of domestic trade for the abovementioned year was up to 6 billion Lebanese Pounds. Furthermore, a statistical study issued by the Lebanese Customs showed that the total Lebanese imports for the year 2004 was up to 9,396,953 US\$. Those statistics give an idea of the high number of international trade contracts involved in the Lebanese Economy through small and medium scale enterprises.

Undoubtedly, the Lebanese Government took into consideration two main elements to enhance the growth within the service sector:

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

The present Lebanese chapter aims to highlight the situation of both arbitration and ADR mechanisms in Lebanon and give a general idea of the existing legal framework on these matters

PART I: ARBITRATION

I- Regulations governing arbitration in Lebanon – The Lebanese Code of Civil Procedure (hereinafter the “LCCP”):

A- The rules in the LCCP governing local arbitration (762-808 LCCP):

On July 29, 2000, the Lebanese Parliament voted Law 440 that introduced numerous changes to the LCCP with respect to arbitration.

1) - The definition of local arbitration: Parties to a civil or commercial contract may include in their agreement a clause stating that all disputes arising from the legality, interpretation or enforcement of an agreement may be resolved by way of arbitration¹. Furthermore, the state of

¹ 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 said law) and resulting from the enforcement or the interpretation of the articles of the said law, should, if its amount does not exceed USD/2000/, be subject to mediation in the attempt to reconcile the parties.



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 decree².

2) - The arbitration clause: In order to have recourse to arbitration, the arbitration clause must be in writing in the main agreement or in a document to which the main agreement refers. The arbitration clause must contain, under penalty of annulment, the nomination of one or more arbitrators in their person or quality or the mechanism for their nomination³. 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.”

3) - The arbitration agreement: Another method of recourse to arbitration is through the arbitration agreement. The arbitration agreement is an agreement by virtue of which the signatory parties may resolve their dispute through arbitration by one or more persons⁴. 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 granted⁵. It is also possible for the parties in litigation to have

Furthermore, the dispute is to be settled by a dispute resolution committee (described in article 97 of law 659/2005) if its amount exceeds USD/2000/ 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/2000/.

² Article 762 LCCP.

³ Article 763 LCCP.

⁴ Article 765 LCCP.

⁵ 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 of the date when they shall start to convene in order 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 should also, during the process of arbitration, take all the provisional and conservatory measures that the nature of the conflict necessitates, doing so in respect of article 589 LCCP. The arbitrator may also render



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 custom⁶.

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 equity⁷ and that the arbitrator(s) be mandated as mediator(s) between the parties⁸. In an ordinary arbitration, the arbitrators must apply the ordinary laws and procedural regulations to the exception of those that contravene the arbitration procedures, notably the rules in the LCCP concerning arbitration. The parties may exempt in writing, in the arbitration agreement or in a separate agreement, the arbitrators from applying part or all of the ordinary procedural rules to the exception of such rules which are of public policy and provided that they are in compliance with the arbitration procedures⁹. In arbitration under equity, the arbitrators may be exempt from applying the ordinary laws and procedural regulations and they rule under equity. Exception from such exemption is made to the laws related to public policy and the fundamental principles of procedural regulations including those related to the rights of defence, the motivation of the award and the specific rules for the organization of the arbitration¹⁰.

5) - The rules for the nomination of an arbitrator

i) - The conditions required to be an arbitrator: The arbitrator should be a physical person, noting that if a moral entity is selected, its role shall be confined to the organization of the arbitration¹¹. Note that the LCCP does not provide that arbitrators must have specific qualifications or diplomas.

provisional decisions and rule on part of the claims before rendering the final award. (Articles 779, 780, 785, 787, 788 and 789 LCCP).

⁶ Article 767 LCCP.

⁷ In the event of doubt as to the nature of the arbitration, it shall be deemed an ordinary arbitration (Art 776 LCCP).

⁸ Article 775 LCCP.

⁹ 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, the party's right of recourse against a decision taken without its knowledge)- (Art 776 LCCP).

¹⁰ Article 777 LCCP.

¹¹ The arbitrator may not be: a minor, an incapacitated person, a person deprived of its civic rights or a bankrupt person that has not been rehabilitated (Article 768 LCCP).



ii) - The procedure for nominating an arbitrator: The number of appointed arbitrators¹² should, at all times, be odd under penalty of annulment of the arbitration¹³. Furthermore, in the event that a physical person or a moral entity is chosen to organize the arbitration, it will be in charge of appointing the arbitrator(s) acceptable to the parties. If such acceptance is not met, the person or moral entity responsible for organizing the arbitration shall ask each party to nominate one arbitrator and shall appoint the third arbitrator. If the parties fail to appoint their arbitrator, then the person or moral entity shall appoint the arbitrator on their behalf¹⁴.

iii) - The revocation or the incompetence of the arbitrator(s): An arbitrator may not be revoked unless the parties agree and may not be declared incompetent from the arbitration except for reasons that are discovered or take place after the designation¹⁵.

6) - The involvement of the judiciary

i) - In the process of nomination of the arbitrator(s): If a difficulty arises in relation to the appointment of the arbitrator(s), the head of the First Instance Tribunal is asked to appoint the arbitrator(s)¹⁶. Furthermore, and as mentioned in paragraph 5) ii), should the parties or the arbitrators fail to appoint the required additional arbitrator, the president of the First Instance Tribunal shall make the appointment¹⁷.

ii) - In the incompetence of the arbitrator(s): As mentioned in paragraph 5) iii), the First Instance Tribunal is competent to declare the arbitrator or the arbitration panel incompetent¹⁸.

iii) - In the conduct of the arbitration process: The president of the First Instance Tribunal shall also be competent to grant an extension of time for the conduct of the arbitration and the

¹² The arbitrator's acceptance of the mission is necessary and should be in writing. If the arbitrator is aware of a reason that renders him/her incompetent, he/she should inform the parties of it and should not accept the mission unless the parties authorize him/her to do so. Once the arbitrator has accepted the mission, he/she may not resign without a valid reason or else he could be forced to compensate the damages caused by his unjustified withdrawal (Art 769 LCCP).

¹³ 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).

¹⁴ Article 772 LCCP.

¹⁵ The declaration of the incompetence of an arbitrator may be asked for the same reasons as those requesting the incompetence of a judge (which are strictly enumerated in articles 120 to 130 LCCP). The request of incompetence of an arbitrator should be handed 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 (Art 770 LCCP).

¹⁶ In doing so, the head 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 he 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 (Art 764 LCCP).

¹⁷ Article 771 LCCP.

¹⁸ Article 770 LCCP.



rendering of the award and such pursuant to the request of one of the parties or the arbitral tribunal¹⁹. In all the cases provided for by articles 764, 771 and 773 LCCP 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^{20 21}.

7) - The suspension of the arbitration: The suspension of the arbitration is governed by articles 505 to 508 LCCP (i.e. the articles that govern the suspension of a trial)²². 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 of the parties' loss of capacity to enter into litigation, (c) the proxy's loss of quality to represent a party during trial. The suspension takes effect starting from the notification of its reason to the other party. The arbitration process is not suspended if the attorney of one of the parties dies, or if his mandate ends or is ended; the arbitral tribunal should therefore grant a reasonable period of time in order for the party to find a new attorney²³. The suspension of the arbitration causes the suspension of all on-going time limits, and the annulment of all procedures undertaken during the suspension (unless the party who can invoke the reason of suspension renounces, expressly or implicitly, to do so)^{24 25}. If an incidental question outside the competence of the arbitrator 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 as well as the time limit set for the rendering of the award until the arbitrators are informed of the final decision taken by the competent court concerning the incidental matter²⁶.

¹⁹ Article 773 LCCP.

²⁰ 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 he finds the arbitration clause to be obviously null, or incomplete and insufficient to appoint the arbitrator(s)), which decision may be appealed before the Court of Appeal who must decide promptly.

²¹ 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).

²² Article 782 LCCP.

²³ Article 506 LCCP.

²⁴ Article 507 LCCP.

²⁵ 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 assists to the session scheduled to continue the arbitration (Article 508 LCCP).

²⁶ Article 784 LCCP.



8) - The end of the arbitration: Unless a special agreement between the parties stipulates otherwise, the arbitration ends in the following cases: (a) revocation, death, impeachment or deprivation of the civic rights of the arbitrator, (b) incompetence or abstention of the arbitrator, or (c) if the prescribed time limit for the conduct of the arbitration process is not met²⁷.

9) - The arbitration award

i) - Conditions of form: The arbitration award should include the following: (a) the name of the arbitrator(s) (b) the place and date on which it was rendered (c) the names of the parties, their title, their quality as well as the names of their attorneys, (d) the facts claimed by each party, their demands and the evidence supporting their claims, and (e) the motivation of the award. The arbitration award should be signed by the arbitrators who have rendered it; in the event that a minority of arbitrators refuses 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 arbitrators²⁸.

ii) - The consequences and effects: The arbitration award results in the relinquishment of the case from the hands of the arbitrator. Furthermore, the award has the power of res judicata with respect to the conflict resolved²⁹.

iii) - The enforcement (the procedure of exequatur): Once the arbitration award is rendered, it should obtain exequatur for its enforcement³⁰. The court decision refusing to enforce the award should be motivated and is valid only for the reasons of annulment provided in article

²⁷ Article 781 LCCP.

²⁸ Articles 790 and 791 LCCP.

²⁹ Article 792 and 794 LCCP. However, the arbitrator remains competent to interpret the award, correct the errors and oversights and to complete it in the event that he omitted 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 set to the arbitrator(s) 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 of interpreting and correcting the award.

³⁰ 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 to the office of the First Instance Tribunal as well as a copy of the arbitration clause or arbitration agreement marked as being a true copy of the original by the arbitrators, a competent authority or the head clerk after review of the original.

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



800 LCCP³¹. Please refer to paragraph 11 (ii) here below. If the conflict that is subject of the arbitration is of the competence of administrative tribunals, the president of the higher Administrative Court (Conseil d'Etat) decides of its enforceability³². Arbitration awards shall be subject to the provisions of prompt enforcement. In the event of appeal or request of 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 is decided by the Court of Appeal in the cases and according to the specific conditions provided in article 575 LCCP)³³.

10) - The length of the arbitration procedure: If the arbitration agreement or the arbitration clause does not set a time limit for the rendering of the award, the arbitrators should complete their mission within six months from the last arbitrator's acceptance of his mission³⁴.

11) – The recourse against local arbitration awards

i) - The appeal³⁵: Arbitration awards are subject to appeal unless the parties have expressly waived their rights in relation thereto. However, arbitrations under equity may not be subject to appeal unless the parties have expressly reserved this right in writing and in such a case, the competent Court of Appeal shall see the matter as an arbitrator under equity³⁶. Furthermore, the court decision refusing to enforce the arbitration award is subject to appeal during the thirty days following the date of its notification. In such a case, the Court of Appeal is competent to

³¹ Article 796 LCCP.

³² Article 795 LCCP.

³³ Article 797 LCCP.

³⁴ 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 head of the First Instance Tribunal upon request of one of the parties or the arbitral tribunal.

³⁵ 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 litigations 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 arbitrations in equity may not be subject of 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 expiry 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.

³⁶ Article 799 LCCP.



see, upon request of the parties, into the motives that could have been invoked by them against the arbitration award by way of appeal or annulment (depending on the situation)³⁷.

ii) - The annulment of the award³⁸: Notwithstanding any provision to the contrary, the parties to arbitration may request the annulment of the award at any time and regardless of their right to appeal. In this respect, the annulment is only possible in the following cases³⁹: (a) rendering of an award without an arbitration agreement or based on a null arbitration agreement or outside the term, (b) an award rendered by arbitrators that have not been appointed according to the provisions of the law, (c) the award has exceeded the scope of the mission entrusted to the arbitrators, (d) the award is rendered without taking into account the rights of defense, (e) the award does not contain all the mandatory provisions in relation to the claims of the parties, the motives and defenses, the names of the arbitrators, the grounds of the award, its content and date as well as the signature(s) of the arbitrator(s), or (f) the award has violated a rule of public policy. Unless the parties have agreed otherwise, the Court, to which the request of annulment is presented and which annuls the award, becomes competent to see into the matter, in the limits of the scope of the arbitrator's mission⁴⁰.

iii) - The decisions which are not subject to recourse: The court order enforcing the arbitration award may not be subject to recourse. However, the appeal of the award or the request of its annulment results in the recourse of the court order enforcing the award or in the suspension of the mission of the judge competent to render it, all the above within the scope of the conflict before the Court of Appeal⁴¹.

iv) - The request for reinitiating the proceedings: The 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 trial⁴².

v) - The opposition to the award: The arbitration award may not be subject to recourse by way of opposition. However, the arbitration award can be subject to third party opposition in

³⁷ 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.

³⁸ Please refer to footnote 35.

³⁹ Article 800 LCCP.

⁴⁰ 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.

⁴¹ Article 805 LCCP.

⁴² The request for reinitiating the proceedings is presented to the Court of Appeal of the judiciary 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.



front of the Court that would have been competent if the arbitration was not agreed upon and in respect of the provisions of article 681 paragraph 1 LCCP⁴³.

B- The rules in the LCCP governing international arbitration:

1) - The definition of international arbitration: An international arbitration is an arbitration related to the interests of international commerce⁴⁴. The Government or other public entities may refer to international arbitration⁴⁵.

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 rules⁴⁶. In the event that the arbitration takes place in Lebanon or that the arbitration proceedings are governed by the provisions of the LCCP and should 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 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 judiciary district of the place where the arbitration is held abroad.

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 governed by the civil procedure law of a designated country. In the absence of such a stipulation in the arbitration agreement, the arbitrator applies the rules that he deems fit to resolve the matter and does so directly or by referring to a specific law or by referring to arbitration rules⁴⁷. The arbitrator shall render the award in application of the rules and laws designated by the parties to the arbitration or in accordance with the rules and laws he deems fit and shall at all times comply with commercial practices and customs (the *lex mercatoria*)⁴⁸. Furthermore, when the international arbitration is governed by Lebanese law, the provisions of articles 762 to 792 LCCP shall not apply, unless the specific agreement between the parties is silent, all the above in compliance with articles 810 and 811 LCCP⁴⁹.

⁴³ Article 798 LCCP.

⁴⁴ Pursuant to the provisions of Law Decree 34/67 aiming to regulate commercial representation, Lebanese Tribunals are exclusively competent to see all matters in relation to the termination or non renewal of exclusive commercial representation agreements. Lebanese jurisprudence interprets this Decree with varying interpretations.

⁴⁵ Article 809 LCCP.

⁴⁶ Article 810 LCCP.

⁴⁷ Article 811 LCCP.

⁴⁸ Article 813 LCCP.

⁴⁹ Article 812 LCCP.



4) - The enforcement of arbitral awards rendered abroad or in international arbitrations

i) - The acknowledgement: Lebanese courts recognize arbitration awards and grant the exequatur if the party claiming the enforcement of the award proves its existence⁵⁰ and if the said award is not obviously contrary to international public policy⁵¹.

ii) - The procedure of exequatur: The provisions of articles 793 to 797 LCCP are applicable to the award. These provisions have been exposed in part A paragraph 9 (iii) above⁵².

iii) - The length and cost of the procedure: The judicial cost for the exequatur amounts to approximately USD/145/. These fees do not include the translation fees, the lawyers' fees and the legalization fees.

5) - The recourse against arbitral awards rendered abroad or in international arbitrations

i) - The appeal: The decision rendered by the Lebanese court refusing to recognize an arbitration award rendered abroad or in an international arbitration or to grant it exequatur may be subject to appeal⁵³. The appeal⁵⁴ of the court order granting exequatur or recognizing the award is only possible in the following cases⁵⁵: (a) the rendering of an award without an arbitration agreement or based on a null arbitration agreement or outside the term, (b) if the award is rendered by arbitrator(s) that was (were) not appointed in accordance with the provisions of the law, (c) if the award has exceeded the scope of the mission entrusted to the arbitrator(s), (d) if the award is rendered without taking into account the right of defense, and (e) if the award violates an international public policy provision.

ii) - The annulment of the award: The arbitration award in an international arbitration rendered in Lebanon may be subject to recourse by way of annulment for the motives listed in article 817 LCCP (as mentioned in paragraph 5 (i) above). The court order granting the

⁵⁰ The existence of an arbitration award is proved by the submittal of the originals of the award and of the arbitration agreement, or a true copy of said originals duly authenticated by the arbitrator(s) or any competent authority thereof. In the event that these documents are rendered in a language other than the Arabic language, they should be translated to Arabic by a sworn translator.

⁵¹ Article 814 LCCP.

⁵² Article 815 LCCP. If the arbitration takes place abroad, it is possible to obtain and present a true copy of the arbitration award (instead of the original award) for the purpose of depositing it with the office of the First Instance Tribunal and to obtain the exequatur.

⁵³ Article 816 LCCP.

⁵⁴ 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.

⁵⁵ Article 817 LCCP.



exequatur of the said award may not be subject to any recourse. The annulment request shall be submitted to the Court of Appeal of the judiciary district where the award was rendered. The request may be submitted from the day the award was rendered. However, the statute of limitation shall be thirty days as of the notification of the award⁵⁶.

iii) - The effect of the recourse: 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 time⁵⁷.

iv) - The internal rules applicable to the recourse: Articles 804 and 805 paragraph 2 LCCP are the only articles concerning recourse in local arbitration that are applicable to the recourse against arbitration awards rendered abroad or in international arbitration⁵⁸.

II- The International Arbitration Conventions that Lebanon has ratified and/or adhered:

A- International arbitration conventions ratified by Lebanon: Lebanon has ratified the 1958 New York Convention related to the recognition of arbitration awards and their enforcement, and such by virtue of Law number 629 dated April 23, 1997 with no reservations as to the contents of the aforesaid convention.

B- 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 April 12, 1962.

C- Involvement in ICSID arbitration: Lebanon has ratified the International Center for Settlement of Investment Dispute arbitration convention administered by the World Bank by virtue of Law 403/2002 dated June 5, 2002.

III- The domestic arbitration centers:

A. Arbitration before the Beirut and Tripoli Chambers of Commerce and Industry:

1) - The Rules (hereinafter the “Rules”) of Mediation and Arbitration of the Beirut Chamber of Commerce and Industry (hereinafter the “BCCI”) regulate arbitration before the BCCI and the Tripoli Chamber of Commerce and Industry (hereinafter the “TCCI”). An organism, whose members are appointed by the BCCI and the TCCI and that operates under the name of

⁵⁶ Article 819 LCCP.

⁵⁷ Article 820 LCCP.

⁵⁸ Article 821 LCCP.



Arbitration Court (hereinafter the “**Court**”), is responsible for resolving international or local conflicts through the process of arbitration⁵⁹.

2) - The recourse to the BCCI or the TCCI: Each party wishing to have recourse to the arbitration procedure of the BCCI or TCCI must file its request with the Secretary. The date of reception of the request by the Secretary is the date of the introduction of the arbitration procedure⁶⁰. The defendant should, within 30 days of reception of the plaintiff’s request, respond to it in writing⁶¹.

3) - The procedure for the appointment of the arbitrators: The Rules provide, in article 2, a set of provisions for the nomination of the arbitrator(s); the following paragraph exposes highlights of these provisions. The Court appoints the arbitrators responsible for resolving the conflict in accordance with the Rules and provided that the parties have not stipulated otherwise; in doing so, the Court should take into consideration the nationality of the parties, their sense of belonging or their residence in relation to the countries of the parties or the arbitrators⁶². The conflict may be resolved by a sole arbitrator or by three arbitrators⁶³. In the event that the parties have agreed that the conflict will be resolved by one arbitrator, they may agree on its identity and have it confirmed by the Court. If the parties do not agree during the period of 30 days following the notification of the request for arbitration to the other party, the arbitrator shall be appointed by the Court⁶⁴. 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 the Arbitral Tribunal, is appointed by the Court, unless the parties have agreed that the arbitrators that they have both appointed should choose the third arbitrator in a set time limit; in this case, 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 that the arbitrators appointed by the parties could not agree, the third arbitrator is nominated by the Court⁶⁵.

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 his nomination or his confirmation by the Court, the arbitrator should inform, in writing, the General Secretary of the Court of the facts and circumstances that could lead the parties to

⁵⁹ Article 1 par. 1 of the Rules.

⁶⁰ The request should notably include the first and last names of the parties, their quality and their addresses, the claims of the plaintiff, the agreements between the parties, notably the arbitration agreement, 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 such arbitrators. Article 3 of the Rules.

⁶¹ Article 4 of the Rules.

⁶² Article 2 par. 1 of the Rules.

⁶³ Article 2 par. 2 of the Rules.

⁶⁴ Article 2 par. 3 of the Rules.

⁶⁵ Article 2 par. 4 of the Rules.



doubt of the independence of the arbitrator. 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, in writing, the Secretary and the parties of any fact or circumstance that could lead the parties to doubt of his independence and that would arise between the nomination or confirmation of the arbitrator and the notification of the final award⁶⁶. The request to declare the arbitrator incompetent should be filed by a party within 30 days following its notification of the appointment or confirmation of the arbitrator by the Court or within 30 days following the date of knowledge by the party filing the request of the facts and circumstances invoked by it⁶⁷. The Court rules on the request after having enabled the arbitrator, the parties and the other members of the Arbitral Tribunal, with the help of the Secretary, to present their observations, in writing, within a certain time frame⁶⁸. An arbitrator may be replaced in the event of death, incompetence or resignation⁶⁹. An arbitrator is also replaceable when the Court concludes that (a) he is prevented de facto or de jure of accomplishing the mission or (b) he is not undertaking the mission in accordance with the Rules or within the requested time limit⁷⁰. The Court's decision on the arbitrator's nomination, confirmation, declaration of incompetence or replacement is not subject to any recourse and the motivation of such a decision is not disclosed⁷¹.

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 application of the Rules⁷². The rules governing the procedure in front of the arbitrator are those provided in the Rules, and in the event they are silent, the rules that are decided by the parties or the arbitrator, with or without reference to a local procedure law are applicable to arbitration proceedings⁷³. 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 apply the law designated by the conflict rules that he finds appropriate with respect to the case⁷⁴. The arbitrator must take into consideration the stipulations of the contract and the commercial customs⁷⁵. The arbitrator examines the documents submitted by the parties and listens to the parties and to any third person⁷⁶. The arbitrator may appoint one or more experts, define their mission and receive their reports or listen to them⁷⁷. The arbitrator determines the language(s)

⁶⁶ Article 2 par. 7 of the Rules.

⁶⁷ Article 2 par. 8 of the Rules.

⁶⁸ Article 2 par. 9 of the Rules.

⁶⁹ Article 2 par. 10 of the Rules.

⁷⁰ Article 2 par. 11 of the Rules.

⁷¹ Article 2 par. 13 of the Rules.

⁷² Article 8 par. 1 of the Rules.

⁷³ Article 11 of the Rules.

⁷⁴ Article 13 par. 3 of the Rules.

⁷⁵ Article 13 par. 5 of the Rules.

⁷⁶ Article 14 par. 1 of the Rules.

⁷⁷ Article 14 par. 2 of the Rules.



of the arbitration taking in consideration the circumstances and, notably, the language of the contract⁷⁸. Notwithstanding any agreement of the arbitrators and the parties, the hearings are not open to persons who are strangers to the arbitration proceedings⁷⁹.

6) - The arbitration award: The arbitrator should render the award within a time limit of 6 months. The Court may, upon a motivated request of the arbitrator or automatically, extend this time limit when it judges necessary⁸⁰. When three arbitrators have been appointed, the award is rendered by majority; if the majority is not reached, the Arbitral Tribunal's president shall rule by himself⁸¹. No award may be rendered without prior approval of its form by the Court⁸². The award is presumed to have been rendered at the place of arbitration and at the time of its signature by the arbitrators⁸³. Once the award is rendered, it is notified to the parties by the Secretary provided however that the arbitration expenses have been paid to the BCCI or the TCCI by the parties or by one of them⁸⁴. The arbitration award is final. The parties, in submitting their conflict to the arbitration of the BCCI or TCCI commit themselves to enforce, without any delay, the award and renounce to any way of recourse that may have been available to them⁸⁵.

7) - The cost of the arbitration: The arbitration award must provide and determine the arbitration expenses and decide which party is responsible of paying them or in which proportions they are to be borne between the parties⁸⁶. The arbitration expenses include the arbitrator's fees (fixed according to the chart annexed to the Rules⁸⁷), the administrative fees fixed by the Court according to a chart annexed to the Rules⁸⁸, the arbitrator's possible expenses, the experts' fees and expenses (in the event of an expertise) and the usual expenses disbursed by the parties for their defense⁸⁹. 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 TCCI⁹⁰.

⁷⁸ Article 15 par. 3 of the Rules.

⁷⁹ Article 15 par. 4 of the Rules.

⁸⁰ Article 18 par. 1 and 2 of the Rules.

⁸¹ Article 19 of the Rules.

⁸² Article 21 of the Rules.

⁸³ Article 22 of the Rules.

⁸⁴ Article 23 par. 1 of the Rules.

⁸⁵ Article 24 CR.

⁸⁶ Article 20 par. 1 CR.

⁸⁷ Article 5 B- of Appendix III.

⁸⁸ Article 5 A- of Appendix III.

⁸⁹ Article 20 par. 2 CR.

⁹⁰ Article 3 c) of Appendix III.



B. The arbitration proceedings at the Beirut Customs Authority (hereinafter the “BCA”): 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 (hereinafter the “**Customs Rules or CR**”).

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 arbitral committee⁹¹. However, there can be no referral to this arbitration committee when the law provides specific provisions to determine the type of merchandise, its nature, its quality, its origin or its value⁹². 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 in respect of article 381 of the customs Law⁹³. The Customs General Director determines the conditions of application of this article and the conditions of the temporary delivery of the merchandise providing that these conditions are not contrary to public policy or to the applicable laws and regulations⁹⁴.

2) – The role of the Higher Council of Customs: The Higher Council of Customs also determines, upon the suggestions of the General Director of Customs: (a) The procedures and formalities that should be followed in order to refer the conflicts to the arbitration committee,

⁹¹ The arbitration committee is composed of: (a) An honorary judge that has retired, in his quality as president of the committee, and who is appointed by the Minister of Justice and another judge, (b) Two experts in their quality as members of the committee, and 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 application of 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, who are appointed by a decision rendered by this Council upon suggestions made by the General Director of Customs and after having taken the opinion of the different chambers of commerce and industry or the associations of businessmen and industrial producers or the concerned technical associations, on condition that they be experienced and competent in the commercial, industrial, technical and agricultural fields. The decisions of appointing the experts should specify the chapters which fall under the responsibility of each expert and the components on which he could be asked to give an expertise (i.e. the type of merchandise, its nature, its quality, its origin or its value). These decisions are published in the Official Gazette. Articles 154 and 155 CR.

⁹² Article 153 CR.

⁹³ 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.

⁹⁴ Article 162 CR.



such as the prerogative of the heads of each district of choosing the experts from the administration's side, and (b) the procedures for sampling⁹⁵. The Higher Council of Customs determines, upon the suggestions of the General Director of Customs, the fees of the committee's president and two members, taking in consideration the sessions held by them⁹⁶.

3) – The involvement of the judiciary: In the event that one of the parties is opposed to the arbitration, or that it does not appoint its expert, the expert is appointed, upon request of the second party, by the judge ruling in the urgent matters of the judiciary district of the concerned customs authority and according to the procedures provided in article 155 CR⁹⁷.

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 takes its decisions by majority⁹⁸. The committee may hear any person and may rely on the statistics and analyses that are deemed fit to pursue the enquiry of the conflict⁹⁹. 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 dispositions to determine these characteristics, the committee renders a decision declaring its incompetence to resolve such a conflict¹⁰⁰. The committee proceeds, as quickly as possible, in the examination of the claims of the parties, and in listening to their comments and renders a decision resolving the conflict that is mandatory to both parties¹⁰¹.

5) – The arbitration committee's decision: The committee's decision should mention the names of its members who have convened in order to resolve the conflict, the conflict's subject, the name and domicile of the party opposed to the administration, the claims invoked, the technical specifications, the motivation and reasons of the decision, its date and the signatures of the committee's members¹⁰². The committee notifies its decision to the concerned parties. 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 amount¹⁰³. The committee's decision is rendered concerning the material and technical facts of the conflict, and not on its legal aspect; furthermore, the committee has no competence to enounce general principles relating to the type of merchandise, its nature, its quality, its origin or its value¹⁰⁴. The committee's decision may not obtain the force of a case precedent

⁹⁵ Article 156 CR.

⁹⁶ Article 164 par. 1 CR.

⁹⁷ Article 157 par. 1 CR.

⁹⁸ Article 158 par.1 CR.

⁹⁹ Article 158 par. 2 CR.

¹⁰⁰ Article 158 par. 3 CR.

¹⁰¹ Article 158 par. 4 CR.

¹⁰² Article 158 par. 5 CR.

¹⁰³ Article 158 par. 6 CR.

¹⁰⁴ Article 159 par. 1 CR.



and therefore may not be invoked as a precedent in any other conflict involving the same or different parties¹⁰⁵.

6) – The recourse of the committee’s decision: its annulment: The committee’s decisions may not be subject to recourse, except the request of annulment, which should be filed during the 30 days following the notification of the committee’s decision to the parties. The request of annulment does not interrupt the enforcement of the committee’s decision¹⁰⁶. The court applies the provisions of the LCCP for the annulment of local arbitration awards. The court’s decision in regard of the request of annulment is final and is not subject to any way of recourse. In the event that the court decides that the arbitration committee has rendered its decision in disrespect of the principles and procedures, it annuls the committee’s decision and is competent to resolve the conflict in lieu of the committee, using, therefore when necessary, the help of two new customs experts that it chooses from the list of experts (mentioned in article 155 CR); the court renders a final decision in the matter and notifies it to the parties in view of its immediate enforcement¹⁰⁷.

7) – The consequences of the committee’s decision on the parties: In the event that the Customs Administration loses the conflict before the arbitration committee, it is responsible of 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 it are reimbursed in the limits provided by a decision of the Minister of Finance. In the event that the Customs Administration loses the conflict in front of the arbitration committee and refuses to let go of the merchandise, its owner may address the competent court and request to be indemnified according to the general principles governing the administration’s responsibility. If the other party loses the case, it is responsible of paying, in addition to the required taxes, the interests of delay at the rates mentioned above. The destruction or modification of samples and documents as well as the harm resulting from the expertise do not open the possibility of any request of indemnification¹⁰⁸. The party who lost the conflict is responsible of the above mentioned fees and of all the expenses resulting from the arbitration¹⁰⁹.

C- Statistics on the number of arbitration cases each year

As a principle, domestic arbitrations frequently take place in Lebanon. It is also frequent for parties to submit the resolution of any conflicts to international arbitration, in which sometimes the place of arbitration is Beirut. Actually it seems quite difficult to give an exact idea of the

¹⁰⁵ Article 159 par. 2 CR.

¹⁰⁶ Article 160 CR.

¹⁰⁷ Article 161 CR.

¹⁰⁸ Article 163 CR.

¹⁰⁹ Article 164 par. 2 CR.



number of arbitrations conducted at both international and domestic levels as of the confidentiality of such a mechanism and the possibility 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 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.

year	Designation Of Arbitrators	Exequatur		Challenge of arbitrators		Extension of arbitration time limit		Deposit and registration of awards	Classified *	Total *
		Approval	Refusal	Approval	Refusal	Approval	Refusal			
2000	4	18	-	2	1	-	-	9	-	34
2001	8	22	1	-	2	1	1	7	3	45
2002	11	33	2	7	2	-	1	8	4	68
2003	10	25	3	1	2	1	2	8	20	72
2004	13	19	1	2	3	4	-	7	15	65
2005 *	2	5	1	1	-	-	-	-	-	9

The statistics contained in this table must be manipulated with precaution as it concerns only requests formulated to the president of the tribunal of first instance in Beirut. The register do not make a difference between domestic and international arbitration but the officer in charge of this register confirmed that the majority of the cases registered concern domestic arbitration.

* Classified: shows the number of requests abandoned because of an amicable settlement of the dispute and/or a voluntary execution of the arbitral award.

* Total: shows the total number of annual requests formulated to the president of the Tribunal of first instance in Beirut in consideration to arbitration.

* 2005: shows statistics till 12/3/2005.

Number of arbitrations conducted by the CCIAB from 1999 till 2004 are state in the table below:

Year	Number of cases	Domestic Arbitration	International Arbitration
------	-----------------	----------------------	---------------------------



		n	
1999	8	7	1
2000	16	15	1
2001	19	17	2
2002	15	15	–
2003	17	17	–
2004	4	4	–
TOTAL	79	75	4

PART II: MEDIATION

I - Cultural aspects of mediation in Lebanon:

A - A traditional practice of mediation:

The Alternative Dispute Resolutions in Lebanon are a traditional practice. Effectively, Lebanon is influenced by the Arab and Muslim culture in the practice of ADR. This means that a third person is usually used for the resolution of conflicts but this third party is commonly 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 his relation with the parties and the mutual they have towards him. The above-mentioned characteristics for the traditional mediation can be interpreted as either an obstacle to the development of ADR or an incentive to it.

Actually, the main obstacle generated by such a traditional culture of ADR is the inadequacy of its characteristics with the scientific and cognitive culture and practice of ADR mechanisms. It is, worthy to note that the third person is never a professional of mediation and/or arbitration in the traditional described culture.

Nevertheless, the traditional culture is incentive since it comprises 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.

B - A traditional conception of the role and characteristics of the mediator:

Age and experience (reputation) are the two main characteristics for mediators to be accepted by the local business community. The Family and/or the confessional origin of the mediator can also enter into consideration in Lebanon especially that the mediator family's origin plays a role in supporting his reputation. In fact, the prerequisites for a mediator to be accepted by the



local business community are a combine of objective and subjective characteristics, the latter being based on a traditional conception of ADR practice.

II - Social awareness on the scientific practice of the ADR:

The degree of awareness of Alternative Dispute Resolution mechanisms amongst the different economical, social and professional sectors is severely unequal:

A- Amongst the legal profession:

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

B- Amongst the business community:

The degree of awareness of the business community concerning the Alternative Dispute Resolution mechanisms is insufficient. The general tendency is to resolve conflicts through litigation or direct negotiation. Medium and large firms have also 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.

C- Amongst the government circles and public agencies:

The degree of awareness amongst the government circles and public agencies relies on the existence of a legal framework on mediation in the law that governs their activities. For instance, the degree of awareness is high concerning the ministry of economy and trade since a law on consumer protection exists and contains specific provisions on mediation¹¹⁰. It is also the case concerning the ministry of Labor¹¹¹. It's worthy to note that the Investment Development Authority of Lebanon (IDAL) refers in the Law on Investment Development to amicable settlement of disputes¹¹² resulting from the package deal contracts.

¹¹⁰ See title III - 1.

¹¹¹ Ibidem.

¹¹² Art. 18 of the Investment Development Law.



D- Amongst the law students:

ADR are not a part of law diploma studies. Nevertheless, and as mentioned below, a specialized master exists at the French section of the Lebanese University – Faculty of Law and political and administrative sciences.

E- Amongst the construction industry:

The construction industry is aware of the importance of ADR mechanisms and frequent events and workshops are organized by the Order of Engineers and Architects in Beirut the latest being held in September 26th and 27th, 2005.

III -The legal framework of mediation:

A - Specific laws.

1) Labor law: A law promulgated in 1964 concerning labor collective contracts, mediation and arbitration sets 17 articles¹¹³ 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 labor collective contracts are subject to mediation in order to reach a negotiated solution¹¹⁴. 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 ministry¹¹⁵. Any party to a labor collective conflict can request the mediation of the ministry, the latter being entitled to propose such mediation even if none of the parties have requested it¹¹⁶. The mediator can be assisted by whomever he wants to help him in his mission, and has the right to handle any investigation he believes necessary in order to solve the conflict, the parties being bound to provide him with any requested information¹¹⁷. The mediator listens to the parties and verifies their allegations and documents and provides them with his suggestions and solutions to the conflict¹¹⁸. 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 parties¹¹⁹. If no agreement is reached, the conflict should be settled by arbitration¹²⁰. The duration of the mediation process should not exceed two weeks from the date of the first session. However the

¹¹³ Art. 30 to 46 of the labor collective contracts, mediation and arbitration (LCCMA).

¹¹⁴ Art 31(LCCMA).

¹¹⁵ Art. 32 (LCCMA).

¹¹⁶ Art. 33 (LCCMA).

¹¹⁷ Art. 40 (LCCMA).

¹¹⁸ Art. 42 (LCCMA).

¹¹⁹ Art. 43 (LCCMA).

¹²⁰ Art. 44 (LCCMA).



delay can be extended upon agreement of the parties. The mediator can also ask for an extension of the delay that cannot exceed one week¹²¹.

2) Consumer protection law: A recent law on consumer protection was promulgated in February 2005; it comprises 14 articles¹²² on mediation in consumer matters. Even though this initiative is appreciated, it is worthy to note that those rules do not enhance the promotion of mediation in general given that the process is not confidential; parties to 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 Ministry Public any detected breach of the law committed by the seller and /or the industrial and/or the professional¹²³ which means that a conflict of interests exists amongst the mediator and the professional and consequently, the mediator is neither impartial nor independent.

B – Enforceability.

1) In compliance with the specific laws: The abovementioned law on labor collective 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 court¹²⁴. The party refusing the execution will be condemned to a penalty and prison or to one of those two sanctions¹²⁵.

2) In compliance with the Code of Obligations and Contracts: The signing by the parties of a settlement agreement which puts an end to their dispute is binding to the parties in accordance with the Lebanese Code of Obligations and Contracts. Such an agreement can be enforced before the executive court¹²⁶. Therefore, this agreement generates contractual obligations by virtue of the actual Lebanese legal framework without any need to a specific law on mediation to enhance the enforceability of such an agreement. In all cases, there is no specific local law on mediation in the country, even though a legal framework should be foreseen for the whole process of mediation.

C- Evaluation of the legal framework opportunities.

There is no legal obstacle to enhancement of mediation in the country. In fact, mediation can be conceived as either a private mechanism (ad hoc) or a judiciary one. The private mechanism exists; it is actually the case of mediation ruled by the CCIAB

¹²¹ Art.45 (LCCMA).

¹²² Art. 83 to 96 Consumer Protection Law (CPL).

¹²³ Art. 95 (CPL).

¹²⁴ Art. 62 (LCCMA).

¹²⁵ Art 63(LCCMA).

¹²⁶ Art 847 Lebanese Code of Civil Procedure.



(Chamber of Commerce, Industry & Agriculture of Beirut). Then, any private entity can handle the development of such a mechanism. The judiciary process of 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. Therefore, the establishment of the judiciary mediation process necessitates 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 be benefic not only for the development of the judiciary mediation but it would also be important, to the judiciary system itself by preserving the impartiality and the independence of the judges through the separation between the mission of judging and that of mediating especially that during the mediation process the parties may disclose confidential information which they might refuse to reveal to the judges.

IV-Private initiatives:

A - Events and academic formation:

Training or ADR presentation workshops in Lebanon are rare. Nevertheless, two successful events took place in the country , the first one was held by the Beirut Bar Association on December 2002 in collaboration with IFOMENE (INSTITUT DE LA FORMATION A LA MEDIATION ET A LA NEGOCIATION – 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' formations at LA FACULTE DES SCIENCES SOCIALES ET ECONOMIQUES DE PARIS. A second session of training is expected to be held in Beirut. The second event was held by the ESA (ECOLE SUPERIEURE DES AFFAIRES – BEIRUT) on 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). Me Ignacio De Castro, the senior advisor of the World Intellectual Property Organization, contribution highlighted the rules of both arbitration and mediation practices carried out by WIPO. Concerning the academic formation related to mediation, it is worthy to note that the French Section of the Lebanese University in Beirut FACULTY OF LAW, French Section has created in 2000 a major 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 mentioned University. This academic formation comprises a seminar of 25 hours based on theory concerning ADR techniques provided by Professor Charles JARROSSON; and a seminar of 25 hours (workshops) related to the practice of ADR and provided by M. Jean – Edouard GRESY, M. Alain LEMPEREUR and M. Ricardo Peres NUCKEL from the ESSEC Iréné (INSTITUT DE RECHERCHE ET D'ENSEIGNEMENT SUR LA NEGOCIATION EN EUROPE). To this moment, almost 80 to 100 persons (students or lawyers) have obtained the mentioned Diploma (20 students / years). A master in "Intercultural Mediation" exists at the Saint-Joseph University in Beirut.



B - 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 services providers of ADR in the country are the Chamber of Commerce, Industry & Agriculture of Beirut (CCIAB) and the Chamber of Commerce, Industry & Agriculture of Tripoli (CCIAT). Those institutions set out Rules of Optional Conciliation in order to facilitate the amicable settlement of civil and business disputes of an internal and international character. Recently, a Lebanese Association has been established under the name "Médiateurs sans frontières" which aims at enhancing the mediation.

V-Strategy of promotion of ADR:

A - General steps:

Promoting mediation and other ADR mechanisms necessitates a whole strategy based on the following issues:

- Establishment of centers with a functional structure able to handle and conduct mediation processes (Rules of ADR Proceedings, secretariat ...), such an institutionalization is required to provide certain credibility to the ADR mechanisms.
- Handling of first level formations by the above mentioned centers (to be created) in order to: Select a number of mediators at the ending of the formation to be accredited by the centers; and organizing continuous formations to the accredited mediators.

Once the establishment of centers, formation and accreditation are achieved, a productive promotion of mediation and other ADR mechanisms can start; 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).
- Conducting of technical seminars, discussion panels, workshops, training of specialists, normalization and dissemination of contractual instruments.

B- Government support:

Creating links with the government would facilitate the implementation of laws and regulations concerning mediation.



C- Foreign investors' interests:

Enhancing 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.



Project of the European Commission



Appendix A

TRADE ORGANIZATIONS REPRESENTING SMEs

Arab Chambers of Commerce

**Secretariat General of the General Union of
Chambers of Commerce, Industry and
Agriculture for Arab Countries**

P.O.Box: 11-2837, Beirut- Lebanon

Tel.: (961 - 1) 814269/70

Fax: (961 -1) 862841

E mail: admin@gucciaac.org.lb

www.ccib.org.lb

Tel: + 961 1 744764 / + 961 1 744774 / + 961 1
353390/2

Chamber of Commerce and Industry of Beirut

Fax: + 961 1 743377

P.O. Box: 11-1801 Beirut – Lebanon

Lebanese Association of Public Accountants

www.lacpa.org.lb

Museum region –Hotel Dieu street- Al Mathaf
altijari Center – 1st floor.

P.O.Box: 11-5821. Beirut - Lebanon

Tel /Fax : 961-1 616011 - 611131 – 616101

Association of Lebanese Industrialists

www.ali.org.lb

Association of the Lebanese Software Industry
(ALSI)

Badaro - Sami Elsolh Street - Youness Building -
5th Floor

P.O. Box: 11-7503 Riad el Solh - Beirut, Lebanon

Phone: +961 1 393434 #110

Fax: +961 1 393434 #105

Email: info@alsilebanon.org

Lebanese Businessmen Association

www.rdcl.org.lb

Sarraf Bldg., Independance Ave.,

Ashrafieh, Beirut, Lebanon

Tel: (961-1) 320 450

(961-3) 289 800



Fax.(961-1) 320 395

Lebanese Contractors Syndicate

Corniche du fleuve
Victoria Tower BLDG., 5th Floor
Tel: 01/612933-4 P.O.Box 11-6818
E-mail : info@lcsyndicate.com.lb

Appendix B

LEGAL ENTITIES

Ministry of Justice

Adlieh – Beirut
Tel: 01-422944
www.justice.gov.lb

Phone

00 961 1 422 207
00 961 1 427 941
00 961 1 427 976
00 961 1 423 266
00 961 1 422 205

Beirut Bar Association

Fax

00 961 1 427 982

Address

Beirut Bar Association – Adlieh - Beirut
Web Site www.bba.org.lb



Appendix C

The Lebanese Arbitration Center

The Lebanese Arbitration Center is the sole institution that takes care of Arbitration in Lebanon.

It was created in 1995 by the Chamber of Commerce, Industry and Agriculture of Beirut and Mount Lebanon, but other institutions have contributed later on in the Center:

- The Chamber of Commerce, Industry and Agriculture of Tripoli and North Lebanon
- The Chamber of Commerce, Industry and Agriculture of Saida and South Lebanon
- The Chamber of Commerce, Industry and Agriculture of Zahlé and the Bekaa
- The Bankers Association
- The Beirut Traders Association
- The Association of Insurance Companies
- The Association of Construction and Public Works Contractors

Contact of the Lebanese Arbitration Center:

President: Ghazi Koraytem

Web: <http://www.ccib.org.lb/arbitration.html>

E-Mail: arbitration@ccib.org.lb

Address:

Sanayeh, 1 Justinian Street, Beirut Lebanon

P.O. Box: 11-1801 Beirut – Lebanon

Tel: + 961 1 744764 / + 961 1 744774 / + 961 1 353390/2

Fax: + 961 1 743377

MEDIATEURS SANS FRONTIERES : Mrs Johana Hawari

Tel: 961 3 739796.

