



The Middle Eastern and African Arbitration Review

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Lebanon

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Lebanon

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- Lebanese Code of Civil Procedure
 - Lebanese Code of Obligations and Contracts
 - Lebanese Code of Commerce
 - Law No. 48 Regulating Public–Private Partnerships
 - Lebanese Court of Cassation, Decision No. 14/2014 dated 25 January 2014
 - Court of Cassation, First Chamber, Decision No. 56 date 24 October 1958
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Arbitration law

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 Lebanese Code of Civil Procedure (LCCP) enacted by Decree Law No. 90/83, with amendments resulting from Law No. 440 dated 29 July 2002, devotes its second chapter to

arbitration. The LCCP makes a distinction between domestic arbitration^[1] and international arbitration,^[2] the latter being governed by more liberal rules. The main differences between domestic and international arbitration concern the criteria for the validity of arbitration clauses, which are subject to stricter formal requirements in domestic arbitration. Other differences include availability of recourses to challenging or setting aside an award, which is broader in domestic arbitration than in international arbitration.

Pursuant to article 809 of the LCCP, an arbitration is deemed international 'when it involves the interests of international trade'. These interests are defined as involving movements of goods or funds beyond borders. In other words, if the operation that is the subject matter of the dispute is linked to more than one country, the arbitration is international.^[3] Factors that are not determinative when assessing whether an arbitration is international include the nationality of the parties or arbitrators, the place of the arbitration, the residence of the parties or the place where the contract was concluded. Furthermore, the application of a foreign law or procedure will have no effect on the definition of an arbitration as international.^[4]

Regarding international arbitrations seated in Lebanon, article 812 of the LCCP provides that where an international arbitration is governed by Lebanese law, unless agreed otherwise, provisions relating to domestic arbitration apply.^[5]

Lebanon is a signatory to the New York Convention with a reservation that the government of Lebanon 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. Lebanon also ratified, among others, the Washington Convention on 26 March 2003.

Arbitration institutions based in Lebanon

The relevant arbitral institution based in Lebanon is the Lebanese Arbitration Centre of the Chamber of Commerce and Industry and Agriculture of Beirut and Mount Lebanon,^[6] founded in 1995, which has its own Rules of Conciliation and Arbitration. The centre is an independent arbitration institution that administers domestic and international arbitration and also offers the possibility of resolving disputes through optional conciliation.

The Lebanese National Committee of the International Chamber of Commerce of Paris (ICC), although not involved in the administration of arbitration cases, is often invited by the ICC Secretariat to propose candidates for appointment as arbitrators.

The Chartered Institute of Arbitrators Lebanon Branch^[7] principally serves as a forum for education and training in alternative dispute resolution (ADR) and may sometimes act as an appointing authority.

Overview of the arbitration legal framework in Lebanon

Arbitration agreements

Formal requirements for an enforceable agreement

Unlike in domestic arbitrations, where the written form of the arbitration agreement is required as a condition of validity (article 763 LCCP), there is no particular requirement for an international arbitration agreement to be valid other than the parties having consented to it. Article 814(2) of the LCCP, however, provides that an agreement in writing is required to obtain enforcement of the award rendered in international disputes.

Insofar as administrative contracts are concerned, one important formal requirement concerns contracts made with the Lebanese state or with other state entities. In domestic administrative contracts, a state or state entity can enter into an arbitration agreement subject to prior authorisation by the Council of Ministers upon a recommendation of either the relevant minister or the relevant regulatory authority.^[8] In international administrative contracts, while the law is silent on the necessity of obtaining a prior authorisation from the Council of Ministers, it is recommended to systematically obtain such authorisation in respect to arbitration clauses inserted in such agreements.

Separability of the arbitration agreement

The principle of separability of the arbitration agreement from the main contract is a well-established principle in Lebanon and is recognised by Lebanese courts.^[9]

Arbitrability of disputes

Under Lebanese law, the following types of disputes are not arbitrable and are subject to the exclusive jurisdiction of the Lebanese national courts.

- Questions of personal status (nationality, age, adoption) and questions of social status (divorce and marriage). However, article 1037 of the Code of Obligations and Contracts allows for an exception regarding financial compensation resulting from personal status disputes. In this case, arbitration is confined to the compensation sought.
- Non-negotiable personal rights such as the right to physical integrity, human dignity, privacy, the right to food, among others. Similar to the questions of personal status, however, any dispute relating to monetary compensation associated with those personal rights is arbitrable.
- Rights of succession. Arbitration over acquired hereditary rights is possible where the value of such rights is determined.
- Questions of public policy, including all matters considered by law as guaranteeing social, economic or political interest.^[10]
- Questions of insolvency. As provided by article 490 of the Code of Commerce, state courts have exclusive jurisdiction in insolvency matters.
- Questions of employment contracts and social security. These issues fall under the exclusive competence of the local Labour Arbitration Court.
- Contracts for commercial representation. Article 5 of Decree Law No. 34, dated 5 August 1967, provides for the exclusive jurisdiction of Lebanese courts in respect of disputes arising out of commercial representation agreements. However, it should

be noted that in recent years the Lebanese courts have adopted a more permissible stance towards the arbitrability of such disputes in specific circumstances.^[11]

Arbitrators: appointment and challenges

Appointment of arbitrators

Lebanese law does not place any limitation on the choice of the arbitrator, but an arbitrator must be a natural person, have full capacity to exercise his or her civil rights and must not be insolvent.^[12] There is similarly no limitation on the nationality of the persons who can act as arbitrators where the seat of arbitration is in Lebanon or where hearings are held in Lebanon. In domestic arbitration, the arbitration clause should include the name or characteristics of the appointed arbitrators or the appointment mechanism.^[13]

Parties are free to agree on the number of arbitrators. The parties may designate arbitrators in their arbitration agreement or provide for a mechanism for their designation directly or by reference to arbitration rules. The law requires the arbitration tribunal to be made up of an odd number. In the absence of agreement between the parties, the most diligent party may petition the President of the competent court of first instance to make such an appointment.^[14]

Challenge of arbitrators

Arbitrators are required to act independently and impartially, failing which they may be subject to challenge pursuant to article 770 of the LCCP.

Under article 770 of the LCCP, arbitrators may be challenged on the same grounds as judges for reasons that arise or become known after their appointment and which are exclusively listed in article 120 of the LCCP. Such grounds include:

- if an arbitrator was a legal representative or an agent of one of the parties or one of the parties appointed him or her as an arbitrator in a previous case,^[15]
- if he or she previously provided a legal opinion with respect to the same case even if this occurred before being appointed as an arbitrator,^[16] and
- if there is sympathy or animosity between an arbitrator and one of the parties which could prevent the arbitrator from ruling impartially.^[17]

Moreover, an arbitrator may be liable for his or her gross fault as is the case for local judges pursuant to article 741 of the LCCP.

In domestic arbitration, unless provided otherwise by the arbitration rules in institutional arbitration, challenges against arbitrators should be brought before the court of first instance where the agreed place of arbitration is located. Failing this, the challenge can be brought before the Beirut court of first instance within 15 days from the date the challenging party becoming aware of the arbitrator's appointment or within 15 days from the date that the reason for the challenge becomes apparent following the appointment of the arbitrator (article 770 LCCP). The court's decision on the challenge is final. In international arbitration there are no express provisions regarding the challenge of arbitrators, which in

most instances will be subject to the arbitration rules of the arbitral institution agreed upon by the parties.

The parties' representatives

In domestic arbitration, where the Lebanese rules of procedure apply, parties must be represented by counsel for claims exceeding 1 million Lebanese pounds or for which the amount is not determined, as well as in cases where the law requires representation by counsel (article 378 LCCP).

In international arbitration, there are no express provisions for mandatory legal representation. Consequently, unless provided otherwise, the parties are free to decide whether they wish to be represented by legal counsel with no condition of nationality.

Intervention of domestic courts

Domestic courts' support to the arbitral procedure

The President of the court of first instance may act as the judge in support of arbitration if required. Such support includes the appointment of arbitrators where the parties have failed to designate an arbitrator or where designation of an arbitrator is not carried out by the relevant arbitral institution. The Lebanese legislation further provides for the assistance of courts in the absence of an agreed set of institutional rules containing a default mechanism for the constitution of an arbitral tribunal or a mechanism provided for in the arbitration clause itself.^[18]

Intervention of domestic courts in cases of forgery allegations

Domestic courts are competent to rule on allegations of forgery. Where a party alleges forgery of one or more documents in the course of a domestic arbitration, the arbitrator shall suspend the proceedings pending the competent court's decision on the issue of forgery.^[19] According to the law, such principle also applies in international arbitration, unless there is an agreement to the contrary.^[20]

Domestic courts and provisional relief

Under articles 589–593 of the LCCP, the Lebanese courts can 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, which can be done on an ex parte basis.

After the constitution of the arbitral tribunal, subsequent requests for interim measures must generally be submitted directly to the arbitral tribunal, which has the power to order any interim and conservatory relief deemed appropriate in accordance with articles 789 and 859 of the LCCP. The arbitrators may also request the local judge to sanction witnesses who fail to appear at a hearing or those who refuse to testify.^[21]

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

Recognition and enforcement of domestic, international and foreign arbitral awards in Lebanon

Recognition and enforcement procedure

The recognition and enforcement of an award in Lebanon is made through ex parte proceedings and a legitimate interest is required for a court to accept jurisdiction over the recognition and enforcement of foreign awards (article 795 LCCP).

The court that is competent to grant exequatur depends on the nature of dispute. In civil and commercial matters, exequatur requests are filed before the President of the court of first instance, either at the place where the award was made, if a domestic award was rendered in Lebanon, or in Beirut if the award was rendered outside Lebanon. In administrative matters, exequatur requests should be filed before the President of the Council of State (articles 770, 775, 793, 795 and 810 LCCP).^[22]

The exequatur application must contain the arbitral award and the arbitration agreement or a certified copy of these documents, irrespective if the award is domestic or foreign. For international or foreign awards, the judge will principally verify the existence of the award and that recognition of the award does not manifestly violate Lebanese international public policy (articles 814 and 815 LCCP).

Recourse against a decision on exequatur

A court decision granting recognition or enforcement of a domestic or international award rendered in Lebanon is not subject to any recourse (articles 805 and 819 LCCP).

However, a court decision denying recognition or enforcement of a domestic, foreign or international award rendered in Lebanon is subject to appeal (articles 806 and 816 LCCP).

Challenge of arbitral awards

In domestic arbitration, unless agreed otherwise by the parties, an arbitral award can be subject to appeal.^[23] The arbitral award can also be subject to the setting-aside action.^[24] When an arbitration is conducted ex aequo et bono, an arbitral award cannot be appealed before the Court of Cassation unless the Court of Appeal annulled the arbitral award. In this case, the grounds for appeal before the Court of Cassation are limited to the annulment grounds as set out here below.

However, in international arbitration, the appeal is not an available recourse and the arbitral award can only be subject to the setting-aside action.^[25] In both domestic and international arbitration, the setting-aside action is of public order and cannot be excluded by the parties' agreement.

The grounds for annulling awards in domestic arbitration are set out under article 800 LCCP as follows:

- where the award has been rendered without an arbitration agreement or on the basis of an agreement that 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;
- where the award does not contain the mandatory requirements related to the relief sought by the parties, along with the grounds and means substantiating such relief; the name of the arbitrators, the *ratio decidendi* of the award, the date of the award, and the signature of the arbitrators; and
- where the award has violated a rule of public policy.

The grounds for annulling awards in international arbitration are set out under article 819 LCCP as follows:

- where the award has been rendered without an arbitration agreement or on the basis of an agreement that 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; and
- where the award has violated a rule of international public policy.

In focus: the international and national legal framework for investments in Lebanon

International investment agreements and other treaties with investment provisions

Private actors investing in Lebanon benefit from the protection of a number of international investment agreements and from other treaties with investment provisions, which provide for recourse to arbitration in case of dispute. These include 52 bilateral investment treaties (BITs) signed by Lebanon, 43 of which are in force.

In addition to being a signatory to the 1965 ICSID Convention^[26] and the 1958 New York Convention, Lebanon has also signed other significant treaties, including:

- the Unified Agreement for the Investment of Arab Capital in the Arab States (Arab Investment Agreement 1980),^[27]
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the Agreement on Promotion, Protection and Guarantee of Investments among the Member States of the Organization of the Islamic Conference (OIC Investment Agreement, 1981);^[28]

- the Euro-Mediterranean Interim Association Agreement (EC-Lebanon Association Agreement, 2002);^[29]
- the Free Trade Agreement between the European Free Trade Association and Lebanon (EFTA-Lebanon FTA, 2004);^[30] and
- the Trade and Investment Framework Agreement between the United States and Lebanon (Lebanon-US TIFA, 2006).^[31]

Lebanon has also ratified various regional and multilateral agreements (eg, intergovernmental agreements, guidelines and principles), namely:

- the Islamic Corporation for the Insurance of Investment and Export Credit (ICIEC, 1992);^[32]
- the Inter-Arab Investment Guarantee Corporation of 1971;
- the UN Code of Conduct on Transnational Corporations of 1983;
- the World Bank Investment Guidelines of 1992;
- the ILO Tripartite Declaration on Multinational Enterprises; and
- the UN Guiding Principles on Business and Human Rights of 2011.

Further, Lebanon is a party to the convention establishing the Multilateral Investment Guarantee Agency (MIGA). Under the treaty, Lebanese investors may acquire political risk insurance from MIGA in respect of investments made in certain developing states. However, this does not apply to all investments, as certain thresholds must be met (eg, investments must be medium- to long-term in nature).

The Lebanese Investment Law^[33]

Lebanon has also enacted a national investment law aiming at promoting and encouraging investments in the country. The Lebanese Investment Law, enacted in 2001, covers investments in the agriculture, agro-food, tourism, information technology, telecommunication, technology and media sectors.^[34] It applies to investors willing to benefit from its provisions.^[35] Lebanon's pro-investment arbitration position could also be inferred from several factors. In addition of the Lebanese courts being generally supportive and respectful of arbitration proceedings, all the Lebanese BITs contain arbitration clauses, and the Lebanese government is open to arbitration in general as governmental entities tend to include arbitration clauses in the contracts they sign with investors.

The Lebanese Investment Law further establishes a public authority named the Investment Development Authority of Lebanon (IDAL), a legal entity enjoying administrative and financial autonomy, administered by a board of directors and reporting to the Lebanese Prime Minister.

In the case of a dispute between IDAL and a foreign or national investor,^[36] the parties shall first attempt to resolve their dispute amicably and, in the absence of amicable resolution of

the dispute, the parties to such dispute shall recourse to arbitration.^[37] Under the Investment Law, a number of features pertaining to arbitration must be agreed upon in advance.

Lebanon has been the subject of a few investor-state investment disputes.^[38] However, as the country is currently facing an unprecedented economic and financial crisis, this will likely lead to a significant increase in investment-related disputes.

Recent developments in international arbitration in Lebanon

Arbitration under the new Public–Private Partnerships Law

On 7 September 2017, Lebanon enacted Law No. 48 Regulating Public–Private Partnerships (the PPP Law). One of the most significant innovations of this law is that it expressly allows recourse to arbitration in disputes involving state entities.

This law was enacted ahead of the CEDRE Conference^[39] (also known as Paris IV) held in Paris on 6 April 2018, in which several countries have pledged over US\$11 billion to support Lebanon in developing its economy through a comprehensive roadmap providing for several reforms and for investments in infrastructure projects.^[40]

The PPP Law provides for an improved model for infrastructure projects involving public and private entities as compared to the general framework that has been governing public procurement long before the enactment of the PPP Law.

The provisions of the PPP Law comprise, among others, those related to its scope of application, the relevant authorities involved and the PPP project agreement to be entered into between the private and the public entity.

As defined under the PPP Law, the PPP project agreement is the main legal instrument regulating the PPP project, together with its annexes undertakings and related guarantees. The PPP Law further provides for a number of mandatory provisions that need to be included in a PPP project agreement. Among these mandatory provisions, we note the provision related to dispute settlement mechanism, which can include mediation and domestic or international arbitration.^[41]

Although the PPP Law provides that arbitration is an acceptable method of dispute resolution, to the extent that PPP project agreement may be characterised as an administrative contract, it is recommended that private parties ensure that the specific arbitration clause contained in their agreement is pre-approved by the relevant administrative authorities pursuant to article 762 LCCP.

This pre-approval acts as a confirmation of certainty until this issue is definitively resolved and to avoid any procedural hurdles in the future.

Arbitration in the Lebanese oil and gas legislation

Following prospects of abundant gas reserves in the Eastern Mediterranean basin, Lebanon has been actively engaged in setting out the legal framework for petroleum development in offshore Lebanon. Despite some delays caused by political deadlocks, Lebanon was able

to launch its first licensing round for offshore petroleum development, which culminated in early 2018 in the award of two exploration and production agreements (EPA) based on the model EPA issued by virtue of Decree No. 43 of 19 January 2017. Both EPAs were awarded to the same consortium comprised of three international companies for the offshore blocks 1 and 9 (out of a total of 10 offshore blocks).

The model EPA provides for an entire article on arbitration, article 38. Such article was reflected in the two awarded EPAs.

Article 38 of the model EPA provides that the parties shall submit any dispute, controversy or claim arising out of or relating to the EPA to binding arbitration, subject to the other provisions of the EPA, and if the dispute, controversy, or claim cannot be resolved during a negotiation period specified in previous articles.

The salient features of the arbitration provisions under article 38 of the model EPA are as follows:

1. The dispute shall be settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce, hereinafter referred to as the 'ICC Rules of Arbitration';
2. The place of any arbitration pursuant to these provisions shall be Paris, France;
3. The law applicable to the merits of the dispute shall be Lebanese law;
4. The language of the arbitration shall be English, and the English version of this EPA and the decree no 10389/2013 (PAR) may be used in such arbitration to the extent there is no conflict with the Arabic version;
5. The arbitral proceedings shall be confidential; and
6. The arbitral panel shall be composed of three (3) arbitrators to be appointed in accordance with the ICC Rules of Arbitration, provided that, upon mutual agreement of both Parties, the arbitration may be conducted by a sole arbitrator appointed pursuant to the ICC Rules of Arbitration.

Article 38 further provides that the arbitral awards rendered in such arbitration are binding on the parties and it includes a waiver of sovereign immunity from jurisdiction and enforcement, as follows:

1. In respect of proceedings to enforce any such award or decision including, without limitation, immunity from service of process and from the jurisdiction of any court; and
2. In respect of immunity from the execution of any such award or decision against any property held for a commercial purpose.

The model EPA also contains a specific procedure for the resolution of disputes by a sole expert as outlined in article 39. This mechanism is particularly relevant in the context of technical disputes, where advanced expertise and understanding is required. The sole expert is defined as ‘an independent and impartial physical or legal person of international standing with relevant qualifications and experience’ pursuant to article 39 of the model EPA. Further, the expert may not have the same nationality of any of the parties and must be appointed by their mutual agreement. Such expert shall also not act as an arbitrator or mediator, but as one who endeavours ‘to express an opinion on the resolution of the disagreement or to resolve the dispute’.

We further note that, at the beginning of April 2019, the Lebanese Minister of Energy and Water announced the launch of the second licensing round (SOLR) for offshore petroleum development in blocks 1, 2, 5, 8 and 10. For this second licensing round, the model EPA was further amended by virtue of Decree No. 4918 dated 31 May 2019. The amendments to the model EPA affected articles 5, 6, 7, 8, 9, 20, 21, 25, 27, 30, 36 and 44, as well as Annex D (Accounting and Financial Procedures). However, the model EPA articles related to the arbitration and to the sole expert remain unchanged.

Arbitration under the China-Lebanon Bilateral Trade Treaty: One Belt One Road Initiative

Chinese investments are becoming more present in Lebanon. In fact, the Lebanese government has been very supportive of the One Belt One Road Initiative. The Lebanese Minister of Economy signed a memorandum of understanding (MoU) with the government of China on ‘joint promotion of cooperation in the framework of the Silk Road economic belt and the 21st Century Maritime Silk Road initiative’. The MoU was concluded during an official visit to China to participate in the China-Arab States Expo 2017 held between 5 and 7 September 2017 in the city of Yinchuan. The IDAL aims to encourage foreign investments in Lebanon including Chinese investments.

Lebanon and China signed a BIT on 13 June 1996 that entered into force on 10 July 1997 (Law No. 614 published in the Official Gazette No. 11 of 6 March 1997). The BIT of 1996 offers Chinese investors an array of investment protection mechanisms such as the most favoured nation treatment clause (article 3), compensation in case of expropriation (article 4), compensation for losses (article 5) and protection of investments (article 2).

Moreover, the China–Lebanon BIT makes the following distinction:

1. The settlement of disputes between a contracting party and an investor of the other contracting party (Art. 8 of the BIT):
There is an initial cooling off period of six months, during which the parties may engage in negotiations to settle their dispute. Should the negotiations fail, the competent court of the contracting party accepting the investment has jurisdiction to hear the case. However, if the dispute relates to the amount of compensation and cannot be settled through negotiations, either party may submit the dispute to an ad hoc arbitral tribunal under the UNCITRAL Arbitration Rules.
- 2.

The settlement of disputes between contracting parties (Art. 9 of the BIT): Such disputes shall be settled through diplomatic channels within a period of six months, failing which, the dispute shall be submitted upon the request of either contracting party to an arbitral tribunal consisting of three members. If both arbitrators fail within two months after their appointment to reach an agreement regarding the chairperson, the latter shall be appointed by the President of the International Court of Justice upon request of either contracting party. Further, the arbitral tribunal shall issue its decision in accordance with the general principles of law, the provisions of the BIT, as well as the generally accepted principles of international law. Subject to other provisions agreed upon by the contracting parties, the arbitral tribunal shall determine the procedure of the arbitration.

Conclusion

The legislative landscape in Lebanon is evolving positively towards encouraging recourse to arbitration and other ADR mechanisms in cases where disputes arise. In addition to the laws described above, a new law just introduced judicial mediation to Lebanon for the first time.^[42] There is also an ongoing project to amend the current Lebanese arbitration law and adopt a more modern one.

By ensuring better protection of investors and business actors in Lebanon and encouraging recourse to ADR, the Lebanese authorities are creating an increasingly friendly environment for large projects and investments in the country.

Footnotes

[1] LCCP articles 762 to 808.

[2] LCCP articles 809 to 821.

[3] Beirut Court of Appeal, Third Chamber, 10 December 2001; Beirut Court of Cassation, Decision No. 14/2014, 25 January 2014.

[4] 'Arbitration in Lebanon', in Abdul Hamid El Ahdab and Jalal El- Ahdab, *Arbitration with Arab Countries*, Kluwer Law International 2011, pp 337–449.

[5] Article 812 of the LCCP: 'the provisions of articles 762 to 792 (relating to domestic arbitration) shall only apply in default of specific agreements and subject to the provisions of articles 810 and 811 (relating to international arbitration)' (OLF translation).

[6] Official Website: <https://www.ccib.org.lb/en/>.

[7] Official Website: <https://www.ciarb.org/our-network/middle-east-subcontinent/lebanon/>.

[8] State Council, Decision No. 23781/2019, dated 5 November 2020.

[9] For example, Beirut Court of Appeal, Decision No. 767/2008 dated 20 May 2008, Lebanese Court of Cassation Decision No. 14/2014 dated 25 January 2014.

[10] Decision of President of the First Chamber of the Court of First Instance of Beirut, dated 18 August 2016, drawing an academic distinction between public policy of protection and public policy of direction: only the involvement of public policy of direction may preclude recourse to arbitration.

[11] Zeina Obeid and Ziad Obeid, 'Arbitration in commercial representation disputes: walking the line between tradition and modernism,' International Law Office, 19 July 2018. See also, Decision of President of the First Chamber of the Court of First Instance of Beirut, dated 18 August 2016, drawing an academic distinction between public policy of protection and public policy of direction: only the involvement of public policy of direction may preclude recourse to arbitration.

[12] Article 768 LCCP.

[13] Article 763 LCCP.

[14] Article 810 LCCP.

[15] Article 120(4) LCCP.

[16] Article 120(6) LCCP.

[17] Article 770 LCCP.

[18] Article 810 LCCP.

[19] Article 783 LCCP.

[20] Article 812 LCCP.

[21] Article 779 LCCP.

[22] See in this regard, State Council, Decision No. 23781/2019, dated 5 November 2020.

[23] Article 799 LCCP.

[24] Article 800 LCCP.

[25] Article 819 LCCP.

[26] The ICSID Convention was signed by Lebanon on 26 March 2003 and entered into force in Lebanon on 25 April 2003.

[27] The Arab Investment Agreement was signed by Lebanon on 26 November 1980 and entered into force on 7 September 1981. In 2019, Lebanon ratified (by Law No. 120 dated 29 March 2019) the 2013 amendments to the 1980 Arab League Investment Agreement (Unified Agreement for the Investment of Arab Capital in the Arab States).

[28] The OIC Investment Agreement entered into force in February 1988.

[29] The EC–Lebanon Association Agreement was signed on 17 June 2002 and entered into force on 1 April 2006.

[30] The EFTA–Lebanon FTA was signed on 24 June 2004 and entered into force on 1 January 2007.

[31] The Lebanon–US TIFA was signed on 30 November 2006 but has not entered into force.

[32] The ICIEC Agreement was signed by Lebanon on 26 December 1993.

[33] Law No. 360 of 16 August 2001.

[34] Article 2 of the Lebanese Investment Law. The Law can also apply to other sectors, as specified by a decree issued by the Council of Ministers based on a proposal of the President of The Council of Ministers.

[35] *ibid.*

[36] ‘Investor’ is defined as follows under the Law: ‘The natural person or legal entity, whether Lebanese, Arab or foreign investing in Lebanon in accordance with the provisions of this law.’

[37] Article 18 of the Investment Law.

[38] There have been five recorded cases in which Lebanon has acted as respondent, with the first being brought before the Cairo Regional Centre for International Commercial Arbitration (CRCICA) in 2000 (*Eastern Company v Lebanon-*), based on publicly available information from the UNCTAD website, available at: <https://investmentpolicy.unctad.org/investment-dispute-settlement/country/116/lebanon/investor>.

[39] CEDRE is an acronym for ‘Conférence Economique pour le Développement par les réformes et avec les entreprises’ (Economic Conference for Development through Reforms and with Businesses).

[40] Rania Ghanem, ‘11.8 billion promised at the Paris CEDRE Conference’ (Businessnews.com.lb, 6 April 2018) available at: <http://www.businessnews.com.lb>.

[41] Article 10(15) of the PPP Law.

[42] Law No. 82 published in the Official Gazette on 18 October 2018. Zeina Obeid and Valeria Spagnolo, ‘An alternative solution: judicial mediation’, International Law Office, 10 January 2019.

IN SUMMARY

Lebanon is an arbitration-friendly jurisdiction whose arbitration legislation is modern and embraces well-established principles of international arbitration. The main advantages of arbitration in Lebanon are similar to those prevalent in other arbitration-friendly jurisdictions. Investors and business actors in Lebanon increasingly include arbitration clauses in their agreements to benefit from the ability to choose their arbitrators, the speed and flexibility that is offered by arbitration, and the confidential nature of arbitral proceedings. In addition, the recent legislative developments in Lebanon, regulating public–private partnerships (PPPs) as well as oil and gas investments in Lebanon, further promote the use of arbitration as a primary mechanism for the resolution of disputes with the Lebanese state. The latter is also part of the One Belt One Road Initiative, which raises interest in the Lebanon–China BIT.

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 - Court of Cassation, First Chamber, Decision No. 56 date 24 October 1958
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ARBITRATION LAW

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 Lebanese Code of Civil Procedure (LCCP) enacted by Decree Law No. 90/83, with amendments resulting from Law No. 440 dated 29 July 2002, devotes its second chapter to arbitration. The LCCP makes a distinction between domestic arbitration^[1] and international arbitration,^[2] the latter being governed by more liberal rules. The main differences between domestic and international arbitration concern the criteria for the validity of arbitration clauses, which are subject to stricter formal requirements in domestic arbitration. Other differences include availability of recourses to challenging or setting aside an award, which is broader in domestic arbitration than in international arbitration.

Pursuant to article 809 of the LCCP, an arbitration is deemed international ‘when it involves the interests of international trade’. These interests are defined as involving movements of goods or funds beyond borders. In other words, if the operation that is the subject matter of the dispute is linked to more than one country, the arbitration is international.^[3] Factors that are not determinative when assessing whether an arbitration is international include the nationality of the parties or arbitrators, the place of the arbitration, the residence of the parties or the place where the contract was concluded. Furthermore, the application of a foreign law or procedure will have no effect on the definition of an arbitration as international.^[4]

Regarding international arbitrations seated in Lebanon, article 812 of the LCCP provides that where an international arbitration is governed by Lebanese law, unless agreed otherwise, provisions relating to domestic arbitration apply.^[5]

Lebanon is a signatory to the New York Convention with a reservation that the government of Lebanon 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. Lebanon also ratified, among others, the Washington Convention on 26 March 2003.

ARBITRATION INSTITUTIONS BASED IN LEBANON

The relevant arbitral institution based in Lebanon is the Lebanese Arbitration Centre of the Chamber of Commerce and Industry and Agriculture of Beirut and Mount Lebanon,^[6] founded in 1995, which has its own Rules of Conciliation and Arbitration. The centre is an independent arbitration institution that administers domestic and international arbitration and also offers the possibility of resolving disputes through optional conciliation.

The Lebanese National Committee of the International Chamber of Commerce of Paris (ICC), although not involved in the administration of arbitration cases, is often invited by the ICC Secretariat to propose candidates for appointment as arbitrators.

The Chartered Institute of Arbitrators Lebanon Branch^[7] principally serves as a forum for education and training in alternative dispute resolution (ADR) and may sometimes act as an appointing authority.

OVERVIEW OF THE ARBITRATION LEGAL FRAMEWORK IN LEBANON

Arbitration Agreements

Formal Requirements For An Enforceable Agreement

Unlike in domestic arbitrations, where the written form of the arbitration agreement is required as a condition of validity (article 763 LCCP), there is no particular requirement for an international arbitration agreement to be valid other than the parties having consented to it. Article 814(2) of the LCCP, however, provides that an agreement in writing is required to obtain enforcement of the award rendered in international disputes.

Insofar as administrative contracts are concerned, one important formal requirement concerns contracts made with the Lebanese state or with other state entities. In domestic administrative contracts, a state or state entity can enter into an arbitration agreement subject to prior authorisation by the Council of Ministers upon a recommendation of either the relevant minister or the relevant regulatory authority.^[8] In international administrative contracts, while the law is silent on the necessity of obtaining a prior authorisation from the Council of Ministers, it is recommended to systematically obtain such authorisation in respect to arbitration clauses inserted in such agreements.

Separability Of The Arbitration Agreement

The principle of separability of the arbitration agreement from the main contract is a well-established principle in Lebanon and is recognised by Lebanese courts.^[9]

Arbitrability Of Disputes

Under Lebanese law, the following types of disputes are not arbitrable and are subject to the exclusive jurisdiction of the Lebanese national courts.

- Questions of personal status (nationality, age, adoption) and questions of social status (divorce and marriage). However, article 1037 of the Code of Obligations and Contracts allows for an exception regarding financial compensation resulting from personal status disputes. In this case, arbitration is confined to the compensation sought.

- Non-negotiable personal rights such as the right to physical integrity, human dignity, privacy, the right to food, among others. Similar to the questions of personal status, however, any dispute relating to monetary compensation associated with those personal rights is arbitrable.
- Rights of succession. Arbitration over acquired hereditary rights is possible where the value of such rights is determined.
- Questions of public policy, including all matters considered by law as guaranteeing social, economic or political interest.^[10]
- Questions of insolvency. As provided by article 490 of the Code of Commerce, state courts have exclusive jurisdiction in insolvency matters.
- Questions of employment contracts and social security. These issues fall under the exclusive competence of the local Labour Arbitration Court.
- Contracts for commercial representation. Article 5 of Decree Law No. 34, dated 5 August 1967, provides for the exclusive jurisdiction of Lebanese courts in respect of disputes arising out of commercial representation agreements. However, it should be noted that in recent years the Lebanese courts have adopted a more permissible stance towards the arbitrability of such disputes in specific circumstances.^[11]

ARBITRATORS: APPOINTMENT AND CHALLENGES

Appointment Of Arbitrators

Lebanese law does not place any limitation on the choice of the arbitrator, but an arbitrator must be a natural person, have full capacity to exercise his or her civil rights and must not be insolvent.^[12] There is similarly no limitation on the nationality of the persons who can act as arbitrators where the seat of arbitration is in Lebanon or where hearings are held in Lebanon. In domestic arbitration, the arbitration clause should include the name or characteristics of the appointed arbitrators or the appointment mechanism.^[13]

Parties are free to agree on the number of arbitrators. The parties may designate arbitrators in their arbitration agreement or provide for a mechanism for their designation directly or by reference to arbitration rules. The law requires the arbitration tribunal to be made up of an odd number. In the absence of agreement between the parties, the most diligent party may petition the President of the competent court of first instance to make such an appointment.^[14]

Challenge Of Arbitrators

Arbitrators are required to act independently and impartially, failing which they may be subject to challenge pursuant to article 770 of the LCCP.

Under article 770 of the LCCP, arbitrators may be challenged on the same grounds as judges for reasons that arise or become known after their appointment and which are exclusively listed in article 120 of the LCCP. Such grounds include:

- if an arbitrator was a legal representative or an agent of one of the parties or one of the parties appointed him or her as an arbitrator in a previous case,^[15]
- if he or she previously provided a legal opinion with respect to the same case even if this occurred before being appointed as an arbitrator,^[16] and
-

if there is sympathy or animosity between an arbitrator and one of the parties which could prevent the arbitrator from ruling impartially.^[17]

Moreover, an arbitrator may be liable for his or her gross fault as is the case for local judges pursuant to article 741 of the LCCP.

In domestic arbitration, unless provided otherwise by the arbitration rules in institutional arbitration, challenges against arbitrators should be brought before the court of first instance where the agreed place of arbitration is located. Failing this, the challenge can be brought before the Beirut court of first instance within 15 days from the date the challenging party becoming aware of the arbitrator's appointment or within 15 days from the date that the reason for the challenge becomes apparent following the appointment of the arbitrator (article 770 LCCP). The court's decision on the challenge is final. In international arbitration there are no express provisions regarding the challenge of arbitrators, which in most instances will be subject to the arbitration rules of the arbitral institution agreed upon by the parties.

The Parties' Representatives

In domestic arbitration, where the Lebanese rules of procedure apply, parties must be represented by counsel for claims exceeding 1 million Lebanese pounds or for which the amount is not determined, as well as in cases where the law requires representation by counsel (article 378 LCCP).

In international arbitration, there are no express provisions for mandatory legal representation. Consequently, unless provided otherwise, the parties are free to decide whether they wish to be represented by legal counsel with no condition of nationality.

INTERVENTION OF DOMESTIC COURTS

Domestic Courts' Support To The Arbitral Procedure

The President of the court of first instance may act as the judge in support of arbitration if required. Such support includes the appointment of arbitrators where the parties have failed to designate an arbitrator or where designation of an arbitrator is not carried out by the relevant arbitral institution. The Lebanese legislation further provides for the assistance of courts in the absence of an agreed set of institutional rules containing a default mechanism for the constitution of an arbitral tribunal or a mechanism provided for in the arbitration clause itself.^[18]

Intervention Of Domestic Courts In Cases Of Forgery Allegations

Domestic courts are competent to rule on allegations of forgery. Where a party alleges forgery of one or more documents in the course of a domestic arbitration, the arbitrator shall suspend the proceedings pending the competent court's decision on the issue of forgery.^[19] According to the law, such principle also applies in international arbitration, unless there is an agreement to the contrary.^[20]

Domestic Courts And Provisional Relief

Under articles 589–593 of the LCCP, the Lebanese courts can 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, which can be done on an ex parte basis.

After the constitution of the arbitral tribunal, subsequent requests for interim measures must generally be submitted directly to the arbitral tribunal, which has the power to order any interim and conservatory relief deemed appropriate in accordance with articles 789 and 859 of the LCCP. The arbitrators may also request the local judge to sanction witnesses who fail to appear at a hearing or those who refuse to testify.^[21]

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

RECOGNITION AND ENFORCEMENT OF DOMESTIC, INTERNATIONAL AND FOREIGN ARBITRAL AWARDS IN LEBANON

Recognition And Enforcement Procedure

The recognition and enforcement of an award in Lebanon is made through ex parte proceedings and a legitimate interest is required for a court to accept jurisdiction over the recognition and enforcement of foreign awards (article 795 LCCP).

The court that is competent to grant exequatur depends on the nature of dispute. In civil and commercial matters, exequatur requests are filed before the President of the court of first instance, either at the place where the award was made, if a domestic award was rendered in Lebanon, or in Beirut if the award was rendered outside Lebanon. In administrative matters, exequatur requests should be filed before the President of the Council of State (articles 770, 775, 793, 795 and 810 LCCP).^[22]

The exequatur application must contain the arbitral award and the arbitration agreement or a certified copy of these documents, irrespective if the award is domestic or foreign. For international or foreign awards, the judge will principally verify the existence of the award and that recognition of the award does not manifestly violate Lebanese international public policy (articles 814 and 815 LCCP).

Recourse Against A Decision On Exequatur

A court decision granting recognition or enforcement of a domestic or international award rendered in Lebanon is not subject to any recourse (articles 805 and 819 LCCP).

However, a court decision denying recognition or enforcement of a domestic, foreign or international award rendered in Lebanon is subject to appeal (articles 806 and 816 LCCP).

Challenge Of Arbitral Awards

In domestic arbitration, unless agreed otherwise by the parties, an arbitral award can be subject to appeal.^[23] The arbitral award can also be subject to the setting-aside action.^[24] When an arbitration is conducted ex aequo et bono, an arbitral award cannot be appealed before the Court of Cassation unless the Court of Appeal annulled the arbitral award. In this case, the grounds for appeal before the Court of Cassation are limited to the annulment grounds as set out here below.

However, in international arbitration, the appeal is not an available recourse and the arbitral award can only be subject to the setting-aside action.^[25] In both domestic and international arbitration, the setting-aside action is of public order and cannot be excluded by the parties' agreement.

The grounds for annulling awards in domestic arbitration are set out under article 800 LCCP as follows:

- where the award has been rendered without an arbitration agreement or on the basis of an agreement that 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;
- where the award does not contain the mandatory requirements related to the relief sought by the parties, along with the grounds and means substantiating such relief; the name of the arbitrators, the *ratio decidendi* of the award, the date of the award, and the signature of the arbitrators; and
- where the award has violated a rule of public policy.

The grounds for annulling awards in international arbitration are set out under article 819 LCCP as follows:

- where the award has been rendered without an arbitration agreement or on the basis of an agreement that 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; and
- where the award has violated a rule of international public policy.

IN FOCUS: THE INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK FOR INVESTMENTS IN LEBANON

International Investment Agreements And Other Treaties With Investment Provisions

Private actors investing in Lebanon benefit from the protection of a number of international investment agreements and from other treaties with investment provisions, which provide for recourse to arbitration in case of dispute. These include 52 bilateral investment treaties (BITs) signed by Lebanon, 43 of which are in force.

In addition to being a signatory to the 1965 ICSID Convention^[26] and the 1958 New York Convention, Lebanon has also signed other significant treaties, including:

- the Unified Agreement for the Investment of Arab Capital in the Arab States (Arab Investment Agreement 1980),^[27]
- the Agreement on Promotion, Protection and Guarantee of Investments among the Member States of the Organization of the Islamic Conference (OIC Investment Agreement, 1981),^[28]

- the Euro-Mediterranean Interim Association Agreement (EC-Lebanon Association Agreement, 2002);^[29]
- the Free Trade Agreement between the European Free Trade Association and Lebanon (EFTA-Lebanon FTA, 2004);^[30] and
- the Trade and Investment Framework Agreement between the United States and Lebanon (Lebanon-US TIFA, 2006).^[31]

Lebanon has also ratified various regional and multilateral agreements (eg, intergovernmental agreements, guidelines and principles), namely:

- the Islamic Corporation for the Insurance of Investment and Export Credit (ICIEC, 1992);^[32]
- the Inter-Arab Investment Guarantee Corporation of 1971;
- the UN Code of Conduct on Transnational Corporations of 1983;
- the World Bank Investment Guidelines of 1992;
- the ILO Tripartite Declaration on Multinational Enterprises; and
- the UN Guiding Principles on Business and Human Rights of 2011.

Further, Lebanon is a party to the convention establishing the Multilateral Investment Guarantee Agency (MIGA). Under the treaty, Lebanese investors may acquire political risk insurance from MIGA in respect of investments made in certain developing states. However, this does not apply to all investments, as certain thresholds must be met (eg, investments must be medium- to long-term in nature).

The Lebanese Investment Law^[33]

Lebanon has also enacted a national investment law aiming at promoting and encouraging investments in the country. The Lebanese Investment Law, enacted in 2001, covers investments in the agriculture, agro-food, tourism, information technology, telecommunication, technology and media sectors.^[34] It applies to investors willing to benefit from its provisions.^[35] Lebanon's pro-investment arbitration position could also be inferred from several factors. In addition of the Lebanese courts being generally supportive and respectful of arbitration proceedings, all the Lebanese BITs contain arbitration clauses, and the Lebanese government is open to arbitration in general as governmental entities tend to include arbitration clauses in the contracts they sign with investors.

The Lebanese Investment Law further establishes a public authority named the Investment Development Authority of Lebanon (IDAL), a legal entity enjoying administrative and financial autonomy, administered by a board of directors and reporting to the Lebanese Prime Minister.

In the case of a dispute between IDAL and a foreign or national investor,^[36] the parties shall first attempt to resolve their dispute amicably and, in the absence of amicable resolution of the dispute, the parties to such dispute shall recourse to arbitration.^[37] Under the Investment Law, a number of features pertaining to arbitration must be agreed upon in advance.

Lebanon has been the subject of a few investor-state investment disputes.^[38] However, as the country is currently facing an unprecedented economic and financial crisis, this will likely lead to a significant increase in investment-related disputes.

RECENT DEVELOPMENTS IN INTERNATIONAL ARBITRATION IN LEBANON

Arbitration Under The New Public–Private Partnerships Law

On 7 September 2017, Lebanon enacted Law No. 48 Regulating Public–Private Partnerships (the PPP Law). One of the most significant innovations of this law is that it expressly allows recourse to arbitration in disputes involving state entities.

This law was enacted ahead of the CEDRE Conference^[39] (also known as Paris IV) held in Paris on 6 April 2018, in which several countries have pledged over US\$11 billion to support Lebanon in developing its economy through a comprehensive roadmap providing for several reforms and for investments in infrastructure projects.^[40]

The PPP Law provides for an improved model for infrastructure projects involving public and private entities as compared to the general framework that has been governing public procurement long before the enactment of the PPP Law.

The provisions of the PPP Law comprise, among others, those related to its scope of application, the relevant authorities involved and the PPP project agreement to be entered into between the private and the public entity.

As defined under the PPP Law, the PPP project agreement is the main legal instrument regulating the PPP project, together with its annexes undertakings and related guarantees. The PPP Law further provides for a number of mandatory provisions that need to be included in a PPP project agreement. Among these mandatory provisions, we note the provision related to dispute settlement mechanism, which can include mediation and domestic or international arbitration.^[41]

Although the PPP Law provides that arbitration is an acceptable method of dispute resolution, to the extent that PPP project agreement may be characterised as an administrative contract, it is recommended that private parties ensure that the specific arbitration clause contained in their agreement is pre-approved by the relevant administrative authorities pursuant to article 762 LCCP.

This pre-approval acts as a confirmation of certainty until this issue is definitively resolved and to avoid any procedural hurdles in the future.

ARBITRATION IN THE LEBANESE OIL AND GAS LEGISLATION

Following prospects of abundant gas reserves in the Eastern Mediterranean basin, Lebanon has been actively engaged in setting out the legal framework for petroleum development in offshore Lebanon. Despite some delays caused by political deadlocks, Lebanon was able to launch its first licensing round for offshore petroleum development, which culminated in early 2018 in the award of two exploration and production agreements (EPA) based on the model EPA issued by virtue of Decree No. 43 of 19 January 2017. Both EPAs were awarded to the same consortium comprised of three international companies for the offshore blocks 1 and 9 (out of a total of 10 offshore blocks).

The model EPA provides for an entire article on arbitration, article 38. Such article was reflected in the two awarded EPAs.

Article 38 of the model EPA provides that the parties shall submit any dispute, controversy or claim arising out of or relating to the EPA to binding arbitration, subject to the other provisions

of the EPA, and if the dispute, controversy, or claim cannot be resolved during a negotiation period specified in previous articles.

The salient features of the arbitration provisions under article 38 of the model EPA are as follows:

1. The dispute shall be settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce, hereinafter referred to as the 'ICC Rules of Arbitration';
2. The place of any arbitration pursuant to these provisions shall be Paris, France;
3. The law applicable to the merits of the dispute shall be Lebanese law;
4. The language of the arbitration shall be English, and the English version of this EPA and the decree no 10389/2013 (PAR) may be used in such arbitration to the extent there is no conflict with the Arabic version;
5. The arbitral proceedings shall be confidential; and
6. The arbitral panel shall be composed of three (3) arbitrators to be appointed in accordance with the ICC Rules of Arbitration, provided that, upon mutual agreement of both Parties, the arbitration may be conducted by a sole arbitrator appointed pursuant to the ICC Rules of Arbitration.

Article 38 further provides that the arbitral awards rendered in such arbitration are binding on the parties and it includes a waiver of sovereign immunity from jurisdiction and enforcement, as follows:

1. In respect of proceedings to enforce any such award or decision including, without limitation, immunity from service of process and from the jurisdiction of any court; and
2. In respect of immunity from the execution of any such award or decision against any property held for a commercial purpose.

The model EPA also contains a specific procedure for the resolution of disputes by a sole expert as outlined in article 39. This mechanism is particularly relevant in the context of technical disputes, where advanced expertise and understanding is required. The sole expert is defined as 'an independent and impartial physical or legal person of international standing with relevant qualifications and experience' pursuant to article 39 of the model EPA. Further, the expert may not have the same nationality of any of the parties and must be appointed by their mutual agreement. Such expert shall also not act as an arbitrator or mediator, but as one who endeavours 'to express an opinion on the resolution of the disagreement or to resolve the dispute'.

We further note that, at the beginning of April 2019, the Lebanese Minister of Energy and Water announced the launch of the second licensing round (SOLR) for offshore petroleum

development in blocks 1, 2, 5, 8 and 10. For this second licensing round, the model EPA was further amended by virtue of Decree No. 4918 dated 31 May 2019. The amendments to the model EPA affected articles 5, 6, 7, 8, 9, 20, 21, 25, 27, 30, 36 and 44, as well as Annex D (Accounting and Financial Procedures). However, the model EPA articles related to the arbitration and to the sole expert remain unchanged.

Arbitration Under The China-Lebanon Bilateral Trade Treaty: One Belt One Road Initiative

Chinese investments are becoming more present in Lebanon. In fact, the Lebanese government has been very supportive of the One Belt One Road Initiative. The Lebanese Minister of Economy signed a memorandum of understanding (MoU) with the government of China on 'joint promotion of cooperation in the framework of the Silk Road economic belt and the 21st Century Maritime Silk Road initiative'. The MoU was concluded during an official visit to China to participate in the China-Arab States Expo 2017 held between 5 and 7 September 2017 in the city of Yinchuan. The IDAL aims to encourage foreign investments in Lebanon including Chinese investments.

Lebanon and China signed a BIT on 13 June 1996 that entered into force on 10 July 1997 (Law No. 614 published in the Official Gazette No. 11 of 6 March 1997). The BIT of 1996 offers Chinese investors an array of investment protection mechanisms such as the most favoured nation treatment clause (article 3), compensation in case of expropriation (article 4), compensation for losses (article 5) and protection of investments (article 2).

Moreover, the China-Lebanon BIT makes the following distinction:

1. The settlement of disputes between a contracting party and an investor of the other contracting party (Art. 8 of the BIT):
There is an initial cooling off period of six months, during which the parties may engage in negotiations to settle their dispute. Should the negotiations fail, the competent court of the contracting party accepting the investment has jurisdiction to hear the case. However, if the dispute relates to the amount of compensation and cannot be settled through negotiations, either party may submit the dispute to an ad hoc arbitral tribunal under the UNCITRAL Arbitration Rules.
2. The settlement of disputes between contracting parties (Art. 9 of the BIT): Such disputes shall be settled through diplomatic channels within a period of six months, failing which, the dispute shall be submitted upon the request of either contracting party to an arbitral tribunal consisting of three members. If both arbitrators fail within two months after their appointment to reach an agreement regarding the chairperson, the latter shall be appointed by the President of the International Court of Justice upon request of either contracting party. Further, the arbitral tribunal shall issue its decision in accordance with the general principles of law, the provisions of the BIT, as well as the generally accepted principles of international law. Subject to other provisions agreed upon by the contracting parties, the arbitral tribunal shall determine the procedure of the arbitration.

CONCLUSION

The legislative landscape in Lebanon is evolving positively towards encouraging recourse to arbitration and other ADR mechanisms in cases where disputes arise. In addition to the laws described above, a new law just introduced judicial mediation to Lebanon for the first time.^[42] There is also an ongoing project to amend the current Lebanese arbitration law and adopt a more modern one.

By ensuring better protection of investors and business actors in Lebanon and encouraging recourse to ADR, the Lebanese authorities are creating an increasingly friendly environment for large projects and investments in the country.

Endnotes

- 1 LCCP articles 762 to 808. [^ Back to section](#)
- 2 LCCP articles 809 to 821. [^ Back to section](#)
- 3 Beirut Court of Appeal, Third Chamber, 10 December 2001; Beirut Court of Cassation, Decision No. 14/2014, 25 January 2014. [^ Back to section](#)
- 4 'Arbitration in Lebanon', in Abdul Hamid El Ahdab and Jalal El- Ahdab, *Arbitration with Arab Countries*, Kluwer Law International 2011, pp 337–449. [^ Back to section](#)
- 5 Article 812 of the LCCP: 'the provisions of articles 762 to 792 (relating to domestic arbitration) shall only apply in default of specific agreements and subject to the provisions of articles 810 and 811 (relating to international arbitration)' (OLF translation). [^ Back to section](#)
- 6 Official Website: <https://www.ccib.org.lb/en/>. [^ Back to section](#)
- 7 Official Website: <https://www.ciarb.org/our-network/middle-east-subcontinent/lebanon/>. [^ Back to section](#)
- 8 State Council, Decision No. 23781/2019, dated 5 November 2020. [^ Back to section](#)
- 9 For example, Beirut Court of Appeal, Decision No. 767/2008 dated 20 May 2008, Lebanese Court of Cassation Decision No. 14/2014 dated 25 January 2014. [^ Back to section](#)
- 10 Decision of President of the First Chamber of the Court of First Instance of Beirut, dated 18 August 2016, drawing an academic distinction between public policy of protection and public policy of direction: only the involvement of public policy of direction may preclude recourse to arbitration. [^ Back to section](#)

- 11 Zeina Obeid and Ziad Obeid, 'Arbitration in commercial representation disputes: walking the line between tradition and modernism,' International Law Office, 19 July 2018. See also, Decision of President of the First Chamber of the Court of First Instance of Beirut, dated 18 August 2016, drawing an academic distinction between public policy of protection and public policy of direction: only the involvement of public policy of direction may preclude recourse to arbitration. [^ Back to section](#)
- 12 Article 768 LCCP. [^ Back to section](#)
- 13 Article 763 LCCP. [^ Back to section](#)
- 14 Article 810 LCCP. [^ Back to section](#)
- 15 Article 120(4) LCCP. [^ Back to section](#)
- 16 Article 120(6) LCCP. [^ Back to section](#)
- 17 Article 770 LCCP. [^ Back to section](#)
- 18 Article 810 LCCP. [^ Back to section](#)
- 19 Article 783 LCCP. [^ Back to section](#)
- 20 Article 812 LCCP. [^ Back to section](#)
- 21 Article 779 LCCP. [^ Back to section](#)
- 22 See in this regard, State Council, Decision No. 23781/2019, dated 5 November 2020. [^ Back to section](#)
- 23 Article 799 LCCP. [^ Back to section](#)
- 24 Article 800 LCCP. [^ Back to section](#)
- 25 Article 819 LCCP. [^ Back to section](#)
- 26 The ICSID Convention was signed by Lebanon on 26 March 2003 and entered into force in Lebanon on 25 April 2003. [^ Back to section](#)
- 27 The Arab Investment Agreement was signed by Lebanon on 26 November 1980 and entered into force on 7 September 1981. In 2019, Lebanon ratified (by Law No. 120 dated 29 March 2019) the 2013 amendments to the 1980 Arab League Investment Agreement (Unified Agreement for the Investment of Arab Capital in the Arab States). [^ Back to section](#)
- 28 The OIC Investment Agreement entered into force in February 1988. [^ Back to section](#)

- 29** The EC–Lebanon Association Agreement was signed on 17 June 2002 and entered into force on 1 April 2006. [^ Back to section](#)
- 30** The EFTA–Lebanon FTA was signed on 24 June 2004 and entered into force on 1 January 2007. [^ Back to section](#)
- 31** The Lebanon–US TIFA was signed on 30 November 2006 but has not entered into force. [^ Back to section](#)
- 32** The ICIEC Agreement was signed by Lebanon on 26 December 1993. [^ Back to section](#)
- 33** Law No. 360 of 16 August 2001. [^ Back to section](#)
- 34** Article 2 of the Lebanese Investment Law. The Law can also apply to other sectors, as specified by a decree issued by the Council of Ministers based on a proposal of the President of The Council of Ministers. [^ Back to section](#)
- 35** *ibid.* [^ Back to section](#)
- 36** ‘Investor’ is defined as follows under the Law: ‘The natural person or legal entity, whether Lebanese, Arab or foreign investing in Lebanon in accordance with the provisions of this law.’ [^ Back to section](#)
- 37** Article 18 of the Investment Law. [^ Back to section](#)
- 38** There have been five recorded cases in which Lebanon has acted as respondent, with the first being brought before the Cairo Regional Centre for International Commercial Arbitration (CRCICA) in 2000 (*Eastern Company v Lebanon*), based on publicly available information from the UNCTAD website, available at: <https://investmentpolicy.unctad.org/investment-dispute-settlement/country/16/lebanon/investor>. [^ Back to section](#)
- 39** CEDRE is an acronym for ‘Conférence Economique pour le Développement par les réformes et avec les entreprises’ (Economic Conference for Development through Reforms and with Businesses). [^ Back to section](#)
- 40** Rania Ghanem, ‘11.8 billion promised at the Paris CEDRE Conference’ (Businessnews.com.lb, 6 April 2018) available at: <http://www.businessnews.com>. [^ Back to section](#)
- 41** Article 10(15) of the PPP Law. [^ Back to section](#)
- 42** Law No. 82 published in the Official Gazette on 18 October 2018. Zeina Obeid and Valeria Spagnolo, ‘An alternative solution: judicial mediation’, International Law Office, 10 January 2019. [^ Back to section](#)



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