

# LEBANON

CHAPTER PREPARED BY

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## JURISDICTION INDICATIVE TRAFFIC LIGHTS †

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|--|---|
| 1. Law                                       | ● |
| a. Framework                                 | ● |
| b. Adherence to international treaties       | ● |
| c. Limited court intervention                | ● |
| d. Arbitrator immunity from civil liability  | ● |
| 2. Judiciary                                 | ● |
| 3. Legal expertise                           | ● |
| 4. Rights of representation                  | ● |
| 5. Accessibility and safety                  | ● |
| 6. Ethics                                    | ● |
| Evolution of above compared to previous year | ● |
| 7. Tech friendliness                         | ● |
| 8. Compatibility with the Delos Rules        | ● |

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

## IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Lebanon is an arbitration-friendly jurisdiction. The arbitration legislation reflects contemporary practice and embraces established principles of international arbitration. In addition, the Lebanese judiciary is generally supportive of the arbitral process and respectful of the parties' choice of arbitration as their method for the settlement of disputes.

Key places of arbitration in the jurisdiction?	Beirut.
Civil law / Common law environment? (if mixed or other, specify)	Civil law. The civil legal tradition was inherited from the French during their mandate over Syria and Lebanon between 1920 and 1943.
Confidentiality of arbitrations?	Under Lebanese law, there are no provisions dealing with the confidentiality of arbitral proceedings <i>per se</i> . However, in practice, arbitral proceedings are treated as confidential as long as the parties agree to specific confidentiality obligations and no legal proceedings before the local courts are filed (requests for the assistance of the judge of summary proceedings, recourse for annulment of the award, etc.).
Requirement to retain (local) counsel?	There are no restrictions as to the nationality of persons who qualify to act as counsel or arbitrators in international arbitration proceedings seated in Lebanon.
Ability to present party employee witness testimony?	Employee witness testimony is not admissible in domestic arbitration unless the parties agree otherwise. Save where specified otherwise in the applicable procedural rules, arbitral tribunals in international arbitrations seated in Lebanon have the discretion to call a party employee for inquiry and clarification purposes.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	If Lebanon is selected as the seat of an arbitration, it is nonetheless permissible to conduct hearings and procedural meetings elsewhere.
Availability of interest as a remedy?	In Lebanon, interest can be applied to the principal claim as well as to costs. The legal interest rate is 9 percent in civil and commercial matters unless agreed otherwise by the parties. In commercial matters, the parties can freely determine the interest rate in their agreement.
Ability to claim for reasonable costs incurred for the arbitration?	The parties to an arbitration seated in Lebanon can recover legal fees paid and other reasonable costs incurred for the purposes of the arbitration. The arbitral tribunal has discretion to decide whether it will apply the "loser pays" rule.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Lebanese law does not expressly regulate or forbid contingency fee arrangements or third-party funding.

Party to the New York Convention?	Lebanon is a party to the New York Convention, which entered into force in Lebanon on 9 November 1998. Lebanon has made a reciprocity reservation under the Convention, declaring that it will apply the Convention on a reciprocal basis to the recognition and enforcement of awards made only in the territory of another contracting state.
Party to the ICSID Convention?	Lebanon is a party to the ICSID Convention. The Convention was signed by Lebanon on 26 March 2003 and entered into force in Lebanon on 25 April 2003.
Compatibility with the Delos Rules?	Yes.
Default time-limitation period for civil actions (including contractual)?	The default time-limitation period for civil actions is 10 years (Articles 348 and 349 of the Lebanese Code of Obligations and Contracts).
Other key points to note?	<p>Lebanon is a signatory of the following conventions:</p> <ul style="list-style-type: none"> <li>▪ The Unified Agreement for the Investment of Arab Capital in the Arab States (Arab Investment Agreement, 1980);<sup>1</sup></li> <li>▪ The Agreement on Promotion, Protection and Guarantee of Investments amongst the Member States of the Organization of the Islamic Conference (OIC Investment Agreement, 1981);<sup>2</sup></li> <li>▪ The Euro-Mediterranean Interim Association Agreement (EC - Lebanon Association Agreement, 2002);<sup>3</sup></li> <li>▪ the Free Trade Agreement between the European Free Trade Association and Lebanon (EFTA-Lebanon FTA, 2004);<sup>4</sup> and</li> <li>▪ The Trade and Investment Framework Agreement between the United States and Lebanon (Lebanon - US TIFA, 2006).<sup>5</sup></li> </ul>
World Bank, Enforcing Contracts: <i>Doing Business</i> score for 2020?	50.8
World Justice Project, Rule of Law Index: <i>Civil Justice</i> score for 2020?	0.42

1 The Unified Agreement for the Investment of Arab Capital in the Arab States (“**Arab Investment Agreement**”) was signed by Lebanon on 26 November 1980 and entered into force on 7 September 1981. Lebanon ratified the 2013 amendments to the Arab Investment Agreement by virtue of Law No. 120 dated 29 March 2019.

2 The OIC Investment Agreement entered into force in February 1988.

3 The EC - Lebanon Association Agreement was signed on 17 June 2002 and entered into force on 1 April 2006.

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

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

## ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	The Lebanese Code of Civil Procedure (" <b>LCCP</b> "), which was enacted by Law 90/83 dated 16 September 1983, with amendments resulting from Law No. 440 dated 29 July 2002, devotes an entire chapter (Chapter 2) to arbitration, with a distinction being made between domestic arbitration (Articles 762 to 808 LCCP) and international arbitration (Articles 809 to 821 LCCP).
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	The provisions on arbitration in the LCCP are based on the old French arbitration law (French decrees No. 80-354 of 14 May 1980 and No. 81-500 of 12 May 1981) and not on the UNCITRAL Model Law.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	There is no specialist court in Lebanon dealing with arbitration matters. The judiciary in the Court of First Instance is however considered as the " <i>juge d'appui</i> " (i.e. the judge acting in support of the arbitration). As such, the Court of First Instance may, for example, hear requests for the appointment of arbitrators and summon recalcitrant witnesses within its jurisdiction.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Lebanese courts can grant <i>ex parte</i> 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.
Courts' attitude towards the competence-competence principle?	Article 785 of the LCCP expressly recognises the principle of competence-competence.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	No. For an award to be to be enforceable in Lebanon it should provide the reasoning underlying the decision or award.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	Lebanese law provides no additional grounds to those based on the criteria for the recognition of awards under the New York Convention. It is notable however that the Lebanese arbitration law is more favourable than the New York Convention in referring to a violation of 'international public policy' rather than 'public policy' as a ground for annulment of international arbitral awards (see section 5.2 below for further details regarding the grounds for annulment under Lebanese law and the position in domestic arbitrations).
Do annulment proceedings typically suspend enforcement proceedings?	Yes, annulment proceedings suspend the award's enforcement.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	An award rendered outside Lebanon and set aside at the seat of arbitration may still be recognised and enforced in Lebanon because local courts have the discretion to independently assess

	the grounds for annulment when a request for recognition and <i>exequatur</i> of a foreign award is sought.
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	<p>Lebanese arbitration law is silent on virtual hearings. To our knowledge, Lebanese courts have not yet confronted this issue in the context of award annulment or enforcement proceedings.</p> <p>It should be noted that in the absence of an agreement between the parties on the format of the hearing, there is still the risk to see an argument raised in relation to violation of due process in case a party objects on the conduct of a hearing remotely.</p>
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	<p>The concept of the state's sovereign immunity from execution is recognized under Lebanese law and therefore can be raised as a defense at the enforcement stage. Article 860 (1) LCCP provides that the assets of the state and public legal bodies cannot be seized. Article 860 (2) LCCP emphasizes that the assets of foreign states cannot be seized save for those which are subject to private law. In this regard, the President of the Execution Bureau in Beirut, issued a decision pursuant to which an international organization acting in its capacity as a private party, in a private transaction, which does not relate to the execution of a public service, cannot avail itself of its immunity of execution. (President of the Beirut Executive Bureau, decision dated 18/7/2013). This position has also been upheld by the Court of Appeal in Beirut in a case where the party invoking immunity from execution was an Iraqi bank affiliated to the Iraqi state. The Court ruled that immunity from execution does not apply to state-related bodies conducting commercial operations; even though there may be a degree of interference from the State in the implementation of their mission they are nonetheless subject to private law (See, for example, Court of Appeal of Beirut, decision no. 41/2018 dated 10/01/2018).</p>
Is the validity of blockchain-based evidence recognised?	This issue is not regulated by the Lebanese arbitration legislation, nor have the courts been faced with it.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	This issue is not regulated by the Lebanese arbitration legislation, nor have the courts been faced with it.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	This issue is not regulated by the Lebanese arbitration legislation, nor have the courts been faced with it.

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Other key points to note?	<p>Under Lebanese legislation, the following types of disputes are subject to the exclusive jurisdiction of the state courts <i>i.e.</i> are not arbitrable:<sup>6</sup> questions of personal and social status, capacity, fundamental rights, rights of succession, questions of public policy, insolvency, employment contracts and social security.</p> <p>Furthermore, Lebanese courts have traditionally held that commercial representation disputes are subject to the exclusive jurisdiction of local courts. Recent jurisprudence, however, suggests a more supportive approach towards arbitration in specific cases.</p> <p>Finally, in administrative contracts, a state and public entity can validly conclude 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 (<i>autorité de tutelle</i>). In international administrative contracts, while the law is silent on the necessity of obtaining a prior approval from the Council of Ministers, it is recommended to systematically obtain such authorisation.</p>
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<sup>6</sup> There are exceptions with respect to most of these exclusions; see below (III, 2, d)).

## JURISDICTION DETAILED ANALYSIS

### 1 The legal framework of the jurisdiction

#### 1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version?

##### 1.1.1 If yes, what key modifications if any have been made to it?

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##### 1.1.2 If no, what form does the arbitration law take?

The Lebanese Code of Civil Procedure provisions on arbitration are not based on the UNCITRAL Model Law but on the old French arbitration law.<sup>7</sup> The second chapter of the LCCP is devoted to arbitration, making the distinction between domestic arbitration (Articles 762 to 808 of the LCCP) and international arbitration (Articles 809 to 821).

Pursuant to Article 809 of the LCCP, arbitration is deemed international 'when it involves the interests of international trade'. The Lebanese courts have interpreted this statutory provision by holding that the international nature of an arbitration is determined by the international character of the economic transaction underlying the arbitration, and to extent to which it involves a cross-border flow of goods, persons or services.<sup>8</sup> Factors that are not taken into account when determining when 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. Additionally, the application of a foreign law or procedure will have no bearing on the definition of an arbitration as international.<sup>9</sup>

Regarding international arbitration seated in Lebanon, Article 812 LCCP provides that: '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).'

#### 1.2 When was the arbitration law last revised?

The arbitration law was last revised in 2002 (by virtue of Law No. 440 dated 29 July 2002).

### 2 The Arbitration Agreement

#### 2.1 Governing law

The LCCP is silent on the governing law of the arbitration agreement.

#### 2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

To the extent that an arbitration agreement is valid, an ambiguous clause will be subject to the Tribunal's interpretation on the basis of the parties' mutual intent. To the extent of our knowledge, the issue set out under para. 2.2 has not yet been addressed by the Lebanese courts.

<sup>7</sup> French decrees No. 80-354 of 14 May 1980 for domestic arbitration and No. 81-500 of 12 May 1981 for international arbitration

<sup>8</sup> Beirut Court of Appeal, Third Chamber, 10 December 2001; Beirut Court of Cassation, Decision No 14/2014, 25 January 2014.

<sup>9</sup> Arbitration in Lebanon', in Abdul Hamid El Ahdab and Jalal El-Ahdab, *Arbitration with Arab Countries*, Kluwer Law International 2011, pp 337 – 449.

### 2.3 Separability of the arbitration agreement

The doctrine of separability of the arbitration agreement from the main contract is a well-established principle in Lebanon and is recognised by Lebanese courts.<sup>10</sup>

### 2.4 Formal requirements for an enforceable agreement

Unlike in domestic arbitrations, where the written form of the arbitration agreement is required as a condition for its 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) LCCP, however, provides that an agreement in writing is required to obtain exequatur of an 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 authorization by the Council of Ministers upon a recommendation of either the relevant minister or the relevant regulatory authority (*autorité de tutelle*). In international administrative contracts, while the law is silent on the necessity of obtaining a prior authorization from the Council of Ministers, it is recommended to systematically obtain such authorization in respect of arbitration clauses inserted in such agreements.

Although not mandatory, in international arbitration, it is preferable for the arbitration agreement to designate the number of arbitrators and their method of designation, the seat and the language of the arbitration.<sup>11</sup> In domestic arbitration, the arbitration agreement should be in writing and should designate, subject to nullity, the arbitrator or the arbitrators in person or their qualities or the mechanism for their designation (Article 763 LCCP).

### 2.5 Third parties

Arbitration agreements are subject to the principle of privity of contracts, thereby only binding the parties that signed them. However, under Lebanese law, a third party to a contract containing an arbitration agreement may be bound by such arbitration agreement in the following circumstances:

- Universal successors and successors by a particular title (Article 225 of the Code of Obligations and Contracts (**COC**));
- Subrogation (Articles 313 and 315 COC);
- Transfer of rights (Article 285 COC);
- Specific merger scenarios in the banking sector (Article 4, para. 1 Law 192 dated 4 January 1993);
- Transfer of contracts (Beirut Court of Appeal 3<sup>rd</sup> Chamber decision No. 763 dated 2 April 2004, Beirut Court of Appeal, 10<sup>th</sup> Chamber, decision dated 28 December 2000 '*Société UFFE v. Compagnie de développement des bâtiments et autres*'); and,
- Third-party beneficiary contracts (*stipulation pour autrui*, Article 230 COC). However, this exception to the principle of non-transmittal of the arbitration clause to the third parties is subject to doctrinal debate.

<sup>10</sup> Eg. Beirut Court of Appeal, decision no. 767/2008 dated 20 May 2008, Lebanese Court of Cassation no.14/2014 dated 25 January 2014.

<sup>11</sup> Article 810 LCCP suggests to include such provisions but is not formulated in mandatory terms.



A third party may also be bound by an arbitration agreement in light of the nature of the relationship it has with one of the signatories to the arbitration clause. For example, in a chain of contracts that has the same objectives and forms an economic unity ("*opération économique unique*").<sup>12</sup>

Ultimately, the extension of the arbitration clause remains a matter to be assessed on a case-by-case basis in light of the specific circumstances of each matter.

Concerning the joinder of a third party, Article 786 LCCP provides that third parties cannot be joined to an arbitration proceeding without the approval of the parties to the arbitration. The law is silent on the need of approval of the arbitrators.

As to consolidation, the Lebanese legislation does not recognise the possibility for an Arbitral Tribunal seated in Lebanon to consolidate separate arbitral proceedings under one or more contracts unless the arbitration rules agreed upon by the parties allow such consolidation. By way of example, Article 8 in Appendix II of the Rules of the Beirut Chamber of Commerce and Industry allows consolidation of claims.

## 2.6 Arbitrability of disputes

Under Lebanese legislation, the following types of disputes, relating to specific domains, are subject to the exclusive jurisdiction of the state courts – *i.e.*, are not arbitrable:

- Questions of personal status (age, nationality and adoption) and questions of social status (marriage and divorce). However, an exception is allowed by virtue of Article 1037 COC regarding financial compensation arising from personal status matters. In this case, arbitration will be confined to the compensation sought;
- 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 those personal rights is capable of being arbitrated;
- Rights of succession. Arbitration over acquired hereditary rights is nevertheless 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 provides that state courts have exclusive jurisdiction to deal with insolvency matters;
- Questions of employment contracts and social security. These issues fall under the exclusive competence of the local Labour Arbitration Court; and,
- Contracts for commercial representation (Article 5 of Decree Law No. 34 dated 5 August 1967, although the Lebanese courts have adopted a more permissible stance towards the arbitrability of such disputes in specific circumstance.

## 3 Intervention of domestic courts

### 3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

Lebanese legislation recognizes the positive effect of the principle of competence-competence. However, the negative effect of this principle is not recognised. Accordingly, Lebanese courts will stay litigation if a party raises an objection on the court's jurisdiction on the basis of a valid arbitration agreement concluded between the parties, irrespective of whether the seat of the arbitration is within or outside of the jurisdiction.

<sup>12</sup> Beirut Court of Appeal, First Chamber, Decision No 294/2009, 21 July 2010; Beirut Court of Appeal, Third Chamber, Decision No 192/2008, 5 February 2008.

### **3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?**

Injunctions issued by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings are not enforceable by Lebanese courts.

### **3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)**

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## **4 The conduct of the proceedings**

### **4.1 Requirements regarding counsel or self-representation**

In domestic and international arbitration, there are no express provisions for mandatory legal representation. Consequently, unless provided otherwise, the parties are free to decide whether or not they wish to be represented by legal counsel, with no conditions of nationality.

### **4.2 Arbitrators' independence and impartiality**

Arbitrators are required to act independently and impartially failing which they might be subject to challenge pursuant to Article 770 LCCP. Moreover, an arbitrator has a duty to disclose to the parties any event which could constitute a ground for challenge as per Article 769 LCCP.

### **4.3 Courts' intervention to assist in the constitution of the Arbitral Tribunal**

Lebanese legislation 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. Pursuant to Article 810 LCCP, the most diligent party, when faced with a difficulty in constituting the Arbitral Tribunal, may request the President of the competent Court of First Instance to make the appointment.

### **4.4 Ability of courts to issue interim measures in connection with arbitrations**

Under Articles 589 – 593 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, parties have the choice to either request interim measures before the local courts or before the Arbitral Tribunal. Generally, interim measures are 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 LCCP. The arbitrators may also request the local judge interim to sanction witnesses who fail to appear at a hearing or those who refuse to testify, as per Article 779 LCCP.

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.

### **4.5 Law regulations on the conduct of the arbitrations**

#### **4.5.1 Confidentiality of arbitration proceedings**

Under Lebanese law, there are no provisions dealing with the confidentiality of arbitral proceedings *per se*. However, in practice, arbitral proceedings are treated as confidential as long as the parties agree to specific confidentiality obligations and no legal proceedings before the local courts are filed (requests for the assistance of the judge of summary proceedings, recourse for annulment of the award, *etc.*).

#### 4.5.2 Length and place of arbitration proceedings

In domestic arbitration, arbitrators should render the final award within 6 months from the date at which the last arbitrator accepted his/her appointment unless the parties agree otherwise. Save in circumstances where the applicable arbitration rules provide otherwise, this duration can be extended either by mutual consent of the parties or by the decision of the President of the First Instance Tribunal upon being petitioned by a party or the Arbitral Tribunal (Article 773 LCCP).

This provision only applies to international arbitrations to the extent that the parties have not agreed otherwise (by adopting institutional rules for example).

#### 4.5.3 Place of hearings and meetings

If Beirut is selected as the seat of arbitration, hearings and procedural meetings can be conducted elsewhere.<sup>13</sup>

#### 4.5.4 The arbitrators' ability to issue interim measures

In domestic arbitration, Article 789 LCCP (with reference to Article 589) grants Arbitral Tribunals the power to order any interim or conservatory measures they consider necessary in light of the nature of the dispute, and in line with those measures provided under Article 589 LCCP.

These provisions would apply to international arbitrations to the extent parties have not agreed otherwise (by adopting institutional rules for example).

Lebanese legislation does not provide a specific requirement regarding the form that a Tribunal's decision on such measures should take. 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.

#### 4.5.5 The Arbitrators' right to admit and exclude evidence

The arbitrators have wide discretion in the conduct of the proceedings including the right to admit and exclude evidence subject to the preservation of due process.<sup>14</sup>

#### 4.5.6 Hearing

Holding a hearing is not compulsory in arbitrations seated in Lebanon. However, it is common practice in Lebanon to hold a final hearing on the merits.

#### 4.5.7 Principles governing the award of interest

Interest can be applied to the principal claim and costs. As a matter of Lebanese law, the legal interest rate is 9 percent in civil and commercial matters unless agreed otherwise by the parties.<sup>15</sup> Arbitral Tribunals can award both simple and compound interest. In commercial matters, the parties can freely determine the interest rate in their agreement.<sup>16</sup> In civil matters, however, usurious interest is forbidden.<sup>17</sup>

<sup>13</sup> There is no specific legal text stating that hearings and procedural meetings can be conducted anywhere, although this is a widely accepted principle in Lebanon. Furthermore, it is generally admitted under Lebanese law, that whatever is not expressly forbidden by the law shall be allowed, thus reinforcing the idea that no restrictions exist on the place of hearings and meetings when arbitrations are seated in Lebanon.

<sup>14</sup> The comment in footnote 13 above equally applies to arbitrators' wide discretion to conduct the proceedings.

<sup>15</sup> As stated in Article 767 of the COC and in Article 767 of the Lebanese Commercial Code. See also Law of 24 June 1939.

<sup>16</sup> Lebanese Court of Cassation, Decision No 16, 22 February 1973.

<sup>17</sup> Article 661 of the Lebanese Penal Code. See also Usury Law of 24 June 1939.

#### 4.5.8 Principles governing the allocation of costs

The parties are able to recover legal fees and costs reasonably incurred, which can include arbitration costs as well as arbitrators' fees and expenses. It is usually left to the Arbitral Tribunal's discretion to decide whether it will apply the "loser pays" rule.<sup>18</sup>

There is no provision in the LCCP's arbitration chapter which allows the courts to review the Tribunal's decision on costs.

#### 4.6 Liability

As a matter of Lebanese law, arbitrators are not afforded immunity from suit.

Arbitrators can be civilly but not criminally liable. Article 770 LCCP provides that arbitrators may be challenged on the same grounds as judges for reasons which arise or become known after their appointment and are exclusively listed in Article 120 LCCP. This includes cases of lack of independence or impartiality. Moreover, an arbitrator might be liable for his/her gross fault as it is the case for local judges pursuant to Article 741 LCCP.

### 5 The award

#### 5.1 Right to waive the requirement for an award to provide reasons

Lebanon does not recognize agreements between parties to waive the requirement for an award to provide the underlying reasons.

#### 5.2 Right to waive the right to seek the annulment of the award

The right to file an annulment action is a matter of public order and policy, and cannot be waived by the parties prior to the final award being rendered. The Parties can nonetheless agree to waive their right to seek annulment after the award is rendered.

#### 5.3 Award's validity requirements

Article 790 LCCP provides that the arbitral award should contain the following information:

- 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;
- The reasons for the award and the dispositive part; and
- The signature of the arbitrators on the arbitration award rendered. In the event that a dissenting arbitrator refuses to sign the award, the remaining arbitrators should mention such refusal and the award will have the same effect as an award signed by all arbitrators.

This article applies in international arbitrations to the extent the parties have not agreed otherwise (by adopting institutional rules for example).

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<sup>18</sup> The comment in footnote 13 above equally applies to allocation of costs.

#### 5.4 Appeal of an award

International arbitration awards cannot be appealed before the Lebanese courts. A party dissatisfied with the outcome of an international arbitration seated in Lebanon can only seek the annulment of the award as per Article 819 LCCP and under the grounds set out under Article 817 LCCP.

In domestic arbitrations, an award is subject to appeal unless agreed otherwise by the parties in the arbitration agreement. The reverse principle applies if the arbitration was decided *ex aequo et bono*. In such a case, the award is not subject to appeal unless agreed otherwise by the parties in the arbitration agreement. If the award is appealed under these circumstances, the Court of Appeal will also rule on an *ex aequo et bono* basis (Article 799 LCCP).

#### 5.5 Procedure for recognition and enforcement of an award in Lebanon

The recognition and enforcement of an award in Lebanon is made through *ex parte* proceedings.

The competent court to grant exequatur varies depending on the nature of the 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 an international 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).

The exequatur application must contain (i) the arbitral award and (ii) the arbitration agreement or a certified copy of these documents, irrespective of whether the award is domestic or foreign. For international or foreign awards, the judge will principally verify (i) the existence of the award and (ii) that recognition of the award does not manifestly violate Lebanese international public policy (Articles 795, 814 and 815 LCCP).

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).

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

The appeal of an award (in domestic arbitrations) or the action for setting aside the award (in both domestic and international arbitrations) *de facto* entails a challenge to the decision granting exequatur and the judge of exequatur will no longer hear the dispute (Articles 805 and 819 LCCP).

#### 5.6 Suspensive effect of annulment or appeal proceedings

Unless the arbitral award is subject to provisional enforcement,<sup>19</sup> its execution is suspended within the 30 days' time-limit in which a challenge against the arbitral award can be submitted (Articles 803 and 820 LCCP).

#### 5.7 Effect of annulment on the enforcement of an award in Lebanon

An award rendered outside Lebanon, which is subsequently set aside at the seat of arbitration, may still be recognised and enforced in Lebanon.

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<sup>19</sup> The provisions on provisional enforcement ("*exécution provisoire*") are set out under articles 570 to 578 LCCP. In general, provisional enforcement is granted by the court upon a party's request which has an interest in commercial matters or when urgency is characterized (Article 572 LCCP). This measure is mandatorily granted by the court upon a party's request with an interest in the following circumstances (Article 571 LCCP):

- (i) If the judgement was rendered on the basis of a previous final judgement or was issued with the provisional enforcement's mention or was rendered to execute this previous judgement.
- (ii) If the judgement was rendered on the basis of an official or non-official deed or on the basis of an admission. The provisional execution can also be conditioned upon providing a guarantee (Article 573 LCCP).

## 5.8 Enforceability of foreign awards

A legitimate interest is required for a court to accept jurisdiction over proceedings for the recognition and enforcement of foreign awards. The applicant must produce as evidence (i) the arbitral award (original or a certified copy) and (ii) the arbitration agreement.

The proceedings are conducted *ex parte*, whereby the judge will only verify (i) the existence of the award and (ii) that recognition of the award is not manifestly contrary to international public policy.

A foreign award has to be translated to Arabic for the purpose of seeking its enforcement pursuant to Article 814 of the LCCP.

## 6 Funding arrangements

### 6.1 Are there laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

The Lebanese Legal Profession Act provides that legal fees are determined by an agreement concluded between the lawyer and the client. The Act does not provide an indication nor a restriction on the nature of the agreement which remains subject to the parties' contractual free will. Insofar as a third-party funding is concerned, a careful structure is required to ensure that such arrangements would not fall under the prohibition of excessive *riba*<sup>20</sup> under Lebanese law.

## 7 Arbitration and technology

### 7.1 Arbitration and blockchain technology

The issue of arbitration and blockchain technology has not been regulated by Lebanese legislation and has not been raised before Lebanese courts.

### 7.2 Electronically and digitally signed awards in recognition and enforcement procedures

Lebanese legislation does not differentiate between an electronic signature and a digital one. Both terms are used interchangeably.

Law No. 81 of 2018 on electronic transactions and personal data protection, states under Article 4 that « *the electronic writings and signatures have the same legal effects than those done on paper or any other type of support, providing that their specific author can be traced and that they are stored in a secured manner*».

Accordingly, there should not be in principle an issue with the recognition and enforcement of electronically signed awards. However, this remains an open issue that needs to be tested before local courts. To our knowledge, Lebanese courts have not yet been faced with such issue at the recognition and enforcement stage.

## 8 Significant reform of the arbitration law in the near future?

There are discussions to reform the arbitration law in the near future but these have not yet materialized.

## 9 Compatibility of the Delos rules with local arbitration Law

The Delos rules are compatible with the Lebanese arbitration law.

## 10 Further reading

- OBEID LAW FIRM, *The Middle Eastern and African Arbitration Review 2020*, Lebanon Chapter (English)

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<sup>20</sup> See Usury Law of 24 June 1939.

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- NAJJAR, Nathalie - *Arbitration and International Trade in the Arab Countries*, Brill-Nijhoff, 2018, with the foreword by E. Gaillard (English)
- OBEID, Zeina - *The action for setting aside arbitral awards in the Arab Countries: Saudi Arabia, Bahrain, Egypt, United Arab Emirates, Iraq, Jordan, Kuwait, Lebanon, Qatar, Syria*, Thesis, Univeristé Paris II Pantheon-Assas, Editions A. Pedone, 2017 (French)
- NAMMOUR, Fadi - *Arbitration law*, Point Delta, LGDJ, Lextenso, 4th ed. 2014 (French)
- COMAR-OBEID, Nayla, *The Impact and Consequences of Changes in Lebanese Arbitration Law*, 2003, (includes a study on administrative contracts and arbitration in Lebanese Law), ICC Digital Library (English)
- COMAIR-OBEID, Nayla, *Arbitrage en droit libanais, étude comparative*, Delta (1999) (French)

## ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	The Lebanese Arbitration and Mediation Centre
Main arbitration hearing facilities for in-person hearings?	∅
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	Malik's and Desco
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	∅
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	Bablex ( <a href="http://bab-lex.com">bab-lex.com</a> ) Quality translation services   translation services in Lebanon, subtitling, interpreting, desktop publishing ( <a href="http://qualitytranslationservices.com">qualitytranslationservices.com</a> ) Professional Arabic Language Interpretation Services in Lebanon   Professional Arabic Language Interpreters ( <a href="http://worldinterpreting.com">worldinterpreting.com</a> )
Other leading arbitral bodies with offices in the jurisdiction?	∅