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# **WEST BANK & GAZA COUNTRY CHAPTER**

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## **I. Introduction**

### **A. Economic and investment situation**

#### *1. The prevailing economic situation in Palestine*

Following signing of the Paris Protocol in 1994, growth in the West Bank and Gaza in the latter half of the 1990s was moderate. Real per capita GDP grew approximately 3% from 1994-99 with much of the growth concentrated in construction and commerce sectors (retail and wholesale trade, hotels and restaurants). Unemployment rates declined significantly from nearly 28% in the 1996 to approximately 11% in 1999. At the same time, high levels of remittances from Israeli employment, restricted trade relations and high levels of donor aid inflow contributed to a shift towards non traded goods and services and declining competitiveness in the tradable sector as a result of higher costs of production, particularly domestic labor. High production costs contributed in part to limited growth in private investment, representing approximately 15% of GDP in 1999.

Traditionally, the private sector has played an important role in the development of the Palestinian economy, particularly with respect to employment. Prior to the onset of the Intifada in September 2000, there were approximately 80,355 private national businesses in the West Bank and Gaza, accounting for nearly 80% of the domestic labor force. Average firm size is less than four persons, with gross average capitalization levels of US\$ 10,000. In addition, there were an estimated 80,000 micro enterprises, represented mainly by family business activities largely involved in trading, small scale manufacturing, services and agriculture.



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Palestine, with its strategic location and need for widespread infrastructure development is an untapped emerging market with enormous investment potential. The Palestinian economy is a market-based economy with the private sector playing the leading role.

The Palestinian economic strategy being developed is export-oriented and outward looking. The Palestinian 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 hindering 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. A move towards increased per capita prosperity will additionally have the overall effect of potentially stabilizing tensions in the region, if achieved in tandem with a just political settlement. A just peace and prosperity within the West Bank and Gaza Strip is not only good for Palestine, but good for Israel and the Middle East as a whole.

## *2. Constrains facing the economic situation in Palestine*

Following the onset of the 2000 Intifada, the peace process in the Middle East collapsed. The Israelis reoccupied the parts which they have evacuated after the peace process started in early 90's, the Israelis targeted and systematic destruction of infrastructure, as well as of the industrial and agricultural sectors and tourism in Palestine have, to put it mildly, adversely affected our economy. Closures have meant the restriction of movement of both people and goods within the



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West Bank and between Gaza and the West Bank. Tens of thousands of Palestinians have lost their jobs. The Palestinian market also lost much of its buying power and exports are down because of external closures. The cost of transportation has risen so Palestinian exports are no longer competitive in some Arab and European markets which 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 is a huge burden on Palestinians. The Palestinian authority has established laws that would encourage direct imports from the outside in order to bypass the Israeli middleman. But the Israelis have made it difficult for Palestine to import from the outside over the past four years.

The Palestinian authority is also trying to fight the dumping of cheap goods from the Far East through Israel into the Palestinian markets and have made great strides in setting standards to protect the consumer. The Palestinian authority exports to Israel, but at a big trade deficit. What would be best is if the Palestinian authority could 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 UAE, Bahrain, Tunisia and Yemen have opened their markets to Palestinian products. The Palestinian authority has a credible mechanism by which we verify the origin of our exported goods, so that any Arab country could verify where the goods are coming from.

### *3. THE Oslo agreement and how it affected investment in the area (the Paris protocol)*

The Paris Protocol was signed with the PLO and was incorporated into the Gaza-Jericho Agreement (Oslo Agreement) which created the Palestinian Authority. The Protocol on



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Economic Relations, signed in Paris on April 29, 1994, created a singular customs envelope encompassing Israel, Gaza and the West Bank.

Realizing the existing links between the Palestinian economy and the Israeli economy, the Palestinian leadership opted to enter into a semi-customs union with Israel. The Protocol on Economic Relations between the government of the state of Israel and the PLO (representing the Palestinian People) of 29 April 1994 (Paris Agreement), formed an integral part of the Israeli Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995 (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 not creating a rapid shift in the prevailing economic structure vis-à-vis Israel, because the two economies are vastly unequal and dramatically connected.
- II. In the hope that cooperation with Israel can assist in the development of the Palestinian economy through the transfer of technology and technical expertise.
- 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 from the occupier-occupied to cooperation.

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 Israeli implementation of the protocol (because of the successive Israeli governments and the difference in their policies) and the disparity in the two economies.

#### 4. *International trade agreements*



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Several Preferential trade agreements were signed by the PLO on behalf of the Palestinian Authority. The signing of these agreements aimed at achieving a free market economy, based on the concepts of globalization and liberalization. This process was intended to eliminate the one-sided dependence of the Palestinian economy on Israel. This dependence manifests itself in the balance of trade which exceeds 2.3 billion dollars of Israeli products imported into Palestine, while Palestinian exports to Israel do not exceed 300 million dollars. Palestinian imports from Israel form about 85% of all imports from the world. This imbalance is not based on free market competition, but is a result of a 30 year monopolization of the Palestinian market by Israeli businesses. Palestinian businesses were not permitted by Occupation authorities to import products from countries that Israel does not have economic or political relations with. Therefore, they had to depend on Israeli importers or producers to meet the needs of the Palestinian market.

The signing of the various trade agreements will enhance Palestinian export potential by increasing the ability of the Palestinian product to compete in potential export markets. These agreements will also serve to open new markets for the Palestinian businesses, which were not accessible to them for the last 30+ years of occupation.

- Interim Association Agreement with the European Union

On February 27, 1997, The Palestinian Liberation Organization for the benefit of the Palestinian Authority of the West Bank and Gaza Strip (WBGS) signed the Euro Mediterranean Interim Association Agreement on Trade and Cooperation with the European Community. This agreement provides for the following framework of trade relations between the WBGS and the EU:

- i. Free trade on all goods from both sides
- ii. Sides retain right to impose duties on agricultural goods



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- iii. Quotas on Palestinian agricultural goods entering into the EU
  - iv. Technical assistance programs to help in the development of the Palestinian Economy

Even though the agreement grants duty free access to WBGS products into the EU, some WBGS agricultural products face quantitative restrictions upon import into the EU. These restrictions are outlined in the annexes to the agreement. The quantities of Palestinian agricultural exports allowed by the agreement are large enough to make the EU a significant market.

The EU incorporates its cooperation -economically and financially- within the framework of the Barcelona process, which aimed at creating a free trade area between the European Union and Countries of the Mediterranean basin.

On the other hand, in this agreement, The PLO/PA grants duty free access to EU products upon importation, keeping some restrictions on agricultural products.

The Agreement successfully provides measures to protect specific infant industries and to sectors undergoing restructuring or experiencing serious difficulties, particularly where those difficulties entail severe social problems in the WBGS.

Currently, the agreement employs strict rules of origin requiring a substantial processing or transformation criteria. The agreement entails full bilateral accumulation between Palestine and the EU, but does not involve regional accumulation. It is expected that regional diagonal accumulation will take place once all countries in the region reach free trade agreements with the EU.



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This agreement repeals Council Regulation (EEC) No 1134/91 of 29 April 1991 on the Tariff Arrangements applicable to Imports into the Community of Products origination in the Occupied Territories and repealing Regulation (EEC) No 3363/86 (official Journal No L 112 of 4.5 .1991).

- Interim Association Agreement with European Free Trade Association (EFTA)

The agreement with EFTA states is very similar in nature to the agreement between the PLO/PA and the EU. This agreement was signed in December 1998 in Geneva and provides for free trade area between Palestine and 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. Sides retain right to impose duties on agricultural goods
- III. Quotas on Palestinian agricultural goods entering into EFTA markets
- IV. Technical assistance programs to help in the development of the Palestinian Economy

- Free Trade Agreement with the United States of America

The Free Trade Arrangements between the United States and the PLO on behalf of the PA was a result of the letter sent by then Minister of Economy, Trade and Industry, Mr. Ahmed Qurai (PLO and on behalf of the PA) to Ambassador Micky Kantor, United states Trade Representative, on 17<sup>th</sup> of October 1995 setting down the terms of duty free market access to products of US origin into the WBGS. Accordingly, the US had taken the decision to accord duty free entry to WBGS products into the United States. This arrangement has been approved by the US Congress and was signed into law by the president. It guarantees products from the



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WBGs the duty free access to the U.S. Market. (Already on 7 April 1995, the WBGs became beneficiaries of the autonomous US GSP regime.) 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
- iii. Possibility of regional cooperation in production through accumulation of origin through qualifying industrial zones

The arrangements include rules of origin that require a minimum of 35% value added to qualify as Palestinian products. The Free Trade Agreement included within it the built in mechanisms for diagonal accumulation of origin between Palestine and Israel. Within this agreement is also the basis for full bilateral accumulation of Palestinian and U.S. production methods and origins.

- Preferential Trade Agreement with Jordan

The Trade Agreement between the Government of the Hashemite Kingdom of Jordan and the Palestinian National Authority was signed on 26 January 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 which will be receiving preferential treatment when imported from the respective other party. The PNA (Palestinian National Authority) grants customs duty exemptions to 45 products originating in Jordan and contained in List 1 and to 32 products in list 2. On the other hand, Jordan grants customs duties exemption in list 3 and exemption from customs duties and other taxes of equivalent effect in list 4 to a total of 60 Palestinian products.



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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.

- Preferential Trade Agreement with Egypt

The Technical and Economic Cooperation Accord between the Arab Republic of Egypt and the Palestinian Liberation Organization was signed on 25 January 1994.

Looking through this Agreement:

- Cooperation in trade should increase the flow of products and facilitate the transit of goods. Further goals pursued are the mutual participation in trade fairs and the improvement of relations between businessmen.
- Customs free trade on a large number of products of national origin
- Expansion of free trade list currently being negotiated
- Plans for the establishment of a free trade zone in the border region

Article 1, par 4, stipulates that “any preferential treatment which the Palestinian Authority may extend to any other party, shall also be granted to Egypt”.



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Since the PA has granted preferences to Jordan, they were through this provision also extended to Egypt. On the other hand the agreement does not specify the reciprocity, whereby Palestinian products are to be granted preferential treatment accordingly.

## **B. Commercial disputes in Palestine**

### *1. Definition of commercial disputes in Palestine*

In the light of the fact that the Palestinian private sector is going through a crucial crisis because of the unstable economic and political situation, this raised the need for commercial dispute resolutions, due to the importance of the time factor in the commercial field.

The private sector prefers mechanisms which avoid delays in court procedures. Hence, profits gained from a court rule in its favor after long procedures would not be better than those gained profits when involving in more commercial projects in less time. Therefore, people involved in commercial activities would prefer alternative procedures to resolve their commercial disputes.

In the Palestinian society, there are several traditional alternative procedures to resolve commercial disputes such as arbitration, mediation, and "sulha" (traditional way to resolve disputes). These procedures are often used in commercial disputes in the Palestinian private sector; we can find them in the banking sector, insurance, communications, commercial contracts and etc...

Disputes in the banking sector fall into two categories: contractual disputes, which are based on capital circle including deadlines, terms and guarantees; and accounting disputes, which depend on following accounting banking procedures.



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Disputes in the communications sector fall into the following: competition as a result of open market policy and terminating or limiting exclusive rights; and consumer related disputes.

## 2. Mechanisms for commercial dispute resolutions

Mechanisms for commercial dispute resolutions may be found in the Palestinian laws, some of these mechanisms should take in consideration the specialty of the commercial activities.

- Commercial dispute resolutions in banking sector

Arbitrating through its characteristics such as specialty, quick procedures and binding decisions in the banking business disputes achieves banking sector goals.

It should be mentioned that it is important to include the arbitration clause or the arbitration agreement within banking contracts as a condition to apply arbitration in banking disputes.

- Commercial dispute resolutions in communication sector

In regard to using arbitration in the communication sector disputes, it is still in the early stages. Never the less, when devising an arbitration mechanism in this sector, the following should be taken into consideration:

- I. Accelerated developments in communication technologies.
- II. Economical cost.
- III. Transparency and confidentiality.
- IV. Dealing with the technical variables of this sector.



- Commercial dispute resolutions in insurance sector

Like wise in the banking sector, an arbitration clause should be included in insurance agreements or it could be added as a post agreement amendment.

### **C. Adhoc and institutional arbitration centers in Palestine**

#### *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 through 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 agree to adopt “Tahkeem’s” rules of procedures which are provided in a list of regulations or other mutually agreed upon rules of procedures.

#### *2. Adhoc arbitration*

Regarding Adhoc arbitration, there are several entities which deal with adhoc arbitration, such as associations and chambers of commerce.

Among those associations is the Engineers Association which has been dealing with adhoc arbitration for almost ten years now; the association has a panel of specialized arbitrators whom the disputed parties may choose from.



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## **D. Advantages of the increased use of arbitration in Palestine**

In reference to cost, quick procedures, confidentiality, freedom of choosing the arbitration panel, execution of decision arbitral awards and safe and clear system for conflict resolution

- Reference to the 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 to an arbitration case cost in Palestine at Tahkeem center (an arbitration center in Palestine) is as follows:

- i. Registration fees, un returnable 200\$
- ii. Underpayment, half of the administrative fees and arbitrary(s) fees.

Regardless to the relatively high cost of arbitration compared to litigation cost, but it safes time, which is an important element in commercial work.

- Quick procedures

Due to the long duration of the Palestinian courts procedures comes the need for arbitration because of its quick procedures, as the arbitration committee look into the issue in a relatively short time, which has a valuable interest for the disputable parties.

- Confidentiality

The Palestinian courts apply open session principle and that may affect the commercial secrecy of the disputable parties. Thus, arbitration as just only the concerned parties contribute to its sessions, reserves the commercial secrecy.



- Freedom of choosing the arbitration panel by the parties

The disputable parties have the right and freedom to choose the arbitration panel according to the nature of the dispute.

- Execution of decisions and arbitral awards

The decisions made by arbitration committees have the same legal frame of court rules. Though, the procedures to execute its decisions are faster than court rules.

- A safe and clear system for conflict resolution

Because the arbitration law is a modern law that contains ingredients which have the ability to make it a safe and clear system for conflict resolution, in harmony to the previous advantages mentioned above.

## **II. Arbitration law #3 for the year 2000**

### **A. Historical overview of the arbitration laws**

Arbitration developed in countries where the economy seemed to be an important factor of life. The Palestinian territories were not open to economic societies in the neighboring countries; therefore, there was not much need to resolve disputes through arbitration. After signing the Oslo accords and the Paris Protocol between the Palestinian Authority and Israel, the Palestinians needed to build perspective for developing the economic situation in Palestine. A quick and



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effective mechanism for conflict resolution was largely needed to help attract foreign investors to Palestine.

In the year 2000 the Palestinian Arbitration Law # 3 came into force after passing discussion in the Legislative Council and being signed and authenticated by the head of the Palestinian Authority. The mentioned law unified the legislation in the West Bank and the Gaza Strip and replaced previous laws that prevailed. Arbitration Law for the year 1926 and its amendments, the Foreign Awards Law of 1930 and its amendments, Arbitration Procedures of 1935, the Law # 18 for Executing Foreign Awards for the year 1952 and the Jordanian Arbitration Law # 18 for the year 1953, were all replaced by the new law.

## **B. Introduction of the Palestinian Arbitration Law**

The Palestinian Arbitration law #3 for the year 2000 is considered relatively new. It was adopted to serve the growing needs of the Palestinian people, and to coincide with the developments and the international trade in the world. ). The legislature attempted to adopt modern foundations in order to avoid the negativity of the previous laws.

The Law consists of 58 articles divided in 6 chapters. Chapters provide definitions, general provisions, description of the arbitration agreement, the arbitration panel, arbitration procedures, the arbitration awards as well as concluding provisions. Many of the provisions of this law are similar to the provisions of the New York Convention, especially in issues related to Accepting and implementing foreign arbitral awards.



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The Palestinian legislature took into consideration and tried to coincide between the provisions of the law and the New York Convention so Palestine will be able to be a member state in the convention when it regains its sovereignty as an independent state.

*1. Major issues addressed in the law*

- Types of arbitration

According to the law, arbitration is:

- a. local if it is related to international commerce but taking place in Palestine.
- b. International if the issue is related to economic, commercial, or civil affairs according to the following events
  - If the headquarters of the parties involved in the arbitration are located in different countries at the time the arbitration agreement has been upheld.
  - If one of the parties has more than one headquarter, it is assumed that the one mostly related to arbitration agreement shall be counted for. If one of the parties does not have headquarters, it is assumed that its regular address shall be considered.
  - If the issue of dispute included in the arbitration agreement involved more than one country.
  - If the headquarters of every party are in the same country at the time the arbitration agreement has been ratified whereas one of these places is located in another country.
- c. foreign if it is conducted outside Palestine.
- d. private if not organized by an institute specialized in arbitration.
- e. institutional if conducted by an organization specialized in organizing and supervising arbitration whether it is inside or outside Palestine.



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The Palestinian legislature was not successful in stating the difference between foreign and international arbitration. However, the arbitration law referred to the law that should be applied on the issue of dispute in international arbitration in article 19, which stated:

- 1- It is possible for the parties involved in international arbitration to agree on the law that should be applied on the issue of the dispute. If they do not agree, the arbitration panel will apply the Palestinian arbitration code.
- 2- If the arbitration is international and conducted in Palestine whereas the parties have not agreed on the law applicable in their case, the objective standards that are stated in the rules of conflict of laws of the Palestinian law shall be applied disregarding the application of the referral rules unless they lead to the application of the Palestinian law.

In all cases, the arbitration panel shall take into consideration the standard application to the relationship.

- The arbitration agreement

According to the law, an arbitration agreement is the agreement between two or more parties ruling the entire or parts of the dispute, which has risen or could rise between parties. It is stipulated that the arbitration agreement be in a written form, issues in the agreement should not be in contradiction to public order and should be legally feasible.

The Palestinian legislature took with the principle of the independence of the condition of arbitration and stated that it will not be affected by the invalidation, recession, or termination of the contract. The legislature acknowledged the importance of the arbitration agreement in article 7 of the law, whereby if one of the parties in the arbitration took any legal action before any court in a matter already assigned for arbitration, it is admissible before getting involved in the case to



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request from the court to cease any procedure and the court shall issue a decision if it is convinced by the legitimacy of the arbitration agreement.

- The Arbitration Panel

The most significant thing in arbitration is that it is subject to will and the agreement of the parties starting from the arbitration panel, determining the procedures and choosing the arbitrators. According to the law, the arbitration panel shall comprise of one arbitrator or more upon agreement of the parties. If it is not agreed to form an 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.

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 rebut 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 the arbitration institution if the arbitration is institutional.

The arbitration panel is authorized to settle issues related to

- Jurisdiction
- Arbitration agreement.
- Application related to the rebuttal of the arbitration panel, or one of its members.
- Rebuttal related to the arbitration presented to it.



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Article 36 of the law stated that the parties in the dispute are entitled to delegate the arbitration panel to conduct reconciliation among them in accordance with the principals of justice. It is possible for the arbitration panel, upon request of one of the parties or by itself, to offer an amicable settlement of the dispute.

- The Competent Court

The Palestinian legislator defined the competent court in Article One of the arbitration law as the court which originally examines the dispute, presented to the arbitration panel if the arbitration is local. However, if the arbitration is international and conducted in Palestine, the competent court in this case is the Court of First Instance where arbitration is conducted within its territorial jurisdiction. If the arbitration is foreign, the competent court authorized in recording and implementing the arbitrate is the court of First Instance in Jerusalem, the capital of Palestine or in its temporary head quarters in Gaza.

From the article above it is understood that by using the term originally examines, the Palestinian legislator is referring to the provisions of the Civil and Commercial procedure law in issues related to territorial jurisdiction and jurisdiction of value. However, arbitration is not restricted to the jurisdiction procedures that exist in the law, the parties are granted freedom of choice of the venue they choose to resolve their dispute within.

The court that monitors the procedures of arbitration is the same court that is competent to resolve the dispute, regardless whether it had territorial jurisdiction or jurisdiction of value. The court also approves or revokes the decisions of the arbitrators. The purpose for doing so is to ensure quick procedures for dispute resolution and because commercial courts do not exist in Palestine.



- The Arbitration Period

The legislature granted the parties the priority for determining the period for resolving their disputes by arbitration.

According to article 38 of the law, the arbitration panel issues the professional decision regarding the adversity on the date assigned by the two parties. Unless the parties agree, otherwise the decision should be issued within 12 months after the date of the initiation of the arbitration procedures. In all events, it is possible for the arbitration panel to extend the date for a period for not more than six months.

If the arbitral decision is not issued within the assigned date indicated in paragraph 1 above, it is possible for any of the parties to 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 at the competent court.

The decision shall be issued by consensus or by majority after consultation if the panel comprises of more than one arbitrator or by a decision by the umpire if the majority cannot be attained.

- Enforcement, objection, revocation

In article 43 of the law the legislature listed the reasons for allowing the parties to file an objection against the decision. Procedures for filing an objection to the decision are different from the procedures of filing an objection in the civil procedures law. The legislator also



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determined 30 days for filing the objection in order to limit the period for objection and not leave it open.

According to article 44 of the law the revocation or objection to the decision should be filed at the competent court within 30 days starting from the date following the issuance of the decision if the parties were present during the sentence or else starting from the date following the notification of the decision.

If the period expires without an objection against the decision, the competent court, upon the request of one of the parties shall issue a decision to endorse it and execute it. The court's decision is final and shall be implemented like all other court decisions. If the competent court rejects the application of the objection, the decision becomes correct and effective. If the competent court revokes the decision, it is possible, if it deems appropriate to return the issue of dispute to the arbitration panel to reexamine the points assigned by the court.

- Execution of the award

After ratification by the competent court, the award shall acquire the power and effect like other court decisions and shall be implemented in the same manner that any sentence is implemented or any decision issued by court in accordance to the adopted principles. According to article 48 of the law the legislature stated that it is possible for the competent court to reject the implementation of the decision if it contravenes with public order in Palestine, or if it is not in agreement to the international agreements and conventions enforced.

- Implementation and enforcement of foreign awards



The foreign award is the award or decision that settles the conflict regardless of the nationality of the parties or the arbitration panel. According to article 3 of the law, arbitration is foreign if conducted outside Palestine. The basis for implementing foreign awards is envisaged in International conventions namely the New York Convention for acknowledging and enforcing foreign awards.

The Palestinian legislature stated that foreign awards are not enforced unless authenticated and certified by a Palestinian consular representative and translated to 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 foreign arbitrate if it contravenes to the public order, or if it is not in agreement to international agreements operating in Palestine.

Article 49 of the law stated that it is possible for the convicted party in a foreign arbitrate to demand an order from the competent court not to implement the decision if it is proved that the decision had been invalidated or annulled before one of the courts in the country of issuance. Or if the convicted party proves that the decision has been appealed in the country where it had been issued and it had not been settled yet, or if a Palestinian court had already issued a sentence in contradiction to the decision in a case established by the same parties and the sentence referred to the same issue.

A foreign decision may also cease to be implemented if one of the parties is not legally admissible, or if the arbitration panel or any of its members was not legally eligible, if the decision or its procedures are invalidated in a manner that will affect the sentence, 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 following the issuance of the decision if the parties were present during the sentence or else starting from the date following the notification of the arbitrate.



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## 2. Constrains facing Arbitration in Palestine

- The judiciary system prevailing in the West Bank and the Gaza Strip .  
Perhaps the most fundamental and difficult challenge in advancing the economy in the West Bank and the Gaza strip is the prevailing legal system, and the lack of a stable legal framework. The Palestinian Authority has failed to develop a regulatory environment that would attract needed levels of foreign investment and to provide legal guarantees and incentives the investors come to expect. The most important factor that discourages the foreign investor is the prevailing legal system and the difficulty in enforcing judgments in the West Bank and the Gaza Strip due to the deficiency of the rule of law and because of the Israeli occupation to the West Bank and Gaza.
- Lack of public awareness about the importance of Arbitration in resolving commercial disputes.
- The fact that rule of law is ceasing to exist in the West Bank and Gaza, discourages investors and the local population to undertake commercial interactions and hence resolve their disputes through arbitration.
- People in the West Bank and Gaza have been resolving their disputes out of court by referring to Sulha Ashairieh, because they do not trust the courts in resolving their disputes in a quick and efficient way.
- Universities and law schools do not include teaching arbitration in their curriculum.
- There is only one institution in the West Bank and Gaza that is specialized in resolving disputes by arbitration. There is a need to have more specialized institutions to promote and enhance the referral to arbitration for conflict resolution.



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- Palestine still did not gain its sovereignty as an independent state; therefore, it cannot be a state party in the International conventions that relate to arbitration

### *3.. The impact that arbitration might have on needed foreign investment in the area in promoting and boosting the economy*

In 1998 the Palestinian National Authority issued investment promoting law no. 1, this law came to achieve investment goals and priorities in Palestine by the founding of an entity responsible for promoting, facilitating and to give exemptions to invest in Palestine. This law did not exclude any investor from enjoying granted privileges; however, a preferable treatment could be given to investors based on their nationality according to commercial or investment agreements, furthermore, this law as other laws provided a suitable and attracting environment for foreign investment.

The investment law (section 5, art.39 and 40) included an arbitration clause in order to resolve disputes between investors and the Palestinian Authority related to rights and duties implemented in this law

It is worth noticing the following:

- i. Regarding that negotiation is the first step in resolving disputes, it should be noticed that it was mentioned twice; first, upon the request of either of the disputes according to the provided procedures in the regulations. Second, upon the request of one of the parties before starting any other mechanism, which makes it unclear whether the use of negotiations is a must or upon request.



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- ii. As for the provided procedure in the regulations, these regulations are not clearly interpreted if they are agreed upon or implemented by the law.
  - iii. The law gave arbitration and litigation the same level of choice for the foreign investor, and usually foreign investors would not prefer litigation process.

### **III. University programs on dispute resolution or arbitration education in Palestine**

There are several law faculties in the Palestinian universities, but none of these faculties give any courses particularly about arbitration. However, in some courses the subject is covered as an example “Private International Law”, in this course there is section on the execution of foreign arbitral awards.

### **IV. Other conflict resolution methods in Palestine**

There are two kinds of other conflict resolution methods in Palestine, Mediation and "Sulha". The difference between the two methods is that "Sulha" is more involved with criminal related conflicts in which the society has a major role in its process. On the other hand, mediation covers a wider range of conflicts in which one or two persons carry out the process. Both methods are not regulated in the Palestinian law; however, they are widely used to avoid long procedures in court.

#### **A. Mediation**

Mediation is considered to be one of the old ways for resolving disputes in Palestine, usually conducted in a simple level based on good faith efforts and it's a traditional custom in the



Palestinian society. Basically, Mediation process in Palestine is carried out by a neutral third party, who works on narrowing between points of views of the disputers, and facilitating communications between disputers. The advantages of mediation is that it is a simple and quick procedure, as it dose not take more than one to two session without any bureaucratic difficulties as in litigation and arbitration. The mediator in Palestine is usually characterized having a neutral, patience and self controlling personality with skills like good listening and creating collaborate negotiation atmosphere.

### **B."Sulha Ashaeriah" (traditional way to resolve disputes)**

The other traditional way to resolve disputes in general is "Sulha", and it is a binding, obligatory and firm process to end disputes which was carried out through the past time by senior citizen, during the first “Intifada” some comities were established by the rebels to avoid courts under the occupation authority and these comities also handle the process of “Sulha”

After the establishment of the Palestinian Authority, new bodies such as governors, legal departments in the governorates , security services and formal reform comities joined the traditional ones( seniors and senates) in the "Sulha" process.

## **V. Recommendations**

1. To raise public awareness on the importance and the advantages of resolving commercial disputes through arbitration and mediation.
2. To teach arbitration and mediation in the law schools in the West Bank and Gaza.
3. To promote the role of the Ministry of Justice in authorizing arbitrators.



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4. To refer to the Palestinian Arbitration Law in international and trade agreements signed by the Palestinian Authority.
  5. To hold workshops on arbitration targeting the lawyers and the business sector.
  6. To raise awareness on the importance of setting up new commercial dispute resolution centers that are monitored by the Ministry of Justice
  7. To coordinate relations between the commercial sectors - private and governmental - to resolve commercial disputes in special arbitration centers.
  8. To train qualified arbitrators with cooperation with regional and international arbitration centers.



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