



Arbitration Guide
IBA Arbitration Committee

LEBANON

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I. Background

(i) **How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?**

Arbitration is becoming an increasingly acceptable way of resolving disputes in Lebanon which is considered as an arbitration-friendly jurisdiction. The Lebanese legislation on arbitration is modern meaning that it recognises all well-established principles in international arbitration. The judiciary in the Lebanese courts is also familiar with, and supportive of, the laws and practices of international arbitration.

The principal advantages of arbitration in Lebanon are to a large extent similar to those prevalent in arbitration-friendly jurisdictions. These include the parties' autonomy in the choice of their arbitrators and applicable law, the speed and flexibility that arbitration offers as well as the confidentiality of the proceedings.

The main perceived disadvantages of arbitration in Lebanon include, as is the case elsewhere, the limits imposed by privity of contracts, some difficulties with multi-party disputes and the availability of appeal procedures in domestic arbitrations.

(ii) **Is most arbitration institutional or *ad hoc*? Domestic or international? Which institutions and/or rules are most commonly used?**

There are no published statistics on institutional versus *ad hoc* arbitration in Lebanon. In our experience, institutional international arbitration is more common than *ad hoc* international arbitration in Lebanon. In domestic arbitrations, *ad hoc* arbitrations are more common than institutional arbitrations. In *ad hoc* international arbitrations the UNCITRAL Rules are generally used, while the ICC Rules are generally used in institutional arbitration. It should be noted that arbitration *ex aequo et bono* is most commonly used in domestic arbitrations.

(iii) **What types of disputes are typically arbitrated?**

In principle, all disputes may be submitted to arbitration in Lebanon. Article 762 of the Lebanese Code of Civil Procedure (CCP) provides that: 'Contracting parties may insert in their commercial and civil contracts a clause providing that all disputes that may arise from the validity, performance or the interpretation of their contracts will be settled by way of arbitration'.

However, there are some types of disputes that the Lebanese legislation considers non-arbitrable and subject to the exclusive jurisdiction of state courts. These disputes include:

- Questions of personal status (age, nationality, adoption and genealogy), questions of social status (marriage and divorce) and questions of capacity (capable minors and incapable majors). An exception is allowed by Article 1037 of the Code of Obligations and Contracts (COC) which allows arbitration in matters relating to pecuniary interests arising from questions of tort or personal status. In such a case, the amount of compensation sought may be arbitrated.
- Non-negotiable personal rights such as the right to human dignity, the right to physical integrity, the right to privacy, the right to food (food allowance), etc. However, any dispute relating to monetary compensation in connection with any of these personal rights is capable of being the subject of arbitration.
- Rights of succession. However, arbitration over acquired hereditary rights is possible if the value of such right is determined.
- Questions of public policy which include all matters considered by law as guaranteeing social, economic or political interests.
- Questions of insolvency. Article 490 of the Code of Commerce gives the state full jurisdiction in relation to questions arising from insolvency regulations. However, if an insolvent party has concluded an agreement to arbitrate with the party's associates in a limited partnership company, such agreement is valid.
- Questions of employment contracts and social security. These issues fall under the exclusive competence of the state jurisdiction known as the Lebanese Labour Arbitration Board.
- Contracts for commercial representation (Article 5 of Decree Law No. 34 dated 5 August 1967; see Court of Cassation decision of 17 July 1997). However, there is a jurisprudential trend which makes a distinction between arbitration clauses in commercial representation contracts which are considered invalid and arbitration agreements concluded following the occurrence of the dispute (*compromis d'arbitrage*) which are deemed valid.

(iv) How long do arbitral proceedings usually last in your country?

Article 773 of the CCP, which applies to arbitrations subject to Lebanese procedural law, provides that the arbitrators should complete their mission within 6 months from the date of appointment of the last arbitrator, unless otherwise

specified by the parties. This 6 month time limit can also be extended by an order from the president of the competent court of first instance. In practice, this time limit may be extended depending on the complexity and size of the case at hand.

- (v) **Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?**

There is no limitation or restriction as to the nationality of the persons who can act as counsel or arbitrators.

II. Arbitration Laws

- (i) **What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?**

Arbitration proceedings in Lebanon are governed by the Lebanese Code of Civil Procedure (CCP), which was enacted by Decree Law 90/83, with amendments resulting from Law no. 440 dated 29 July 2002. The CCP devotes an entire chapter (Chapter 2) to arbitration with a distinction being made between domestic arbitration (Articles 762 to 808 CCP) and international arbitration (Articles 809 to 821 CCP).

In case of an international arbitration subject to Lebanese law, Article 812 CCP provides that, in addition to taking into consideration provisions of Articles 810 and 811 (relating to international arbitration), the provisions of Articles 762 to 792 (relating to domestic arbitration) also apply unless agreed otherwise by the parties.

The provisions of the Lebanese arbitration law are based on the old French arbitration law (Decrees No. 80-354 of 14 May 1980 and No. 81-500 of 12 May 1981). The provisions of the Lebanese arbitration law are not based on the UNCITRAL Model Law.

- (ii) **Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?**

Yes, there is a distinction between domestic and international arbitration. Pursuant to Article 809 CCP, an arbitration is deemed international 'when it involves the interests of international trade'. The criteria for determining whether an arbitration involves the interests of international trade is an economic one which involves movements of goods or funds beyond borders.

As explained in the answer to question II(i) above, different sets of provisions in the CCP apply to international and domestic arbitrations. The main difference

concerns the criteria for the validity of arbitration clauses, which are subject to certain formal requirements in domestic arbitration. There are also differences in the recourses which are available to the parties to challenge or set aside an award.

- (iii) **What international treaties relating to arbitration have been adopted (eg, New York Convention, Geneva Convention, Washington Convention, Panama Convention)?**

The Republic of Lebanon acceded to the New York Convention on 9 November 1998. Lebanon has made a reciprocity reservation under the New York Convention, pursuant to which the Government of Lebanon has declared that it will apply the Convention, on the basis of reciprocity, to the recognition and enforcement of awards made only in the territory of another contracting state.

The Republic of Lebanon also ratified the Washington Convention on 26 March 2003 which entered into force on 25 April 2003 (see also Law no. 403 dated 5 June 2002) and ratified the Arab Convention on Commercial Arbitration on 23 September 1988.

- (iv) **Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?**

In domestic arbitration, the applicable substantive law is Lebanese law. However, the parties may agree that the dispute will be settled according to a foreign law or a foreign custom (Article 767 paragraph 2 CCP).

III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

In domestic arbitration, the written form of the arbitration agreement is required as a condition of validity (*ad validitatem*) (Article 763 CCP). In agreements to arbitrate entered into following the occurrence of a dispute, the written form is required as a condition of proof (*ad probationem*) (Article 766 CCP). The arbitration agreement should also designate the arbitrator(s) in their person, in their quality or the method of their designation without which, the arbitration agreement will be considered null and void (Article 763 and 766 CCP).

Unlike domestic arbitrations, there is no particular requirement for an international arbitration agreement to be valid other than the parties' mutual

consent. The written form for an arbitration agreement is only required to obtain the enforcement of the award (Article 814, para. 2 CCP). Article 810 CCP, which deals with international arbitrations, is not formulated in mandatory terms and provides that an arbitration agreement can designate directly or by reference a set of arbitration rules, the arbitrator(s) or the method of their designation.

Although not mandatory, it is preferable to designate the number of arbitrators and their method of designation, the seat and the language of the arbitration.

In contracts with the Lebanese State or other public law entities it is recommended to systematically obtain a prior authorisation regarding the arbitration clauses inserted in such agreements. For contracts with the state, such authorisation should be obtained from the Lebanese Council of Ministers upon a recommendation of the relevant Minister. For contracts with public law entities, such authorisation should be obtained from the relevant regulatory authority (*autorité de tutelle*).

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?

The courts are favourable to arbitration and to the enforcement of agreements to arbitrate. See Section III(i) above which deals with the validity of arbitration agreements and the related formal requirements. Courts, however, will not enforce an arbitration agreement which is manifestly invalid.

(iii) Are multi-tier clauses (eg, arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?

Multi-tier clauses, especially mediation and negotiation clauses, are recently being included when drafting arbitration agreements in Lebanon. The parties should, of course, adhere to terms of their arbitration clause when it requires them to follow certain mandatory steps prior to referring their dispute to arbitration. Valid multi-tier clauses are enforceable and the arbitral tribunal will generally stay the proceedings in order to allow the parties to negotiate within the time limit set out in their arbitration agreement.

(iv) What are the requirements for a valid multi-party arbitration agreement?

When drafting a multi-party arbitration agreement, the parties should avoid a situation in which an even number of arbitrators are appointed. The parties should

also ensure that the principle of equality of the parties in the appointment of arbitrators is maintained. In a recent decision dated 19/10/2010, the Mount Lebanon Court of Appeal held that ‘it is not possible to force three respondent parties to choose one arbitrator, as long as they have independent moral and financial personalities and interests’. The Court of Appeal affirmed that the ‘principle of equality of the parties in the appointment of arbitrators is a fundamental principle in arbitration which concerns public policy and can only be waived after the dispute has arisen’.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

An agreement conferring on one of the parties thereto – to the exclusion of the others – a unilateral right to arbitrate is unenforceable. For an arbitration agreement to be valid and enforceable it must confer on all parties thereto an equal right to resort to arbitration

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

Arbitration agreements are governed by the principle of privity of contracts, thereby only binding the parties which signed the arbitration agreement. However, Lebanese courts have allowed arbitration agreements to bind non-signatories in the following circumstances:

- in a chain of contracts which have the same objectives and which form an economic unity (*opération économique unique*); and
- in some cases involving ‘group of companies’ issues (see below for more details).

The ‘group of companies’ and piercing the corporate veil doctrines are not recognised under Lebanese law. There has also been no direct jurisprudence regarding these doctrines. However, Lebanese courts have, on a number of occasions when dealing with a chain of contracts, extended the arbitration clause in the main contract to other contracts in the chain by reference to the economic unity of the operation between them. There is a doctrinal view that there is nothing preventing Lebanese courts from extending such analysis to a group of companies.

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to

arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

See Section I(iii) above. The courts will decide whether a matter is capable of being submitted to arbitration. Non-arbitrable matters are subject to the exclusive jurisdiction of local courts and cannot be resolved via arbitration.

- (ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

If court proceedings are initiated despite an arbitration agreement, the court will declare itself incompetent if the objection on jurisdiction is made prior to the parties engaging in the merits phase.

Lebanese arbitration law does not provide time limits for making jurisdictional objections. Should a party wish to object to the competence of the court seized with the dispute, such objection should be made by reference to Article 53 CCP prior to engaging in any discussion on the merits of the case.

If both parties fully participate in court proceedings despite there being an arbitration agreement in their contract, this would be considered a waiver of their right to arbitrate.

- (iii) Can arbitrators decide on their own jurisdiction? Is the principle of *competence-competence* applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the Tribunal's jurisdiction?**

Article 785 of the CCP expressly recognises the principle of *competence-competence*. Therefore, if a party challenges the jurisdiction of an arbitral tribunal before a local court, the latter will declare itself incompetent to make a determination. Any request submitted to the Lebanese courts to determine an issue relating to an arbitral tribunal's jurisdiction and competence will be dismissed based on Article 785 CCP (Decision of the Court of Cassation, 5th Chamber, no. 160, dated 16 October 2003).

V. Selection of Arbitrators

- (i) How are arbitrators selected? Do courts play a role?**

Arbitrators are selected in accordance with the provisions of the arbitration agreement entered into by the parties (ie, sole arbitrator, three-member tribunal, etc.).

Article 771 of the CCP provides that in all cases there should be an odd number of arbitrators; otherwise, the arbitration will be considered invalid.

The courts play a role when the parties are faced with a difficulty in constituting the arbitral tribunal. In this case, the president of the competent court of first instance will be requested to make the required appointment (Article 764 CCP in domestic arbitration, Article 810 CCP in international arbitration).

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

Article 770 CCP provides that arbitrators may be challenged on the same grounds as judges for reasons which arise or become known after their appointment.

The challenge should be brought before the court of first instance where the agreed place of arbitration is located. If such an option is not available, the challenge can be brought before the Beirut Court of First Instance within fifteen days from the date the challenging party becomes aware of the arbitrator's appointment or within fifteen days from the date that the reason for the challenge becomes apparent following the appointment of the arbitrator (Article 770 CCP). The court's decision on the challenge is final.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

Lebanese law does not place any limitation as to the choice of the arbitrator. Article 768 CCP provides, however, that an arbitrator must be a natural person, have full capacity to exercise his or her civil rights and must not be insolvent.

In international proceedings, arbitrators are bound by the applicable rules, international professional standards and ethical codes. For example, independence and impartiality are important ethical duties that an arbitrator should adhere to.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

See Section V(iii) above regarding the choice of the arbitrator. There are no specific rules or codes of conduct in Lebanon regarding conflicts of interest for arbitrators. However, since arbitrators can be challenged on the same grounds that

apply to challenging judges (Article 770 CCP), it can be argued that the same provisions concerning conflicts of interest for judges apply to arbitrators (Article 120 CCP). In international arbitrations, the IBA Guidelines on Conflicts of Interest are a useful source which is consulted in practice when issues of conflicts of interest arise.

VI. Interim Measures

- (i) **Can arbitrators order interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the Tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?**

Article 789 CCP grants arbitral tribunals the power to order any interim or conservatory measure they consider necessary in light of the nature of the dispute in accordance with Article 589 of the CCP (such as affixing seals, inventorying goods, impounding property, selling perishables and describing their condition, etc.).

Lebanese legislation does not provide a specific requirement as to the form of the tribunal's decision. The tribunal, therefore, has the discretion to decide whether to issue a procedural order or a partial award in respect of any interim measure sought. The decision taken by the tribunal will be enforceable in the local courts.

- (ii) **Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following constitution of the arbitral tribunal?**

The courts will grant provisional relief in support of arbitration when the arbitral tribunal is not yet constituted. In this case, an application for interim measures should be filed before the competent judge of summary proceedings.

After the constitution of the arbitral tribunal, the parties will have to request such measures from the arbitral tribunal, which has the power to order any interim and conservatory relief that it deems appropriate in accordance with Articles 789 and 859 of the CCP.

- (iii) **To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?**

The competent court, at the request of the tribunal, will issue sanctions on witnesses who refuse to appear before the arbitral tribunal or refuse to cooperate

(Article 779, para. 3 CCP). In relation to the second question, the tribunal's consent is not required.

VII. Disclosure/Discovery

- (i) **What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?**

The discovery process which is prevalent in common law countries is not recognised as such under Lebanese law. However, Article 780 CCP gives the arbitral tribunal the power to order a party to disclose evidence in its possession. The IBA Rules on the Taking of Evidence in International Commercial Arbitration are generally taken into account if agreed upon by the parties.

- (ii) **What, if any, limits are there on the permissible scope of disclosure or discovery?**

The extent and limit on the scope of disclosure are matters which fall within the arbitral tribunal's discretion.

- (iii) **Are there special rules for handling electronically stored information?**

No.

VIII. Confidentiality

- (i) **Are arbitrations confidential? What are the rules regarding confidentiality?**

As a matter of Lebanese law, there is no provision dealing with the confidentiality of arbitral proceedings. However, in practice, arbitral proceedings are considered confidential as long as no legal proceedings before the local courts are filed (ie, request for the assistance of the judge of summary proceedings, recourse for annulment of the award, etc.).

- (ii) **Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?**

Lebanese law does not deal specifically with the arbitral tribunal's power to protect trade secrets and confidential information. However, in practice, since arbitral proceedings are considered confidential, the arbitral tribunal has a duty to preserve the confidentiality of all the information of which it has knowledge.

- (iii) **Are there any provisions in your arbitration law as to rules of privilege?**

There are no such provisions under the Lebanese arbitration law.

IX. Evidence and Hearings

- (i) **Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

The IBA Rules on the Taking of Evidence in International Commercial Arbitration are taken into account if agreed upon by the parties, generally as a guideline. When applicable, the tribunal's discretion to depart from the IBA rules generally depends on the agreed procedural rules.

- (ii) **Are there any limits to arbitral tribunals' discretion to govern the hearings?**

Lebanese law does not provide any limits as to the conduct of the hearings.

- (iii) **How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?**

Lebanon is a civil law country. Therefore, Lebanese counsel are generally not familiar with the techniques of oral direct examination and cross-examination. However, in international arbitration, these techniques are used. In domestic arbitrations (*arbitrages en droit*), the arbitral tribunal will apply the procedural rules applicable to the testimony of witnesses before local courts unless agreed otherwise by the parties and only where such provisions are not in conflict with the specific provisions set out in the Lebanese arbitration law (Article 776 CCP). In practice, the witness examination will start with a request from the arbitral tribunal to the witness to confirm his/her testimony following which the tribunal and each party will be entitled to put questions to the witness.

- (iv) **Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

Where Lebanese procedural law is applicable, Articles 259, 260, 262, 263, 264 and 265 provide a number of restrictions on who can or cannot appear as a witness. Article 779 CCP makes it clear that arbitrators can hear witnesses without requiring them to give evidence under oath.

- (v) **Are there any differences between the testimony of a witness specially connected with one of the parties (eg, legal representative) and the testimony of unrelated witnesses?**

Where Lebanese procedural law is applicable, and unless otherwise agreed upon by the parties or directed by the tribunal, the testimony of a witness having close ties with one of the parties will not be accepted (Article 264 CCP).

- (vi) **How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

Where Lebanese procedural law is applicable, and unless otherwise agreed upon by the parties or directed by the tribunal, expert testimony is generally presented in the same way as described for witnesses of fact in question IX(iii) above. Articles 316 and 320 CCP, when applicable, provide that an expert must execute his mission in an honest, trustworthy and impartial manner. An expert can be challenged on the same grounds that apply to challenging judges (Article 120 CCP).

- (vii) **Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

The common practice in domestic arbitrations is for arbitral tribunals to appoint their own experts. There is no set procedure applicable for tribunal-appointed experts. There is a particular list for court-appointed experts but the arbitrators are not bound by such list unless the parties decide to be so confined.

In international arbitrations, it is more common for each party to appoint its expert. In practice, this will depend on each tribunal's approach and the parties' consent thereto.

- (viii) **Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?**

Witness conferencing is not common in Lebanon. Such practices, however, remain subject to the parties' agreement and the tribunal's discretion in that respect.

- (ix) **Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

Lebanese arbitration law is silent as to the use of arbitral secretaries. However, in practice, according to the complexity of the case and notably in international

arbitration cases, an administrative secretary will be appointed if agreed upon by the parties.

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

Article 790 of the CCP provides that the arbitral award should contain:

- The name of the arbitrator(s);
- The date and place of the award;
- The full names and denominations of the parties and their legal counsel;
- A summary of the parties' positions and the evidence provided in support of their respective positions; and
- The reasons for the award and the dispositive part.

There are no restrictions in Lebanon as to the types of remedies or relief that an arbitral tribunal may grant.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

There are no punitive damages under Lebanese law. For arbitrations subject to Lebanese law, an arbitral tribunal can award both simple and compound interest.

(iii) Are interim or partial awards enforceable?

Interim or partial awards are enforceable in Lebanon.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Dissenting opinions are permitted under Lebanese law. Article 791 (para. 2) of the CCP provides that in case an arbitrator refuses to sign an award, the remaining arbitrators are required to state so in the award, but the award will have the same legal effect as if it was signed by all arbitrators (Articles 788, 791 para. 2 CCP). The law does not provide particular rules as to the form and content of dissenting opinions.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

Yes, upon the parties' agreement. Arbitration proceedings can be terminated by the parties' consent. When an arbitrator has been nominated *intuitus personae* in an arbitration agreement, the ensuing arbitration will be automatically terminated by the death, removal or resignation of the arbitrator in question. The arbitration will also be terminated if the duration (and any extension thereof) for rendering the award has elapsed.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

Article 792 CCP (para. 2 and 3) provides that the arbitrator has the competence to interpret and correct the arbitral award from any material errors or omissions affecting the award and to complete the award in case he neglected to determine an aspect of the claim.

The law stresses that any interpretation, correction or completion of the award should be made by the arbitrator within the time limit fixed to settle the dispute. Once this deadline has elapsed, the court which would have been competent in the absence of an agreement to arbitrate will be empowered to deal with such requests for interpretation and correction.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

The parties are able to recover fees paid and the reasonable costs incurred. It is usually left to the arbitral tribunal's discretion to decide whether the unsuccessful party will bear the entire costs.

(ii) What are the elements of costs that are typically awarded?

All elements of costs can be awarded including the arbitration costs, the arbitrator's fees and expenses.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

In *ad hoc* proceedings, the tribunal has jurisdiction to decide on its own costs and expenses. In institutional arbitrations, it is the institution which determines the costs of the tribunal. Most institutional rules forbid any agreement on fees between the tribunal and the parties. Expenses are claimable by a tribunal within the limit set out in the applicable arbitration rules.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

A tribunal generally has total discretion as to the conduct of the arbitration proceedings within the framework of the applicable arbitration rules and procedures. A tribunal can therefore decide to apportion the costs between the parties if it deems it appropriate subject to the provisions of the applicable rules in relation to costs (see for example Article 31 of the ICC Rules, Article 28.4 of the LCIA Rules).

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

There is no provision in the Lebanese arbitration law allowing the courts to review the tribunal's decision on costs. To date, there is no case law on this issue.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

In domestic arbitrations, arbitral awards can be challenged in the following ways:

- By filing an ordinary appeal before the Court of Appeal. Such appeal is, however, not available against arbitral awards rendered on an *ex aequo bono* basis, unless the parties have expressly reserved their right to do so in their arbitration agreement.
- By filing a recourse in annulment before the Court of Appeal. The grounds for presenting such recourse are, however, limited to those set out in Article 800 CCP.
- By filing a third party opposition application before the court that would have had jurisdiction had the parties not referred their dispute to arbitration.
- By filing a retrial proceeding before the Court of Appeal pursuant to Article 808 CCP within the specific conditions applicable to such a procedure.

Legal proceedings to set aside a decision of the Court of Appeal rendered under the first two grounds listed above can be filed with the Court of Cassation, whose review – being a court of law – will be limited to legal as opposed to factual grounds. A distinction must, however, be made between awards rendered by applying the law and awards rendered on an *ex aequo bono* basis: a decision rendered by the Court of Appeal in relation to an arbitration *ex aequo bono* can be referred only to the Court of Cassation in the event the court of appeal has set aside the award.

For administrative matters, only one level of recourse is available. Any objection to a decision denying enforcement may be raised in the judicial section of the Council of State.

In international arbitrations, a party can present an appeal against the decision granting recognition or enforcement of an international award, or file recourse in annulment against an international award rendered in Lebanon, on the following limited grounds set out under Article 817 CCP:

- where the award has been rendered without an arbitration agreement or on the basis of an agreement which is null or void due to the expiry of the relevant time limit for rendering the award;
- where the award has been rendered by arbitrators not appointed in accordance with the law;
- where the arbitrators ruled without complying with the mission conferred upon them;
- where the award has been delivered without due respect of rights of defence; or
- where the award has violated a rule of international public policy.

The above-mentioned annulment recourse and appeal procedure must be filed not later than thirty days from the notification of the decision granting *exequatur* to an international arbitration award which could take around 6 months. Unless the award has been rendered on an expedited basis, enforcement is stayed when an appeal/annulment procedure is pending. When a challenge is made before the Court of Appeal, it is not open to the parties to obtain a leave to enforce.

For recourses made at the Court of Cassation (second level of jurisdiction) enforcement will only be stayed upon the court's order.

- (ii) **May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?**

The grounds for challenging international awards which are set out in Article 817 CCP are of public order. As such, the parties may not waive their right to file an appeal or recourse in annulment against an international award.. In domestic arbitration, however, the parties can waive their right of appeal against the domestic arbitral award (Article 770 CCP).

- (iii) **Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?**

See Section XII(i) above.

- (iv) **May courts remand an award to the Tribunal? Under what conditions? What powers does the Tribunal have in relation to an award so remanded?**

No.

XIII. Recognition and Enforcement of Awards

- (i) **What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

The decision granting recognition or enforcement of the award is generally obtained through *ex parte* proceedings. In such *ex parte* proceedings, the judge will only verify: (i) the existence of the award; and (ii) that recognition of the award is not manifestly contrary to the Lebanese international public policy. (Articles 795, 814, 815, 816 and 819 CCP). The grounds to resist enforcement are those set out in Articles 814, 817 and 819 CCP.

For the purposes of international arbitrations seated outside Lebanon, Article 810 CCP provides that the Beirut Courts will take the place of the court in which the foreign arbitration is seated whenever necessary. As such, requests for *exequatur* of international awards seated outside Lebanon will be made to the President of the Beirut Court of First instance (Articles 815, 793 and 770 CCP). For international awards rendered in Lebanon, requests for *exequatur* should be made to the president of court of first instance which has jurisdiction in the place where the award was made.

The enforcement of foreign awards in administrative matters has to be sought in Beirut before the President of the Council of State.

Unless the award has been rendered on an expedited basis, enforcement is stayed when challenge proceedings are engaged as explained in Section XII(i) above. When a challenge is made before the Court of Appeal, it is not open to the parties to obtain a leave to enforce.

(ii) If an *exequatur* is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

The procedure to be followed after receiving an *exequatur* is typically the same as enforcing a court decision which is to proceed to execution against the assets of the losing party, in case of non-voluntarily compliance with the award. A party can seek the assistance of the court's execution in order to enforce the award.

A token fee has to be paid to obtain recognition and/or enforcement of a foreign award in Lebanon. However, if an award is executed against any assets in Lebanon, a proportional fee of two and a half per cent must be paid to the Treasury on the sum awarded. In addition, a fee amounting to around one per cent has to be paid for the judiciary mutual fund stamp duty, the Bar Association stamp duty and the fiscal stamp duty.

(iii) Are conservatory measures available pending enforcement of the award?

Yes. For example, a party may seek an interim attachment order from the competent court to freeze the assets of the losing party pending the enforcement of the award.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Lebanese courts are arbitration-friendly and respect international arbitration awards to the extent that they do not manifestly violate Lebanese international public policy. In our view, Lebanese courts would agree to enforce arbitral awards in Lebanon which were annulled at the place of arbitration in other countries, if they find that the criteria set out by Lebanese law for enforcement of foreign awards are met.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

Obtaining *exequatur* of an international arbitration award in Lebanon is not a lengthy process in itself. The length of enforcement procedures generally depends

on the measures sought against the losing party and the efforts deployed to seek compulsory compliance with the award.

Lebanese law does not provide any specific limitation for the recognition and enforcement of foreign awards. However, it may be argued that the limitation period applicable to legal proceedings for enforcement of judgments under Lebanese law also applies to foreign arbitral awards. In this case, the relevant limitation period would be 10 years from the date of the award.

XIV. Sovereign Immunity

- (i) **Do state parties enjoy immunities in your jurisdiction? Under what conditions?**

The concept of the state's sovereign immunity from execution is recognised under Lebanese law and, as such, can be raised as a defence at the enforcement stage.

- (ii) **Are there any special rules that apply to the enforcement of an award against a state or state entity?**

Article 860 (para. 1) of the CCP stipulates that the assets of the state and public legal bodies cannot be seized. Article 860 (para. 2) of the CCP stipulates the assets of foreign states cannot be seized save for those which are subject to private law.

XV. Investment Treaty Arbitration

- (i) **Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Lebanon signed the Washington Convention on 26 March 2003, which entered into force on 25 April 2003 (See Law No. 403 dated 5 June 2002 published in the Official Gazette No. 34 dated 13 June 2002).

- (ii) **Has your country entered into bilateral investment treaties with other countries?**

Lebanon has signed 51 BITs that provide for investor-state arbitration.

XVI. Resources

- (i) **What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

Practitioners can consult the following publications:

- Al-Adl journal published by the Beirut Bar Association;
- Treaty on the civil procedure, arbitration volumes 10, 11 and 12, Edouard Eid;
- The Lebanese Review of Arab and International Arbitration;
- The Journal of Arab Arbitration, published by Al-Halaby legal publications;
- Dr. Nayla Comair Obeid, 'The Impact and Consequences of changes in Lebanese Arbitration Law' *ICC International Court of Arbitration Bulletin* (Vol.14/No.1-1st Semester 2003); and,
- 'Guide to National Rules of Procedure for Recognition and Enforcement of New York Convention Awards: Lebanon' *ICC International Court of Arbitration Bulletin* (2008 Special Supplement).

- (ii) **Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

Arbitration events and conferences are regularly held in Lebanon whether through the Lebanese Branch of the Chartered Institute of Arbitrators, the Lebanese National Committee of the ICC or other institutions such as the LCIA, the Beirut Chamber of Commerce, the Beirut Bar and the Lebanese Universities. These events usually take place throughout the year.

XVII. Trends and Developments

- (i) **Do you think that arbitration has become a real alternative to court proceedings in your country?**

While Lebanon is an arbitration-friendly jurisdiction, it is not yet at a stage where one could assert that arbitration has become a real alternative to court proceedings.

- (ii) **What are the trends in relation to other ADR procedures, such as mediation?**

Lebanon favors ADR procedure especially the recourse to mediation. Parties usually resort to conventional mediation.



(iii) Are there any noteworthy recent developments in arbitration or ADR?

A new law has been drafted relating to judicial mediation. However, this law has not yet entered into force and is still awaiting Parliament's ratification.