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A contemporary look at Qatari arbitration of civil and commercial materials from a future perspective

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Abstract: The judiciary is the main means of resolving disputes, but with the development of national and international trade and investment conditions, there is an urgent need to find alternative ways to resolve disputes and keep pace with these developments in world trade. Although arbitration as an alternative means of dispute resolution is older than the judiciary, the old concept of arbitration was closer to reconciliation than conciliation. However, the development of arbitration with the development of international trade and the global investment movement, so that most of the laws of countries around the world have devoted a section to the regulation of arbitration and others to the enactment of laws. This development was illustrated by arbitration procedures and the formation of the arbitral tribunal, which was similar to judicial procedures and formations, and then international conventions and treaties strengthening arbitration provisions and ensuring their implementation. It is no longer an exaggeration that international arbitration is no longer an alternative means of resolving international commercial disputes. On the contrary, it has become the main means of resolving these disputes and, unfortunately, has many disadvantages in the judicial system. It is the prolongation of the conflict and the problems and difficulties of implementation.

Keywords: international arbitration - dispute resolution - civil and commercial articles – Qatar.

نظرة معاصرة في التحكيم القَطَري للمواد المدنية والتجارية وفق رؤية مستقبلية

عذاب العزيز الهاشمي

شركة العزيز القابضة

الملخص: القضاء هو الوسيلة الأساسية لحل المنازعات، ولكن مع تطور ظروف التجارة والاستثمار الداخلي والدولي بدت الحاجة ملحة لوسائل أخرى لحسم المنازعات، ومواكبة لهذا التطور التجاري العالمي، ورغم أن التحكيم كوسيلة بديلة لحسم المنازعات هو أقدم من القضاء، أي أن المفهوم القديم للتحكيم كان أقرب للمصالحة والتوفيق منه كوسيلة لحسم المنازعات، ولكن ما لبث أن تطور التحكيم مع تطور التجارة الدولية والحركة الاستثمارية العالمية، حتى إن معظم قوانين دول العالم قد أفردت له بابًا في قوانينها لتنظيم التحكيم وبعضها الآخر أصدر قوانين خاصة بالتحكيم، وقد تمثل هذا التطور بالإجراءات التحكيمية وبتشكيل المحكمة التحكيمية والتي اقتربت كثيراً من الإجراءات والتشكيلات القضائية، ثم جاءت الاتفاقيات والمعاهدات الدولية لتحصن أحكام التحكيم وتضمن تنفيذها؛ بحيث لم يعد مبالغًا بأن التحكيم الدولي لم يعد وسيلة بديلة لحسم منازعات التجارة الدولية بل أصبح الوسيلة الأساسية لحسم هذه المنازعات، وللأسف الشديد بدأ يأخذ الكثير من مساوئ القضاء وهو استطالة أمد النزاع ومشاكل وصعوبات التنفيذ.

الكلمات المفتاحية: التحكيم الدولي – حل المنازعات - المواد المدنية والتجارية - دولة قطر.

Introduction

In the face of this evolution and the international appetite for arbitration as an alternative means of resolving conflicts and emerging problems, other means of resolving conflicts began to emerge, especially since arbitration in the United States did not know the progress made by Europe during this period. As an alternative means of resolving disputes in a way that reduces the burden on the judiciary and keeps it under its control after the arbitral award is made. In response to this reality and evolution, alternative means also become alternative means of conflict resolution, represented by stipulations or regulations in a number of international and Arab agreements such as the 1974 Arab Agreement on Investment Guarantee, which provided for mediation and conciliation as an alternative solution to conflicts (articles 2 and 3). Dispute Resolution Annex) to which they can resolve the dispute before going to arbitration. It also included the 1965 World Bank Convention on the Settlement of Investment Disputes between States and Citizens of Other Countries and paved the way for conciliation before arbitration. Its procedures are also described in Articles 28 to 35. The International Chamber of Commerce in Paris has also set up a special system of voluntary reconciliation of 11 articles, which came into force in 1988. The application of this system stipulates that the dispute must be of a commercial and international nature.

UNCITRAL (United Nations Commission on International Trade Law) also established a conciliation system in 1980 that had an international impact on the dissemination of conciliation as an alternative means of dispute resolution.

The methodology used in the research

The study adopted the methodology of descriptive analysis of international arbitration laws and their conformity with the laws of the State of Qatar

The importance of research

The importance of research lies in the fact that arbitration makes it possible to resolve disputes:

1- It maintains relations between the parties and must not be interrupted by the dispute
2- It is not much time to take a few days or a few weeks at most, whereas the dispute lasts years and the arbitration lasts on average one year or a little more.
3- The cost of disputes and arbitrations is low
4- It is characterized by its speed of arbitration and by the fact that the solutions are many and varied as long as the judge is bound by the provisions of the law.
5- This satisfies the parties because they are in control of the process and the results
6- It is an extremely flexible system that does not respect the strict rules of dispute resolution, particularly when the parties do not want the dispute to be made public or defamed by

newspapers or when they wish to continue their relations despite the dispute or when they need constructive solutions.

Research objectives

The legal organization of arbitration is based on the consent and acceptance of the parties as a means of resolving all or part of the disputes that have arisen or may arise between them in the course of a particular contractual or non-contractual legal relationship. Authorities, arbitration procedures, etc. Whenever the agreement fails, the arbitrator refrains from saying that the arbitration takes place

Research problem

The new proposals emphasize that arbitration provisions are in force regardless of the country in which the verdict was rendered, noting that the increasing number of arbitral cases in the country reflects the tremendous development observed by arbitration in dispute resolution, stressing that one of the most important challenges is the legislative vacuum existing under current law. This left a wide range of courts for la jurisprudence, stressing that everyone is eagerly awaiting the new law to overcome this vacuum and address the problems facing the sector.

Research plan

First Requirement: Arbitration Mechanism from an Objective Perspective

Second requirement: Arbitration of civil and commercial material by Qatar

Third requirement: Practical proposals for arbitration in Qatar

The first requirement: The arbitration mechanism according to the objective view

First: negotiation

Negotiation is one of the main ways to resolve the dispute. The parties attempt to examine it directly, face-to-face, without any interference from a third party.

It is the simplest, fastest and cheapest way to resolve disputes if a mutually satisfactory solution is successfully resolved. When the parties to the conflict transfer their disputes to each other and thus attempt to resolve them and are negotiated between the parties to the conflict in successive sessions, at any place, the dispute is discussed until mutually acceptable decisions are taken. These decisions are more acceptable than those dictated by third parties.

Negotiations can be easy or difficult depending on the negotiation prospects and the degree of submission.

Those seeking easy negotiations must keep in mind the agreement and have the confidence to negotiate directly, thus changing the growing perception of negotiation.

For those seeking difficult negotiations, when each side is Egypt to achieve its claims, it is not logical in its views and claims to negotiate, which could spoil the negotiations.

Therefore, the negotiator in the direct negotiation phase must have the skills, negotiation, technical competence and knowledge of the claim report. It has the following characteristics:

- The power to negotiate.
- Ability to express opinions in clear terms, verbally or in writing.
- Deep and quick thinking under the pressure of direct negotiations.
- Ability to convince others.
- Patience and flexibility.
- Ability to adjust and hide feelings during negotiations.

With what is mentioned above:

A. The ability to analyze the knowledge of economic knowledge and legal culture that allows it to do so.
B. Ability to formulate a negotiation strategy and policy.
C. Ability to resolve differences of opinion between the parties.
D. Mastery of the art of listening and listening and understanding the point of view of each party.
E. Speed of observation, insight and a sense of justice.
F. A complete and integrated understanding of the information that allows him to negotiate.

Clearly, negotiation is an optional solution to which any party can withdraw at any time when it feels useless.

One of the most important factors for the success of the negotiations is the existence of common interests between the parties, it is the reason that prompted each party to try to reach a solution from the negotiating tractor.

Often, in the negotiation processes, each party waives some of its claims for the success of such negotiations.

Negotiation rules (1):

There are no specific rules for the negotiation process or the way they are conducted, so the negotiator should be familiar with the following rules.

Create a climate of trust and understanding of each other's interests in order to find solutions to achieve common gains. Focus on common interests when negotiating.

Maintain a flexible and friendly relationship. Openness in the flow of information to understand each other's interests

Working as a team outside the problem and crisis

Far from confrontational conflicts

Self-confidence and the ability to perceive or understand the intentions and interests of others

General principles for constructive negotiation:

A. Good preparation before the start of negotiations.
B. Respect the other party and do not underestimate them.
C. Discuss all issues in a calm, friendly and detailed manner.(1)
D. Credibility and openness to show positions
E. Be patient and take the time necessary to study and be careful in your decision-making
F. Direction of the other party
G. Avoid conflict and sterile controversy
H. Provide solutions one by one

Realism in relation to results

The negotiator must have a clear vision of the objectives

A. Demonstrate professionalism, honesty and trust to create credibility between the parties
B. Negotiations should be concluded in a friendly and positive manner
C. Keeps nerves calm and confident
D. Believe in the truth and justice of the cause
E. Convinced of all the ideas put forward before convincing others
F. Do not enter into the negotiation dialogue with provocative sentences or an aggressive attitude

(Engineering Contract Management Book, Part V, Mr. Sami Freeh)

Steps in the negotiation process: (1)

1- Preliminary negotiations to familiarize you with the aspects of the issue under negotiation and determine the best alternative in the event of disagreement.
2- Create the right atmosphere for the negotiation process
3- Respond to sit at the negotiating table as part of the dominant negotiating factors introduced into the negotiating process.
4- Operational preparation of the negotiation process, including:

Selection of the place of negotiation

Selection of negotiation policies and strategies

5- Start the negotiation sessions by going through the following steps:
   a. Identify appropriate negotiation tactics for each element of the case

(1) Freeh, Sami, **Consult the Engineering Contract Management Manual Part V Dispute Resolution.**

b. Prepare the necessary documents and data for all elements of the negotiation file.

c. Exert various pressures on the parties to the negotiation.

(1) Review the Engineering Contract Management Book Part V Dispute Resolution Dr. Sami Freeh

6- End of negotiations

7- If the parties agree to accept the result of the negotiation, minutes shall be drawn up and signed by the parties.

Second: mediation: ((mediation))

Mediation is one of the dispute resolution mechanisms in which a neutral person, chosen alone or as the representative of a mediator, chosen by the parties to the conflict, makes an amicable effort to advance negotiations between the parties to the conflict in order to reach a settlement of the dispute between them.

Mediation can be individual or cooperative in the sense that the mediator acts as more than one person. In clear terms, mediation can be defined as an amicable settlement mechanism by one or more neutral persons who are not parties to the conflict in order to help these parties reach a voluntary negotiated settlement, led by the mediator using different tools and skills, without the decision-making power of the mediator. In principle, the activities of the mediation process are confidential, unless the parties to the conflict agree otherwise, in whole or in part.

In order to fulfil his mission, the mediator will seek all possible means authorized by the parties to the conflict, including listening to the views and requests of each party and deliberating, sometimes jointly and sometimes individually, with the parties to the dispute, in order to reach a settlement. Conduct an inspection or investigation into some of the facts of the dispute. The particularity of mediation is that it is an optional procedure at its various stages.

The mediator is not obliged to offer mediation or accept the offer, and the parties are free to choose when considering the possibility of using mediation to resolve the dispute. The compromise reached with the assistance of the mediator is, as we have said, non-binding, and the mediator is working to reach a settlement of the conflict in order to exploit data relating to the desire of the parties to the conflict to reach a rapid and inexpensive friendly settlement, urging the parties to the conflict to make mutual concessions in their position Satisfied meeting points.

Mediation course

This has led the General Authority on Investment and Free Zones of Egypt to consider encouraging the use of mediation to resolve investment disputes, in line with the trend adopted by the United States of America and more recently followed, in which the Investment Authority submitted a proposal (No. 2) on 4/9. A guide to the ethical rules of a brokerage center established within the Authority to advise brokers on ethical issues that may arise during brokerage transactions sponsored by the

Authority's brokerage center. The introduction to the Guide states that mediation is a "voluntary and non-binding process in which a neutral third party is used to help the parties reach a mutually beneficial settlement of the dispute. The principles on which mediation can be based are defined in the Guide:

1. The mediator ensures that all parties are aware of the mediator's role and the nature of the mediation process and that all parties understand the terms of the settlement.
2. The mediator protects the voluntary participation of each party
3. The mediator is competent to mediate the foreseeable problem
4. The mediator must maintain the confidentiality of the mediation process
5. The mediator shall conduct the mediation process in an impartial manner
6. The mediator shall refrain from giving legal advice
7. The mediator must withdraw if certain circumstances arise (for example, his inability to maintain his impartiality, or if the mediation process has been used to persist in unlawful conduct, or if there remains an unresolved conflict of interest, etc.)
8. The mediator must avoid misleading commercial practices and cannot guarantee the results or add to the above.

The parties to the conflict should have equal confidence in the mediator. In the event of failure of the mediation, the parties to the dispute shall not disclose any information, data or agreement submitted or proposed to the mediator, nor to any judicial or non-judicial settlement mechanism used by the parties to resolve the dispute.

The above applies to what is called traditional mediation and is commonly used. Mediation may take another form of "mediation - arbitration or decision", in which the mediation used to resolve its failure is transformed into an arbitration or decision-making mechanism if the parties to the dispute agree in advance.

It is well known in Anglo-Saxon and some other countries that one of the characteristics of the mediation mentioned above is that once negotiations are completed, concessions are often made by the parties to the conflict to reach a voluntary settlement, which is generally not valid before any other settlement. The mediator is an arbitrator or judge in the same dispute.

Optimal time to start (mediation) in engineering contract disputes: (1)

Experience shows that if one of the parties (often the contractor) submits a claim during construction, the project manager postpones the decision until the end of the project.

In the event that the contractor does not receive his claim and feels an injustice or agrees with the opinion of the obliged engineer, his reaction could have a negative effect on the work.

The broker is chosen by mutual agreement and the project manager remains the employer's representative. The representative of one of the parties to the brokerage firm must not be a mediator in

order not to be inclined to mediate. Leaning beside the opponent designated to his advantage. In addition, he or she would not be so out of mind that he or she could resolve the dispute without the possibility of a tendency towards one of the opponents, which would make him or her unsuitable to be perceived as representing one of the parties to the dispute because of the appearance of impartiality that he or she should have (1).

*** Types of disputes resolved by mediation:**

All types of disputes can be resolved through mediation, which presents mediators with many types of disputes that are similar in diversity to the types of industries and business disciplines that use this process.

Almost all types of disputes that the parties wish to resolve can be submitted to mediation in a timely and cost-effective manner, particularly disputes relating to engineering contracts.

***Advantages of mediation:**

The benefits of successful mediation between a dispute and a settlement vary according to the needs and interests of the parties. Here are the most common features:

The parties are directly involved in the negotiation of a settlement.

- The mediator, as a neutral third party, can view the dispute objectively and can help the parties explore alternatives that they could not have handled alone or without assistance.
- Since mediation can be scheduled at an early stage of a conflict, a settlement can be found more quickly than in a dispute.
- Mediation is generally characterized by a reduction in costs and a reduction in the time required to resolve the conflict.
- Allow the parties to continue their commercial relations.
- Creative solutions or adjustments related to the particular needs of the parties may become an integral part of the settlement.

*** Occurrence of mediation:**

Mediators can be created in different ways and methods:

First, mediation can take place at the beginning of a dispute and before the filing of legal proceedings.(2)

Second, mediation can be an additional procedure in the event of a dispute or decision, which means that once the legal action has been initiated, mediation can be used to attempt to resolve a dispute at the beginning of the dispute or at any time thereafter, but before the trial.

(2) Freih, Sami, **Review of the management of engineering and construction contracts Section V Dispute resolution**.

Third, mediation can take place during the dispute in court but before the judge or jury makes the decision.

Fourth: mediation can take place after the judgment has been delivered.

The defendant will not delay the execution of the judgment in return for the transferee of the judgment in favor of waiving part of his rights.

Mediation procedures

1- Agreement on mediation:

Since mediation is a voluntary and voluntary process, the parties must agree in writing that their dispute may be initiated under any law on which they have agreed and may be resolved in different ways.

2- Request for mediation:

The parties may require or provide for the resolution of future disputes by including or including the mediation clause in their contract. The model mediation clause is as follows:

If a dispute arises out of a contract or is not bound by a contract, and if the dispute cannot be settled by negotiation, the parties undertake first to attempt to settle the dispute in good faith through mediation supervised by the Arab Arbitration Centre, in accordance with the laws of (the country of their choice). Before resorting to arbitration, dispute or any other procedure to resolve the dispute.

The position could also include the qualifications of the broker, the method of payment, the location of meetings and any other matters of interest to the parties.

Where a party has filed a request for mediation, the requesting party must submit a copy of the mediation clause contained in the contract under which the dispute arose.[3]

Steps in the mediation process:

Mediation consists of five steps that the mediator and the parties to the conflict must follow in order to reach satisfactory solutions. The steps of the mediation are summarized as follows:

1. Preparation for mediation
2. Pre-mediation
3. Information exchange phase (identification of points of disagreement phase)
4. Stage of formulation of important issues and clarity of vision (identification of common interests)
5. The step of identifying the alternatives available to reach the solution
6. Decision-making stage

They will be explained in detail below:

(3) Freij, Sami, Previous Ref.

3- Preparation of the mediation session:

1. Recommendations to the mediator to identify and analyze the issues in dispute
2. Know the characteristics of a particular situation (what you can really expect, time constraints, available resources, legal ramifications, business practices, costs, etc.)
3. Identify your needs and interests in conflict resolution
4. Prioritize or hierarchize problems according to your needs
5. Determine the stock price and situation and explore various possible solutions with a preliminary proposal (requests or desires "typical enough to allow negotiation). A draft proposal (an acceptable alternative proposal).
6. Try to make your suggestions reasonably and in accordance with the requirements of the law and be prepared to meet the needs of the other party.
7. Check the strengths and weaknesses of your case.
8. Prepare facts, documents, evidence and strong arguments to support your claims.
9. Anticipate the needs and demands of the other party, as well as their strengths and weaknesses, and match them to the facts.
10. Focus on the interests and not on the position of each party.
11. Develop your strategies and tactics by discussing problems, making proposals and choosing each other's positions.

Pre-mediation: (1)

It aims to organize a preliminary meeting between the mediator and the parties once the mediator has reviewed all the documents submitted to him/her which clarify the dispute in general, so that the mediator can identify the candidates for mediation and try to open up a space for them to discuss it. The parties must attend the mediation meeting with all the evidence, documents and materials they deem necessary to discuss their respective issues. Of course, the parties are allowed to be represented by a lawyer or legal counsel.

As a first step, mediators describe the basic procedures and laws that govern the ability of each party to speak, present or present, adapt, discuss unresolved issues, the use of electoral meetings and the confidentiality of deliberations and procedures.

Following these introductions, each party describes the relevant views on the dispute. The initiating party discusses its understanding of the issues at stake, the facts surrounding the conflict, what it wants and why, then responds and mentions similar offers addressed to the mediator, and in this introductory session, the mediator collects all that he can gather from many facts and shows the differences. The mediator tries to understand each party's visions, reconciliation and positions on the issues.

1. The mediator and the parties to the conflict must understand each other's objectives, interests and requirements in order to identify possible options for the convergence of these interests. Strength and weakness in his position.
2. Examine the possibility of applying the options in the field and check whether the solution is compatible with the interests of both parties
3. Take into account the possibility of a failure of the mediation attempt and the reaction of the parties.
4. Examine the feasibility of applying the options in the field and determine whether the solution is in the interest of both parties.
5. Take into account the possibility of a failure of the mediation attempt and the reaction of the parties. All this is done in the following steps:(4)

Prepare the parties for mediation:

Before meeting them, it is wise to meet with each party, during which the mediator pursues several objectives:

- Determine whether mediation is appropriate in this situation and determine which method to use.
- Gain the trust of the parties.
- It is unlikely that you will gain the trust of the parties until they are convinced that they can understand them.
- The mediator must show the parties that he or she understands them without necessarily agreeing with them or subscribing to their position.
- confirms to the parties that their information will be confidential and confidential
- Motivate the parties to confront and resolve the conflict
- Give the parties hope that their dispute can be resolved and that the responsibility to find a solution will be confirmed, (the mediator does not have the authority to apply the solutions nor does he have the decision to write or submit to the parties.
- Take into account that people have difficulty coping, and that mediation is not an easy process, but offers real hope for success.
- Make sure that the parties are aware of the objectives of mediation, as they may think it is possible to become friends or reconcile immediately.
- One of the best ways to demystify mediation is to talk about the mediation process.
- The mediator should clarify his or her role to the parties.
- Must show them that he or she is not a judge or makes decisions on their behalf.

(4) Freij, Sami, Previous Ref.

- The mediator explains seriously that his role does not support the party at the expense of another.(5)
- The mediator explains that the consent of the parties requires the collective consent of the parties Those who offer the solution.
- The notion of confidentiality must be explained to the parties.

The mediation procedures are as follows:

First session:

Opening minutes are crucial as they are intended to focus on negotiation and the nature of cooperation and to foster a negotiating environment.

- The meeting will be held as part of a friendly session in which drinks and candy are offered to give a pleasant atmosphere to the meeting.
- Welcome and encourage the evenings by greeting the audience warmly and in an appropriate tone.
- Ensure that the names and parties know how to contact the mediator
- must take into account current social and cultural etiquette, such as silence during prayer, as well as reasonable fun to reduce anxiety.
- Describe the mediator's role as a guide.
- Explain the mediation agreement and answer all questions.
- Description of the nature of the mediation.
- - Confirmation of confidentiality.
- Call to discuss guidelines for mediation procedures
- Help the parties to talk to each other and find solutions

The mediator does not place himself in the judge's decision-making because he has no decision

2- Confidentiality:

- Focus on the confidentiality of the mediation process, what happens must remain in this room and neither party has the right to disclose it to other parties.
- Take notes for the mediator and the parties.

3. Beginning of the mediation process:

A. Each party describes the position from a personal point of view.
B. The mediator will assist the parties in preparing a list of points of disagreement for consideration.

(5) Freij, Sami, Previous Ref.

C. discuss points of disagreement one by one.

D. Work to reach an agreement or end the session in case of disagreement.

4. Rules or guidelines:

- Do not interrupt.
- Respect for the feelings and dignity of others.

5. Personal assessment of the broker's ability to mediate:

Assuming that his skills and knowledge are available, the broker must feel the desire to find a solution from the parties. It negatively affects the process and expresses its opinion only in the final stages of mediation.

The mediator must ensure that he or she is able to deal impartially and objectively and must be able to conduct the mediation process effectively; otherwise, he or she must apologize for the mediation.

6. Information gathering:

There are more effective ways to obtain information to answer questions, which are often misused, and many conflicts take the form of questions. Questions are important because they can indirectly change the point of view of others. Speaker briefing, used by lawyers in court or police to interview suspects. In the mediation process, questions should not be used with the intention of surrounding and questioning others when trust exists, communication becomes more effective and clearer when questions are used to clarify, collect information and convey trust.

In the mediation process, questions are used to question and understand the mediator's opinion or doctrine, and to invite the parties to share the information sought by the mediator, rather than using brief questions, such as questions starting with questioning tools (who, why, what and when?). Open gives the speaker the opportunity to elaborate, allowing the mediator to extract useful information, and mediators can formulate important data as well as create a greater sense of openness at the same time, as explained above.

The major challenge in the early stages of mediation is how to resolve disputes between the parties, with each party expecting to get along well and not be interrupted, and it is important that mediators be well prepared to deal with the parties,

Failure to do so can quickly lead to a loss of control of the debate and the credibility of the entire process. After giving each party the opportunity to discuss freely, the districts will gradually decrease until they disappear completely.

The mediator must be firm on the basic rule (and not interrupt the speech) and must keep more pens and papers handy to give to the party interrupting him to take notes.

Intense discussions sometimes lead to conflicts between the parties, sometimes leading mediators to make detailed observations; when the mediator notes it, they are deeply aware of the ideas presented by the parties; the mediator must focus and listen to the keywords so that he can only write down the important points.

Focus on not publishing minutes of previous meetings or establishing facts so that the parties cannot use them in a dispute or arbitration if the mediation process fails.

When telling the story, the parties often say very provocative things.

He can say, "I know you have a different point of view and I want to hear your point of view in a few minutes." Such a comment can help the parties reduce their anger and put the process under control.

Exciting provocative comments with general wording, such as the expression (he/she lies) can be modified by the mediator (you see things differently from another angle).

This often helps to ask for specific examples if the first party says that the second party (reckless and irresponsible) could answer the mediator by saying (give a specific example of what you have in mind).

Specific examples escape criticism by the parties: if the insult or alliance becomes an important element of the debate, the mediator can propose a basic rule of morality and respect due to the adherence of both parties. Separately at a special conference.

Identifying points of disagreement is the crucial bridge between the problem and its solution, as the list of points of disagreement prepared by the mediators can help the parties move from the position of disagreement to the position of agreement.

7. Phase outputs: (1)

A. Identify points of disagreement at the beginning of the process: this is usually done after the first discussion between the parties, because what they say in the second round is either to strengthen their position or to respond to the other party's position. They will then have the opportunity to discuss further when the problem is resolved together.
B. The mediator prepares the lists and listens objectively to all parties and identifies points of disagreement in a list.
C. Preparation of a common list of agreed points: this list should include the main cases of both parties
D. Establish a framework for points of disagreement that is acceptable to both parties:
E. Identify points of disagreement in a simple and general way:

This is done by making a short list (three to five points considered good) that will help to make the task easier and mediatized.

F. Review the list linguistically with each participant and ask the Parties if this list includes all the points of interest and if it should possibly modify or complete the list based on the Parties'

responses; after agreement, the solution to the problem is common and it is common to add a point of disagreement later in the process.

8. Information exchange step: (step of identifying points of disagreement):

The purpose of this step is to give the parties the opportunity to reveal what they have come to mediation, to give them time to talk without interrupting what they consider to be a problem, how they feel about what is happening, their needs and interests, and the opportunity for the parties to recognize the power of integration. The parties will be encouraged to see it as a general problem in order to find a common solution in which both parties will win, and the mediators will reformulate and summarize what has been said and inform all parties. The accuracy and precision of the summary, Du comes down to Mediator at this stage are as follows:(6)

A. Help to reach an agreement, not take a decision and stand by one of the parties
B. Take notes if necessary and confirm the confidentiality of the case.
C. Summarize what both parties have said and, if necessary, ask each party to summarize the other.
D. Emphasize common points of view and existing areas of agreement.
E. Identify the points of disagreement heard by the mediator during the discussions between the parties and draw up a common list including the most important points of agreement and the points of disagreement, and indicate them clearly. This is the agenda of the mediation.
F. The parties can be asked what they understand or what they want the other party to understand at this time.
G. The mediator to spread his point of view does not feel that the party who does not speak focuses only on the speaker.

9 - The stage of formulation of important questions and clarity of vision: (identify common interests):

The purpose of interest identification is to help the parties discover what they value, what the important objectives are and why they are important.

One of the strategic negotiation theories on which mediation has been established is that the parties are more likely to agree if they work to defend their interests,

The mediator, with the help of the parties, helps to clarify, prioritize and realize their main interests according to the following points:

A. Discover interests through questions and listening skills.
B. Focus on interests whenever they arise, especially common interests.

(6) Freij, Sami, Previous Ref.

C. Encourage the exchange of information between the parties during the dialogue on their interests.
D. Understand the means by which interests can be expressed using objective (measurable) criteria.
E. Provide assistance in difficult times.
F. Consider using separate meetings if necessary.
G. Periodically summarize interest groups and common ground.
H. Gather interests (common and preferred) in a declaration of common objectives and advocate for common solutions.
I. The aim of finding solutions for the Parties is to produce a more creative and detailed product of the Parties' work in its entirety, and the mediator will assist at this stage by encouraging inspiration and imagination.
J. Encourage the development of future thinking by the parties (using imagination from a personal point of view).
K. Encourage inspiration to confirm the achievements of the parties so far.
L. Taking into account the work of reason and the reflection and analysis of the previous lists and the need to return to a focus on common interests in the event of a crisis.
M. Use questions to highlight what has been agreed and clear to the parties.
N. Encourage reflection on practical and procedural alternatives to the agreement.
O. Underline the seriousness of the commitment through advice and take the consent of authorized persons.

10. Identification phase of the alternatives available for the solution:

When joint discussions reach a stage where progress is often halted, the mediator often confronts each party in individual meetings. While meeting separately, the mediator may travel between the parties and refer them to the joint sessions at separate intervals. At each election meeting, the mediator tries to clarify the version of each party's facts, priorities and attitudes, reduces rigid attitudes, explores alternative solutions and seeks possible exchanges. The mediator must conduct, test and challenge the positions of each party, The mediator does not act as a lawyer, but as an agent or truth factor: he must ensure that each party carefully and thoroughly examines the demands, priorities and opinions, and processes the arguments and evidence of the other party.

Now comes the important role where points of disagreement are addressed by the parties in the way they choose to reach an agreement.

A. Determine the previous points of disagreement agreed upon and what has been agreed upon between them in order to move the final settlement forward.
B. Address the point of disagreement that is easy to resolve.

C. Address the remaining points of disagreement.

- The mediator shall oblige each party to explain to the other party the suffering caused by these points of disagreement and shall invite the parties to indicate their needs to resolve this point of disagreement.
- The mediator must allow each person to provide an initial response to the points raised by the other party.
- The mediator should research what lies behind the positions or demands made by each party to discover more interests and key points.
- The mediator should indicate similarities and common ground on these points and should also seek potential areas of convergence.
- The mediator should avoid imposing the following idea and ask the parties for their opinion to solve the problem.
- The parties may never agree on the facts or what has happened in the past, and when they begin to repeat what they have already said about the past, the mediator must focus on the future. To prevent this from happening again in the future so that you can work together without disturbing each other.)
- The mediator should summarize the discussion points that have been periodically agreed upon and encourage the parties to proceed without taking minutes of the meetings and without taking their signatures.

How is mediation different from arbitration?

Arbitration is less formal than a dispute, while mediation is less formal than arbitration. Unlike the arbitrator, the mediator does not have a procedural session like the arbitrator but organizes joint and separate meetings with the parties to understand the problems, facts and positions of the parties.

Separate meetings are called election meetings or meetings. In return, arbitrators hear testimony and receive evidence at a joint session, where they make a final and binding decision known as the arbitrators' decision.

In joint meetings or with the other party, the mediator tries to obtain an open discussion on the problems and priorities of each party. When he obtains certain information or facts from meetings, he can use the information selectively to:

- Reduce hostility between the parties and help them engage in a constructive dialogue on specific issues.
- Open discussions in areas that have not yet been addressed or that have been underdeveloped.
- Transfer or communicate positions or proposals in more understandable or pleasant terms.

- Testify and provide the necessary evidence. They are similar to arbitration procedures and rules.

Third: conciliation:

Conciliation A procedure for the amicable settlement of a dispute, in which a person or a committee composed of specialized persons (e. g. subject matter experts, lawyers, engineers, diplomats or politicians) takes charge of the dispute and submits a report containing proposals for its resolution. Conciliation is carried out by agreement between the parties to the conflict. This Agreement may directly govern conciliation procedures in a particular case and may constitute a prior agreement on any dispute between the parties to this Agreement.

Note that this prior agreement requires, when the dispute arises, another agreement between the parties to the dispute specifying the subject to be submitted to the conciliation mechanism and the manner of setting up this committee and its procedures, particularly if the previous agreement is limited to a simple commitment to resort to conciliation without resorting to regulation. Question of the composition and procedure of the Committee.

Even if the previous agreement settled these issues, it was still necessary to determine the subject matter of the dispute either by agreement or by a party to the dispute.

As a procedure at the disposal of States parties to the treaty.

Conciliation is generally negotiated by a neutral individual conciliator or by a committee composed of an odd number of three or five members (although there is nothing to prevent it from forming an even number). The Committee may include delegates chosen by the parties to the conflict, who have the confidence to ensure that their views are dealt with in all their aspects in the Conciliation Commission, as well as one or more neutral delegates, depending on the agreed number of members of the Commission, appointed as a general rule. By examining the facts of the dispute and the positions of the parties, and submitting such proposals as it may deem appropriate to resolve the dispute.

Proposals or recommendations made by the conciliator after consideration of the subject matter are not binding. The parties are free to accept or reject them. They may convert these proposals into a signed contract or a binding arbitration award agreed by the parties.

There are a number of well-known rules concerning conciliation rules, the best known of which are

1- Rules of reconciliation published by the International Chamber of Commerce (ICC) in Paris on 1/1/1988

ICC Conciliation and Arbitration Rules

2- Conciliation rules published by the Institute of Certified Arbitrators on July 1, 1981

3- Conciliation Rules published by UNCITRAL on 4 December 1989

United Nations Committee on International Trade Law (UNCITRAL)

4- Conciliation rules issued by the British Institute of Civil Engineers in 1988
5- Rules of the Arab-European Chamber of Commerce
6- Rules of the International Centre for the Settlement of Investment Requests
7- Mediation Rules published by the Cairo Regional Centre for International Commercial Arbitration

All the above rules were unanimous in that the role of the arbitrator was different from that of the conciliator or mediator.

Decision-making by the Dispute Resolution Board:

1. The dispute shall be submitted in writing to the Council for consideration and decision and a copy of this notification shall be sent to the opposing party.
2. The date of receipt of the notification to the Council shall correspond to the date on which it is received by the President of the Council.
3. The Council shall take its decision within 84 days of receipt of notification of the referral of the dispute to the Council.
4. This resolution must be justified.
5. This Decision shall be binding on the parties and shall be applied by it, unless it is settled amicably or submitted to arbitration.
6. The objection of a party to the decision does not give him the right not to continue to perform the contract.
7. If one of the parties does not approve the decision, it must, within 28 days of receipt, notify the other party of its opposition.
8. If the Council does not take a decision within 84 days of the date on which the President receives notification of the dispute, a Party may, within 28 days of the 84-day deadline, notify the other Party of its dissatisfaction with the reasons for not accepting its decision.
9. No party may initiate arbitration proceedings without having notified the previous paragraph of dissatisfaction.
10. The decision of the Board shall be final and binding if no withdrawal is notified to the Board within 28 days of receipt of the resolution.

The appointment of the Dispute Resolution Committee has several aspects:

1- The Permanent Dispute Resolution Commission "at any time", composed of one or three members appointed before the beginning of the contract and who usually visit the site regularly thereafter.

During these visits, the Dispute Settlement Commission is competent to assist the parties to avoid any dispute at the request of all parties.

The terms of the contract must include the language required for the procedures of the Standing Dispute Resolution Committee "at any time", including "if the parties agree at any time, they may participate in the submission of an order to the Dispute Resolution Committee for advice".

2- The Dispute Resolution Board, which consists of one or three members appointed when the dispute arises, and whose appointment generally ends after the decision of the Dispute Resolution Board regarding the dispute. Refer a dispute to the Board.

Reasons for the success of the Conflict Resolution Council in construction projects

- becomes an integral part of the project when the members of the conflict resolution council are appointed at the beginning of the project.
- Review and study all project papers and documents from the beginning.
- Visits to see and monitor the performance of the contractual teams.
- The Council for the settlement of disputes is the creation of the contract and the will of both parties.
- Very fast compared to other means of arbitration or litigation.
- It is cheaper than other means.
- In some standard contracts, the board may have binding decision-making powers.
- Ability to call early to resolve any serious dispute that may arise or develop between the parties to the contract without being able to resolve it and give a quick decision or recommendation on how or whether to resolve the dispute.
- The possibility of resorting to arbitration or justice if not approved by one of the parties to the proposed solution within a specified period of time.

The second requirement: Qatar Arbitration Law on Civil and Commercial Goods

Article (1)

In applying the provisions of this Act, the following words and expressions have the meaning assigned to them, unless the context otherwise requires:

The Minister	Minister of Justice
The Ministry	Ministry of Justice
Arbitration	A legal and consensual approach to dispute resolution rather than recourse to justice, whether it is the arbitrator .In agreement with the parties, a permanent or non-permanent arbitration centre
Arbitration agreement	.The agreement provided for in Article 7 (1) of this Law
The parties	.Party or parties to the dispute who have agreed to refer it to arbitration

The Minister	Minister of Justice
The Arbitral Tribunal	Body consisting of an individual arbitrator or an individual number of arbitrators, responsible for ruling on the dispute submitted to arbitration.
Other authority	The body chosen by the parties to their agreement, as permitted by this Law, to perform certain functions related to the assistance and supervision of arbitration, whether it is a center or a permanent arbitration institution.
Competent court of jurisdiction	Civil and Commercial Litigation Department at the Court of Appeal or Trial Chamber of the QFC Civil and Commercial Court, with the agreement of the parties.
The competent judge	Enforcement judge of the court of first instance or enforcement judge of the QFC civil and commercial court, if the parties agree.
The Applicant	The party to the agreement that initiated the request to submit the dispute to arbitration.
The defendant	Party to the agreement for which the dispute is submitted to arbitration.
Arbitration centres	Any legal person authorized to conduct an arbitration in accordance with the provisions of this Law.

Article 1 of this Act, in the definition of the other authority, indicates that the Qatari legislature has developed a new philosophy of shortening the arbitration procedure by finding another authority to replace the court with arbitrators whom the parties have not appointed or appointed to the presidency. It has accepted its choice and, in addition, has granted it the power to rule on the arbitrators' request for referral and even to rule on appeals against the jurisdiction of the arbitral tribunal or against any other defense chosen by the court.

He is a good commander who reinforces the principle of the will of both parties to the arbitration when they do not wish to resort to justice at any stage of the arbitration.

Article (2) Scope of this law

1. Without prejudice to the provisions of the international conventions in force in the State, the provisions of this Law shall apply to any arbitration between parties governed by ordinary or private law, whatever the nature of the legal relationship in question, if such arbitration takes place in the State or in the event of international arbitration. The parties have agreed to comply with the provisions of this law.
2. Arbitration in administrative contract disputes must be agreed with the consent of the Prime Minister or his authorized representative.

Under no circumstances may ordinary persons resort to arbitration to resolve disputes between them.

3. In the application of the provisions of this Law, arbitration shall be commercial if the dispute concerns a legal relationship of an economic nature, whether contractual or not,

This includes commercial, investment, financial, banking, banking, industrial, insurance, tourism or other transactions.

The nature of the arbitration contract specified in the previous article:

Arbitration may be concluded before the dispute by means of a clause in the contract established by the parties, in which the agreement generally provides that: if a dispute arises in the interpretation of the contract, in its performance or in relation to its effects, it must be submitted to arbitration.

This is known as the "arbitration clause" in most Arab laws, the "arbitration document" in the Saudi arbitration system and Egyptian law, or the "arbitration agreement" in Qatari and Kuwaiti law.

Arbitration may take place after the dispute has taken place, and then the parties to the dispute have concluded an agreement to resort to arbitration, called "participation in arbitration". In both cases, the arbitration was concluded by mutual consent of the parties, which constitutes a consensual contract within the meaning of the Shariah and the law, an optional contract replaced by litigation and dispute, as well as the purpose of the judgment For a just solution.

State party to the arbitration agreement:

If the State is a party to the arbitration agreement, the question of the extent of the conflict between the arbitration agreement and the sovereignty of the State arises while the State enjoys its sovereign privileges in the field of arbitration in that it is subject only to its law and the inadmissibility of arbitration in its administrative contracts and the non-execution of arbitration against the State.

However, the provisions on international arbitration have gone further by setting out a set of legal principles applicable when a State is a party to an arbitration agreement, among other things:

1. The law applicable to legal persons originating from the State is the national law under which these legal entities were created. The legal personality of a ministry can only be reasonably determined in accordance with the law of the State to which the ministry belongs.
2. A State may not apply its national law if this would justify its refusal to be bound by an arbitration agreement it has concluded.
3. When the government or state enters into an arbitration agreement, it waives its sovereign immunity from that agreement.
4. The State shall not be considered a party to an arbitration agreement concluded by one of its organs because of the separation of the personality of the State from the personality of the public legal persons arising therefrom.
5. A State cannot rely on its inability to be recognized by the international community to avoid its obligation to conclude an arbitration agreement.

Qatar's Arbitration Act limited the agreement on arbitration in administrative contracts to the approval of the Council of Ministers.

Then comes the second paragraph of the second paragraph of Article II, which prohibits ordinary persons from resorting to arbitration.

It is therefore understood that the Qatari legislator only excludes the Council of Ministers or its authorized representative from signing an arbitration clause or condition.

The ambiguity of the legislator's position on the determination of the role of the will of the parties in the choice of rules applicable to arbitration proceedings in article 2

Article 2 (1) of the Qatar Arbitration Act stipulates:

"Without prejudice to the provisions relating to international expenses in force in the State, the provisions of this Law shall apply to any arbitration between parties governed by ordinary or private law, whatever the nature of the legal relationship in question, if such arbitration takes place in that State or if it is an international commercial arbitration conducted abroad. Its parts are subject to the provisions of this law.

This article deals with the wording of the law applicable to arbitration proceedings and distinguishes between two hypotheses:

First: If the arbitration is conducted in the State of Qatar.

Second: If the arbitration is international commercial and takes place abroad.

One: If the arbitration is conducted in the State of Qatar

Article 2 of the Arbitration Act stipulates that the provisions of this Act shall apply to arbitration proceedings if they take place in the State regardless of the parties, whether public or private law persons and regardless of the nature of the legal relationship resulting from the dispute before it. This article stipulates that it is the Arbitration Act of Qatar No. 2 of 2017 that applies to arbitration proceedings conducted in Qatar, regardless of the will of the parties, where the parties have not had the right to choose the law applicable to such proceedings. ,

As long as the arbitration takes place in the State, the Qatari Arbitration Act applies to its proceedings and the legislator considers that the rules of this Act are considered to have immediate effect.

However, section 19 of the Arbitration Act contained a provision that may appear to contradict section 2. Article 19 provides that:

The parties may agree on arbitration procedures, including rules of evidence to be established by the arbitral tribunal, and shall have the right to submit them to the rules in force in any arbitration organization or center within or outside the State.

As indicated in the second paragraph, the arbitral tribunal may, subject to this Law, apply such procedures, as it considers appropriate.

In this provision, the legislator gave the parties to the arbitration the right to determine the law applicable to the proceedings, which allows them to exclude the application of the Qatari law on arbitration and to choose another law to apply to the arbitration proceedings, which means, in accordance with article 19, that the determination of the applicable law Arbitration in Qatar is subject to the will of the parties, in accordance with article 2 of the Arbitration Law, to apply its procedural provisions to the arbitration conducted in Qatar without regard to that will. But does this mean that there is a conflict between the provisions of articles 2 and 19 of the Arbitration Act?

We believe that there is no contradiction between the text of these articles, each having a different scope of application. When the legislator decided, in article 1, that the Arbitration Act applied to arbitration conducted in Qatar, he took into account the rules of procedure relating to public policy set out in this Act, which apply to arbitration conducted in Qatar without requiring the agreement of the parties to apply it, these are the rules to ensure the conduct of the arbitration dispute, which are based on two basic principles. No procedural law or agreement in the law governing the conduct of the dispute may be challenged.

Consequently, the scope of article 2 is different from that of article 19 of the Arbitration Law, regardless of the will of the parties and the law of their choice, with respect to the rules of procedure relating to public policy set out in the Qatar Arbitration Law. Article 19 on other rules of procedure.

The application of the provisions of the Arbitration Act relating to public policy to any arbitration in Qatar is necessary and important, and its importance is demonstrated during the implementation of the arbitral award. Which stipulates that: The enforcement of the arbitral award in accordance with this law shall only be ordered if it is verified that it does not contain any element contrary to the public policy of the State.

Although there is no contradiction between the provisions of articles 2/19 of the Arbitration Act of Qatar in the light of the explanation given above, the existence of these articles in their current legislative wording may be confusing and may constitute a reason for the jurisprudential dispute.

Therefore, we propose - to avoid confusion and to avoid a dispute based on case law - to merge these two articles into a single article worded as follows: -

1. Without prejudice to the provisions of the international conventions in force in the State of Qatar and the mandatory rules of procedure relating to public policy set out in this Law, the arbitral parties may agree on the procedures followed by the arbitral tribunal, including their right to submit them to the rules in force in any State organization or arbitration center. In the absence of such an agreement, the arbitral tribunal may choose such arbitration procedures, as it deems appropriate.

2. The preceding paragraph shall apply to any arbitration between parties governed by ordinary or private law, whatever the nature of the legal relationship in question, whether the arbitration takes place in Qatar or abroad.

If the arbitration is conducted outside the State

Article 2 of the Qatari Arbitration Act stipulates that the provisions of this Act shall apply to international commercial arbitrations conducted outside Qatar, provided that the parties so agree, as the legislator has explicitly recognized the role of their will in determining the law applicable to arbitrations conducted outside their country. This arbitration will be agreed by the parties following its application. However, the freedom of the parties to exclude Qatari law and to choose a foreign law applicable to the arbitration proceedings in this case is limited by the observance and respect of mandatory procedural rules relating to public policy in Qatari arbitration law if the arbitral award is to be applied in Qatar in accordance with that law and in accordance with the clarifications we have already provided.

However, it should be noted that the legislator, when referring in article 2 to domestic arbitration conducted in the State, used only the term "arbitration" without indicating whether the legislator had not qualified it as civil or commercial. When he spoke in the same article of arbitration conducted outside the State, the term international commercial arbitration was used.

Such an approach by the legislator may give rise to ambiguities: it may be thought that the dispute is international only if it is commercial, whereas there is no link between the international nature of the arbitration and its commercial nature. Commercial litigation, as can be said, international civil arbitration is not subject to arbitration law,

Although this law applies to arbitration, regardless of the legal nature of the dispute being arbitrated, whether it is a commercial or civil dispute, in accordance with the text of Article 2 itself subject to this criticism, the legislator should therefore have used Article 2 of the Arbitration Act. The term "domestic arbitration" is "international arbitration" without description to include arbitration in civil and commercial disputes.

Qatar Commercial Arbitration Standard for Commercial Arbitration:

Article 2 (3) of the Arbitration Act provides as follows: Arbitration shall be commercial in nature within the provisions of this Law if the dispute concerns a legal relationship of an economic nature, whether contractual or not, including commercial, investment, financial, banking or insurance transactions; industrial, tourist or other transactions of an economic nature.

In this provision, the legislator has adopted a broad and broad standard for determining what constitutes an enterprise: the economic nature of a legal relationship. it is stated at the beginning of the article that arbitration is commercial in the provisions of this law if a dispute arises about a legal relationship of an economic nature.

The legislator had included the words "in the provision of this law" to clarify that the company's criterion, namely that the work is of an economic nature, is specific to arbitration law and deviates from the standard set by any other article of the law.

After defining the economic nature of a company as a company, the legislator of the Arbitration Act did not limit itself to this criterion - despite its excessive scope - and presented a series of examples of companies for which disputes are considered commercial.

The legislator's conduct in this paragraph of Article 2 of the said Arbitration Act has been the subject of numerous criticisms and questions, and most of the criticisms concerned the deletion of the word "commercially" from the text of this paragraph of Article 2 / quoted as well as the deletion of all the examples it contains. According to the criterion of the economic nature of the dispute, it is permissible to submit it to arbitration.

One of the suggestions we see that the word is not commercially necessary because it will limit us to commercial materials, while we find many examples in the same article is not of a commercial nature, and these many examples can be abbreviated and give a general expression and we can thus amend this article as follows:

Arbitration shall be subject to the provisions of this Law if the dispute concerns a legal relationship of an economic nature, whether contractual or not, whether civil, commercial, credit, industrial or agricultural.

I believe that this proposal replaces all the examples in this article. It is of a general nature and clarified as a general rule.

Article 2 Paragraph 4: Arbitration shall be international in the application of the provisions of this Law if its subject matter is a dispute relating to international trade, in the following cases:

A. If the seat of the employees of each of the parties to the arbitration agreement at the time of conclusion of the agreement is located in different States, if one of the parties has more than one place of business, the lesson on the place of business most relevant to the subject matter of the arbitration agreement shall be the case. A lesson in his usual place of residence.

B. If the principal place of business of all the parties to the arbitration agreement is located in the same State at the time the arbitration agreement is concluded and one of the following places is located outside that State

- The place of arbitration indicated in the arbitration agreement or at the place indicated.
- The place where a substantial part of the obligations arising from the parties' relations is performed.
- The most relevant place in relation to the subject of the conflict.

C. If the subject matter of the dispute that is the subject of the arbitration agreement involves more than one State.

D. If the parties agree to use a permanent arbitration institution based inside or outside the State.

Requirement 3: Practical proposals for arbitration in Qatar

Contemporary look

Distinction between national and international commercial arbitration

First: geographical basis

1. The first criterion for distinguishing between the two is that arbitration is considered foreign if one of its parties is foreign and arbitration is domestic if the litigants belong to the nationality of the State concerned. The arbitral award was made in a State other than the one in which it is requested.

The 1961 Geneva Convention on International Arbitration went further by declaring that the dispute arose out of an international commercial process if the dispute involved persons residing or having permanent resident status in different States. The 1985 United Nations Convention on International Commercial Arbitration had another basis: It is considered international if the parties at the time of conclusion of the arbitration agreement reside in different countries.

Second: The economic base

2. Some case law cases have another basis, namely that the dispute over international commercial interests is the basis for international arbitration, regardless of the place of arbitration or the nationality of the litigants. The French Arbitration Act of 1981 adopted this standard.

Thus, according to this consideration, if there is a project to establish an oil refinery in a given country by national companies but on the basis of international contracts to import all project equipment from one or more foreign countries, this dispute is considered to be the basis for international arbitration because of the international interests involved in the implementation of the project, even if His parties are patriots and will be executed in the territory of the same State.

Third: The importance of distinguishing between domestic and international arbitration

3. If the arbitration is domestic, the national judiciary may control the arbitral award by dealing with the subject matter of the dispute, which is applicable in some States, while the laws of some States do not allow the national judiciary to deal with the subject matter of the dispute when requesting the application of the international arbitral award.
4. International arbitration is broader than domestic arbitration. In the latter case, national legislation does not allow for the arbitration of labor disputes, which is permitted by international arbitration, and some national laws prohibit the State and public bodies from submitting their disputes to individuals and companies for domestic arbitration. Disputes with foreign companies and state laws

apply to domestic arbitration and thus invalidate the arbitral award that contravenes domestic arbitration law, as arbitration is a means of obtaining justice.

Thus, public policy is affected while national law on arbitration does not apply to international arbitration, but the national judiciary examines the arbitral award in accordance with its agreement with public policy when it requests the application of the international arbitral award in the territory of the State. International arbitration provision with international public policy and not with domestic public policy.

5. National laws have drawn attention to the importance of the distinction between domestic and international arbitration in order to reduce the interference of the national judiciary in international arbitration, this distinction attracting international arbitration to States whose legislation does not hinder its conduct and is not linked to domestic arbitration rules, as international arbitration has nothing to do with domestic arbitration. Consequently, the Law on Domestic Arbitration and the Law on International Arbitration were published separately in France by one year. The first was published in 1980 and the second in 1981, as well as the English and Lebanese legislators in 1983, and the Belgian legislator followed an advanced approach. The Law on International Arbitration provides that the Belgian judge is not competent to annul the international arbitral award.
6. Modern case law has tended to weigh the economic criterion against the geographical criterion and to consider that arbitration is international under the following conditions:

   First: to be a commercial subject, i.e. operations with an economic objective.

   Second: this trade must be international, i.e. a movement of funds, goods or services across the geographical borders of States.
7. The 1985 United Nations Model Law on Arbitration, in its articles 1 and 3, provides that arbitration is considered international in the following cases:

   First: if the premises of the parties to the arbitration at the end of the arbitration are located in two different countries

   Second: If the place of arbitration is located in a State other than the place of business of the parties.

   Third: If the implementation of the main obligations arising from the commercial contract is different from that of the parties' headquarters.

   Fourth: If the parties expressly agree that, the subject matter of the arbitration agreement concerns more than one State.

First: the idea of national public order:

8. Public policy rules: a set of rules of law that cannot be violated and that are in addition to all the political, economic, social and moral systems on which society is founded and which is at the heart of

public policy even if it is not stipulated in the laws and does not stipulate inadmissibility. To rape him because they are the pillars of society and agreed for hundreds of years.

9. The notion of public order is flexible and varies according to the place and time. What is considered a public policy in one State may not be considered a public policy in another State but may be considered a crime and what is considered a public policy at one time in one State may not be considered at another time in the same State.

Difference of place: the call for the establishment of the monarchy in a republican state is a crime, because the republican system is considered as one of the rules of public order and vice versa, while a call for a republican system in a monarchic state is considered as a crime, because the monarchy is one of the rules of public order that cannot be broken.

For example, the different public policy rules on the length of time that smoking had been considered in some Arab countries to be contrary to the public policy of public morality, then became permissible and did not violate public policy.

10. The universally established rule is that any agreement or conduct contrary to the public policy of the State is absolutely null and void and that, consequently, the judiciary has the right to annul it on its own initiative, without request from the parties to the proceedings. Arbitrations pronounced in violation of public policy are considered null and void by the judiciary once they have been submitted to the national judiciary for execution.

Second: the idea of an international public order

11. In view of the conflicting idea of public policy between States, the concept of international public policy has emerged in the context of international commercial relations between parties belonging to different nationalities of States, which consider their disputes before international arbitration. The general interests of a particular society, but taking into account the other thing, the protection of international solidarity, which requires the contribution of each country to the development of relations between peoples in order to create a mutual understanding that creates peace Each country should facilitate this communication and eliminate obstacles to achieving even those that require sacrifices if tended to consider that international solidarity requires the application of foreign law in the case of compatibility with the interests of international trade, including does not harm the public interest of the State.
12. The concept of international public policy can be conceived as reconciling the interest of the State with the interest of international trade. The judge decides accordingly on the basis of his or her conviction, as it is impossible to establish a precise determination of national and international interest. It is carried out in France even if arbitration has been considered in France and therefore if an arbitral award is made in a labor dispute between an employer and a worker who is not French, this

arbitration is international and the French judiciary does not invalidate such a provision, even if French law does not allow arbitration in labor disputes. The arbitration was heard in France because it is not contrary to international public policy, although it is contrary to French public policy.

13. In the field of international commercial arbitration, the judiciary has tended to adopt the idea of international public policy and to accept that the obligation to trade gold in international contracts providing protection against price fluctuations is considered acceptable. In this regard, the judiciary has preferred to protect international trade at the expense of the national interest. The requirement to process gold to protect the national currency was held that the text of the law prohibiting the use of government and public sector arbitration in disputes arising from contracts concluded by these bodies is considered to be related to domestic public policy and not to international public policy. Governments and public sector entities accept the arbitration clause in their international contracts provided that these contracts are contracts of private law and not in the field of administrative contracts.
14. In accordance with the concept of international public policy, the Supreme Court of the United States of America ruled that trade with world markets and international seas could not be conducted in accordance with our conditions under our laws applied by American courts because the rules of national public policy do not apply to international trade disputes. The enforcement of an arbitral award has settled a dispute between a bankrupt US company and a Japanese company, even though US public policy rules prohibit bankruptcy proceedings before arbitration.
15. The question is to clearly define the rules of international public order and to answer this question. It can be said that the general principles established in the States of the world respect the law and legality, such as respect for human rights in general and the right to material, literary and artistic property and non-judgment. This is detrimental to the person or freedom of the debtor and non-discrimination on grounds of sex, race or religion. Some provisions relating to international arbitration established that the rules of international public policy did not allow unlawful commissions to be required for arbitration and that, in some cases, arbitral tribunals had responded to requests. It broke the commission request and established this deletion of the "Nemo auditor" principle.
16. According to some case law, it would be appropriate for arbitrators to always seek to create obstacles to agreements contrary to the interests of the injured State by commissions and to unethical agreements in international economic relations.

According to some case law, the international arbitrator of the present time should be an objective thinker who reacts to different cultures and political and social systems and does not consider the conflict to be imbued with a certain culture. These considerations are vital to the president of the arbitral tribunal, as it is likely that the arbitrators will be in conflict, but these considerations are also required by the members of the tribunal. Arbitration.

17. International commercial arbitration agreements provided for the respect of the rights of the defense, such as the 1927 Geneva Convention, the 1958 New York Convention and the 1961 European Geneva Convention. They annulled all arbitral awards infringing the rights of the defense and that these rights were not linked to a specific national law. The need to treat opponents on an equal footing and the principle of open court and oral argument, so that the violation of the rights of the defense constitutes a violation of international public order.
18. An example of the judicial power's tendency to distinguish between national and international public policy is a case brought before the Tunisian judiciary by the Tunisian Electricity Company, a public sector company, against the French company Entrepose to settle a dispute arising from a gas transport contract in Tunisia, where the French company argued that the jurisdiction of the judiciary The Tunisian company responded to this argument that Tunisian law prohibited government and public sector entities from resorting to arbitration in contractual disputes settled by the Tunisian Chamber of Commerce (ICC). The Tunisian court refused to admit that it did not have jurisdiction to hear the case and rejected the defense of Tunisian society on the grounds that the prohibition provided for by Tunisian law does not apply to international contracts.
19. Another example of the application of the concept of international public policy, in which American courts have long held that antitrust cases cannot be adjudicated by arbitration, is that the United States Supreme Court recently ruled that this rule applies to domestic disputes, but that they can be settled. Arbitration if these disputes are international.
20. Some States have tended to develop a national law on international arbitration and another on domestic arbitration, such as the French law on international arbitration of 1981, preceded by the law on domestic arbitration of 1980, as in Lebanon. The purpose of this trend is to maintain the State's domestic arbitration law, which can be based on stable and long-standing traditions, and to promulgate a law of international arbitration so that the judiciary has a clear legislative instrument to distinguish between domestic and international arbitration rather than leaving it to the discretion of the judiciary.

This is the right solution for States that do not wish to modify national arbitration law and therefore make judicial intervention in international arbitral awards flexible and limited, without national judges being embarrassed to face the rules of national public policy when considering applying or appealing the application of international arbitral awards. These provisions.

21. One of the judgments of international arbitration in this regard is the 1975 decision of the Arbitration Chamber of the International Chamber of Commerce.

"The arbitrator is not obliged to fully respect the law that the parties have agreed to apply to the dispute, but always has the freedom to reject solutions arising from that law that are incompatible with

international public policy. It ruled on behalf of the State, but on the basis of general legal rules, general legal principles and the spirit of universally established law.

22. The Commission rejected the provision of certain rules of law that the parties agreed to apply in respect of the dispute and established that this refusal was contrary to the general spirit of the Common Mind the Law Act.

This term refers to the general principles of law recognized by civilized countries and the application of stable judgments on the application of these principles, which have rejected them. It is a special justice of Sui Generis.

23. It is recognized, however, that the application of the concept of international public policy in international arbitral disputes, even if it contravenes the rules of domestic public policy, cannot be compromised by a national interest of great importance to the State.

Therefore, when an international arbitral award is submitted to it, the national judiciary must strike a fair balance between international public policy and domestic public policy, and must prevail as it deems appropriate. There is no disciplined rule distinguishing between international public policy and domestic public policy. Without prejudice to the national interests of the State to which it belongs, the objective is to facilitate international trade, which suffers from the domination of national interests over its course.

The role of the national judiciary in assisting international arbitration

24. It is universally accepted that arbitrators do not have executive power, although the function of arbitration is of a judicial nature and purpose, but the source of this function is contractual, with arbitration resulting from the agreement of the wills of the parties.

During the dispute, an order requiring an order or provisional measure may be made against a third party outside the dispute to collect evidence or to preserve the money or property in dispute, such as the transfer of witnesses to the arbitral tribunal, where the latter considers that the evidence is: Prosecution, at the request of either party to the dispute or when the Commission deems it necessary, without anyone having asked about the importance of the truth in the dispute.

According to a well-established rule, arbitrators may ask the parties to a dispute to submit a document in the possession of one of them because of its importance to the resolution of the dispute or because the other party has invoked it in its defense. However, the arbitrator has no binding authority over the opponent who has been ordered to present the document and can only compel him by order of the formal and forcefully enforced judiciary, or by forcing him to impose a threatening fine for each day the document is late.

25. On the other hand, the arbitral tribunal may not ask a person outside the dispute to submit a document. The courts have this power under the laws of some states. It is not uncommon for the arbitral tribunal to request this from the judicial authorities.

For example, the dispute submitted to arbitration must be between a contractor and an employer; in its defense, the contractor needs the bank's documents indicating the deposit of certain amounts relating to the subject matter of the dispute; and it must file an urgent case before the court requesting the bank to submit this document. The Arbitral Tribunal has at its disposal the details of its defense, which specify the importance of this document for the determination of the cause of the arbitration.

26. Arbitral tribunals have the prerogative to hear witnesses in the dispute but do not have the power to compel a witness to appear before the arbitral tribunal. The role of the national judiciary in assisting arbitral tribunals appears to be important. In this case, the interested party may seek justice by asking a witness to appear. If the arbitral tribunal summoned the witness without requesting one of the parties to the dispute, the tribunal has no legal reason to request it from the court.
27. Arbitral tribunals have the right to issue expert opinions to provide technical advice on disputes before them that they need, when the dispute is strictly technical and the arbitrators cannot rule on the basis of their experience with the rules of commercial custom. However, there are urgent cases, such as perishable foodstuffs, such as vegetables, fish, chemicals, rapid evaporation or rapid self-combustion, such as coal, and there is an urgent need to review this information.

It is legally possible to declare an expedited prosecution for a hearing held the next day or between one and one hour and one hour on the same day, during the procedure preceding the hearing of the dispute before the arbitral tribunal.

28. In the event that an urgent action to prove the case must be brought before the arbitral tribunal, the litigant may request a short-term arbitration procedure to file a legal action, with proof of its importance, until the court responds to the request for postponement.

State laws differ with respect to interim orders: some laws confer this jurisdiction on the courts, while others confer this jurisdiction on arbitrators and arbitral tribunals, even with respect to seizure and sale orders.

29. One of the roles of the judiciary in assisting arbitral tribunals is to prevent the potential arbitrator from presiding over the arbitral tribunal and to prevent a party from choosing the arbitrator to represent it before the tribunal, despite the existence of an arbitration clause or agreement. In such cases, the competent court shall make the selection, which shall be limited to free arbitration.

Ad hoc arbitration, i.e. the selection of an arbitral tribunal to rule on a single dispute If the arbitration clause or agreement provides for the jurisdiction of a permanent arbitration center, called an institutional arbitration, arbitral tribunal or arbitration board The process of selecting a weighted arbitrator

or arbitrator that a party has not appointed. For example, the Arab-European Arbitration Centre in Paris and the Arbitration Centre of the International Chamber of Commerce in Paris.

The competent court may appoint an alternate arbitrator for free arbitration or the arbitral tribunal in the case of institutional arbitration.

30. It is clear from the above that cooperation between arbitration and the judiciary is aimed at ensuring the effectiveness of arbitration and guaranteeing its independence. At the same time, the national judiciary must have the power to take the necessary measures to ensure the proper conduct of the arbitration.

In addition, the national judiciary plays a final supervisory role when making an arbitral award, in order to ensure that the judgment does not violate the rules of international public policy.

31. The judiciary may annul the arbitral award if it violates the rules of international public policy: procedural defects affecting the judgment - violation of the equality of the parties. However, when examining judicial practice in the field when appealing international arbitral awards, we note a clear tendency on the part of judicial authorities to restrict judgments quashing international arbitral awards. Courts often tend not to accept appeals from sentences for one reason or another, or to dismiss appeals on grounds that are not valid.

The Swiss court argued that an appeal against an arbitral award was not an appeal in the technical sense of the term and that, where the parties had chosen the arbitration route, they knew that it was the last means of settling the dispute and that they accepted it with their consent. In cases where the arbitral awards have been set aside, the annulment is in favor of the arbitration and not against it.

The basis for the annulment provisions was the poor quality of the arbitrators or their inappropriate conduct. This is the case of the judiciary when higher courts overturn judgments rendered by lower courts. Arbitrators and judges alike are not infallible.

The role of the parties to the dispute in international arbitration

32. When the contract is concluded, it may be stipulated that the dispute that may arise from its performance or interpretation must be decided by a sole arbitrator chosen by the parties or by an arbitral tribunal chosen to settle it, this being an "ad hoc arbitration". The dispute is referred to as a permanent arbitration center called "institutional arbitration". At the time of conclusion of the contract, the parties are not aware of the nature of the dispute that may arise in the implementation of the obligations under the contract.

This is called the arbitration clause.

33. The contract may not contain an arbitration clause, but when the dispute arises at the stage of its application, the parties to the contract consider that the dispute should not be brought before the courts because of the duration of a judicial procedure and, in that case, conclude an agreement by

which they agree to submit the dispute to arbitration. The so-called "arbitration agreement" All arbitration laws in the world are unanimous on the lawfulness of using one of these methods and one or the other of them leads to the incompetence of the judiciary to use arbitration and the jurisdiction of the arbitral tribunal.

34. Although the parties to the contract refrain from any importance of dispute resolution by arbitration, the parties' conduct may differ when the dispute arises and their personal interests encourage them to take positions incompatible with their initial desire to resolve the dispute by removing it from its formal jurisdiction, a chapter of the dispute while maintaining the commercial relationship and the desire for reconciliation. It has been noted in some international arbitration cases that there are opposing positions inconsistent with this initial trend, according to which an opponent was attempting to disrupt the dispute by making malicious arguments with which the Commission could be obliged to suspend the arbitration proceedings and return the documents to the judiciary, as in the case of the fraud challenge and this trend. Some will lose arbitration, the most important characteristics of which are the speed of dispute resolution and the saving of time, effort and money to encourage international trade, which suffers from lengthy procedures, wasted time and excessive expenses.

The question therefore arises of the conduct of the parties to the dispute in arbitration cases and the liability of moral litigants in international arbitrations.

35. The case law has argued that it is pointless to speak of the need for a breach of an obligation by the party in breach of its obligations when considering the dispute in arbitration, since the personal interest has the greatest effect on the conduct of such an adversary, since the early resolution of the dispute will entail its legal liability for breach of its obligations. This liability will be translated into amounts to be paid.

This fact annoys the dithering opponent, whose judicial power has been awaiting procrastination for many years, in the hope of obtaining a waiver from his opponent for some of his rights because of the boredom of the duration of the proceedings. Therefore, there is no solution for the opponent who procrastinated during the arbitration, except to deactivate the arbitration proceedings in an attempt to extend the duration of the hearing of the case for the maximum possible period.

36. Faced with this arbitration problem, the case law considered that the only reason for this type of litigant to cooperate to put an end to the dispute was that he feared that the disruption of the arbitration would lead the arbitral tribunal to favor the complainant, giving him the right of origin and committing the procrastinator to incur expenses.
37. In our opinion, this case law is valid because the personal interest of litigants leads them to postpone and obstruct the arbitration process. It is absurd to talk about the moral obligations of opponents in this area. The remedy consists in the arbitral tribunals being firm, they do not allow postponement

twice for a single reason and the defense immediately rejects the apparent malice. With regard to what is outside its jurisdiction, such as the call for falsification, the body should if the fraud is unfounded and pay the apparent malice and it is clear to the naked eye without the need for the experts to refuse to pay.

With regard to the request for referral to experts, the arbitral tribunal shall use the files with the expert and set a short deadline for the submission of its report.

He has always been convinced of the safety of his work and the achievement of the points awarded to him, and of the fact that he investigates the equality of opponents in the performance of his mission.

Conclusion:

The purpose of each research is to draw the final results and to make suggestions or recommendations, if any, for the development of research on the topics addressed. We show the following:

1. Commercial arbitration is used to settle postponements, because of the freedom of the parties to the arbitral dispute to choose the law applicable to the arbitral proceedings, in addition to the freedom to choose the arbitral tribunal, the law governing the dispute, etc.
2. The choice of law applicable to the proceedings is limited by the fact that the arbitral proceedings do not violate public policy.
3. The fundamental procedural rule is the freedom of the parties to choose the procedural rules, provided that the principle of due process is respected.
4. The law applicable to arbitral proceedings is not necessarily the law applicable to the subject matter of the dispute.
5. It is clear from Qatari, Egyptian, French and English arbitration law, international treaties and conventions, the opinions of lawyers and arbitral awards that the parties have given priority to the willingness of the parties to establish the procedure themselves or to choose a national law or arbitration rules to apply to the procedure. Existence of such an agreement the arbitral tribunal will have the power to choose the applicable law according to the variants mentioned in the research.
6. Provide intensive courses to lawyers, judges and arbitrators on matters of arbitral procedure.
7. The Qatari Arbitration Act did not provide for nullity in the event that the arbitral tribunal did not comply with the applicable law agreed by the parties to the arbitral dispute, and we hereby recommend that the legislator add a paragraph to the text of article 49 of the Qatari legislator, as follows: Arbitration, except in the following cases: If the arbitral tribunal ignores the rules of procedure that the parties have decided to apply to the arbitral dispute.

8. We call on the Qatari legislator to introduce a separation between national and international arbitration, following the example of French arbitration, in order to eliminate any confusion and controversy that may arise under Jordanian law.
9. The study recommends that researchers examine the impact of arbitration on society, due to the preservation of human relationships and the continuity and interdependence of human relationships, rather than the nature dominated by litigation, as well as the complexity and multiplicity of court proceedings.

References:

- Abou Habib, Saïd, Fiqh dictionary
- Abu Al-Wafaa, Ahmed, Optional and mandatory arbitration
- Abu Zeid, Radwan, General principales of international commercial arbitration
- Alam El Din, Muhyiddin, Judgments rendered by the Cairo Centre
- Alam El Din, Muhyiddin, Multilateral arbitration
- Al-Awa, Mohammad Salim, Law on Arbitration in Egypt and the Arab States, Parts I and II
- Al-Awa, Mohammed Salim, Studies in arbitration law
- Al-Baridi, Mahmoud Mukhtar, (1999), International Commercial Arbitration.
- Al-Haddad, Hamza Ahmad, Arbitration in Arab laws
- Ali, Shams Mirghani, Arbitration within the framework of the Cairo Regional Centre
- Badran, Mohamed Mohamed Mohamed, Arbitration Conferences
- Dasuki, Abdel Moneim, Elimination of criticism in civil matters
- Fathy, Mohamed, The Civil Matters Arbitration Act
- Fayoumi, (1987), The Lebanon Library Illuminating Lamp.
- Kholousy, Mohamed Majed, Arbitration assets in engineering disputes
- Khulusi, Mohammed, Qandil, Hicham, Arbitration cases rendered by the Arab Arbitration Centre
- Labib, Mahamed, Contractcontract
- Mehran, Bilal Mahmoud, Family provisions in Islamic jurisprudence
- Middle East and Mediterranean Arbitration Complex, Conferences on the fundamental problems of international arbitration from a development perspective
- Omar, Nabil, Maritime Arbitration
- Regional international commercial arbitration sections 1: 6
- Sanhouri, Mohammed Faraj, Mediator in the Civil Code

- Second Islamic Conference of Shariah and Law, Absolute arbitration in the light of Islamic law
- Shafiq, Mohsen, (1974), International Commercial Arbitration Conferences for Students, Law of the Cairo Faculty of Law.
- Sharqawi, Mahmoud Samir, International commercial arbitration and comparative legalstudy
- Wali, Fathi, Arbitration law in theory and practice