

**INTERNATIONAL TRADE AGREEMENTS
AND TRADE LAW**

**The Impact of Using ADR in Jordan on International Trade and
Foreign Investment**

Omar M.H. Aljazy, PhD MCIArb

Managing Partner

Jordanian Center for Dispute Resolution (JCDR)

www.jcdr.com

Introduction

Trials are costly and time consuming. It has been said that this is the result of “too many lawyers, too many lawsuits, and too many laws”. In fact, in Jordan over the last two decades the number of lawyers has tripled, the number of lawsuits has tripled, and the numbers of judges and courts have not kept pace. Thus, it has become important for the disputing parties to explore, understand and utilize alternative methods to resolve their disputes. In this concern the use of Alternative Dispute Resolution (ADR) to resolve disputes outside the legal system has been growing in significance and popularity.

ADR is a term used to describe a basket of procedures outside the traditional litigation processes that are usually entered into voluntarily by parties to a dispute in an attempt to resolve it. The main advantage of ADR over proceeding in national courts is that it can be initiated relatively quickly, as the neutral third party is not subject to the constraints of judicial formalities such as the court docket and other requirements.

Furthermore, ADR can be accomplished without the lengthy process associated with formal litigation, where each party’s counsel makes a stream of requests for information held by the other party as the “discovery” process in England. In addition, ADR, unlike disputes carried out in court, is a completely confidential process and any decisions or awards are not disclosed to the public.

There are various ADR procedures used today, but the most commonly used ones in Jordan are mediation and arbitration. Hence, this paper will mainly focus on these two types of ADR and the relevant Jordanian legislation formulating them.

Arbitration in Jordan

The provisions governing arbitration in Jordan were always distinguished from those of the Arab countries since they are found in special arbitration acts and not within the Code of Civil Procedure.

The Arbitration Law No. (31) of 2001 has repealed the old Arbitration Law No. (18) of 1953, which has been influenced mainly by English Law, in contrast to similar laws of most other Arab countries, which were influenced by French law. The current law is mainly derived from the Egyptian Arbitration Law No. (27) of 1994, which is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration of 1985.

An arbitration agreement can take two forms. It may take the form of a clause in the substantive agreement in which its parties undertake to submit any dispute which may arise in relation to their agreement to arbitration. However, in the absence of a pre-existing arbitration clause, such agreement can sometimes be concluded as a separate agreement after a dispute has already occurred. The Jordanian Arbitration Law considers both types of agreements to arbitrate, namely arbitration clauses and arbitration agreements, to be valid and binding (Article (11)). The Law requires that the agreement to arbitrate must be in writing, otherwise it is considered to be void (Article (10/A)).

The Jordanian Arbitration Law recognizes the well established principle “severability of arbitration clause” where the arbitration agreement whether contained within the substantive contract or exists in a distinct contract is regarded to be separate from the main contract of which it forms part and as such, survives the termination of that contract (Article (22)).

Furthermore, the Law adopts the doctrine of “competence – competence” which empowers the arbitral tribunal to decide upon its own jurisdiction. Under this doctrine

the arbitral tribunal many decide all these matters without involving the jurisdiction of a national court to determine these issues (Article (21)).

With regard to arbitrability, the Law widens the scope of arbitration to cover any legal dispute whatever the legal nature of the relationship which is the subject – matter of the dispute. Thus, the disputing parties can refer any disputes whether civil or commercial, contractual or non- contractual, to arbitration (Article (3)). The principle adopted by the Law in this regard is that arbitration is not permitted in matters that cannot be conciliated (Article (9)).

It is worth mentioning that the Jordanian ratification of the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958 (The New York Convention), is considered a major step to secure the interests of foreign business community dealing with Jordanian parties.

Mediation in Jordan

Mediation, as another ADR method, can be defined as an informal, voluntary process where the parties to a dispute, with or without their lawyers, meet with a neutral third party (the mediator) who helps them in exploring issues, developing options, analyzing their dispute in order to reach a consensual settlement by creating a productive environment for negotiation.

The mediation process in Jordan has been recently organized by the Mediation Law for Settling Civil Disputes No. (37) of 2003. It is interesting to note that commercial disputes are included within commercial ones in the context of this Law.

By virtue of the Mediation Law a “Mediation Directorate” is established and composed from a number of judges from both the First Instance and Magistrates’ Courts. In

addition to those judges, the Minister of Justice may nominate “Special Mediators” to settle referred disputes (Article (2)).

In practice, mediation in Jordan is used in resolving various types of disputes; these include the most complicated disputes such as construction controversies between the owners of different projects and contractors or sub-contractors.

The Impact of Arbitration and Mediation in Jordan on International Trade and Foreign Investment

The relationship between ADR and international trade and foreign investment is of increasing significance. What inspired the growth of ADR in the last century was the inability of national courts to offer a neutral forum for the resolution of cross-border business disputes.

In Jordan, having come to ADR due to perceived inadequacies in litigation and arbitration, many Jordanian practitioners and their clients have come to value the other benefits that processes such as mediation can offer. These benefits include the ability to arrive at commercial solutions, the ability of business managers to maintain control of the process, and the ability of the process to address business interests as well as legal rights. This has led ADR to be seen as a valuable complement to arbitration, which in turn has led to several developments such as the establishment of a specialized institute to offer ADR services in the field of intellectual property disputes. With respect to trade agreements and bilateral investment treaties (BIT's), Jordan is engaged in 27 BIT's with different countries. Additionally, Jordan in 1972 ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States of 1965, which established the International Center for Settlement of Investment Disputes (ICSID). Furthermore Jordan is currently a party to two pending ICSID disputes.

Conclusion

In this era of globalization and world wide integration of markets, we are witnessing an extraordinary growth of the ADR use in the field of international trade and foreign investment. Within this context it is very encouraging to that Jordan has made tremendous steps in the modernization of its legislation in the field of ADR, by passing new laws in this regard, and by ratifying the most important relevant international tools. The increasing accumulated balance of recent foreign investment in Jordan will also increase the need for proper resolution of cross-border disputes. Jordanian companies will, gradually but inevitably, play a significant part in the development of ADR techniques.

This healthy legal environment will naturally provide a breeding ground for more foreign investment in Jordan since it suggests an appropriate level of security and neutrality. Foreign companies interested in Jordan for the purpose of investment will be comforted by Jordan's achievements with regard to ADR methods for dispute resolution which give them together with their Jordanian partners the right to choose the applicable laws and their designated forum.