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Palestinian Legislative Council Proposed Arbitration Law

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APPENDIX A

Palestinian Legislative Council

Proposed Arbitration Law

Submitted by: The Council of Minister
PLC Reading: No. 1
Date: 23/11/1999

DRAFT LEGISLATION ON ARBITRATION

No. () of ()

CHAPTER ONE

Definitions and General Rules

ARTICLE 1

The following words and expressions, wherever they appear in this legislation, will have the meaning given hereunder, except when otherwise specified.

-- Arbitration: Means of solving disputes between parties by submitting the subject of dispute to the Arbitration Commission who decide on it.

-- Arbitrator: The natural person who arbitrates.

-- Arbitration Commission: One or several persons to whom the dispute is submitted for decision.

-- Arbitrator who Casts Vote: The arbitrator who casts the vote to break a tie.

-- Expert: Person with special expertise called upon to provide opinion in technical matters.

-- Special Court: The court designated to settle the dispute submitted to the Arbitration Commission when the arbitration is local. When the arbitration is international and takes place in Palestine, the designated court is the court of first instance that has jurisdiction over the matter. In the case of a foreign arbitration, the designated court is the court of first instance in Jerusalem, the capital of Palestine or the temporary site in Gaza.

ARTICLE 2

Subject to Article 4 of this Law, this Law shall apply to every arbitration between natural or legal persons, having full legal capacity over the rights involved in the matter subject to arbitration and in accordance with the international agreements to which Palestine adheres.

ARTICLE 3

In this Law, the following applies:

1. Arbitration is considered local when it does not involve international trade and when it occurs in Palestine.

2. Arbitration is considered international when its subject is a dispute over economic, trade or civil issues in the following cases:

a. When the headquarters of the parties to arbitration are located in different countries at the time of signing the arbitration agreement. If a party has several headquarters, the more frequently used one is the one that relates to the arbitration agreement. If a party does not have a headquarters, the party's usual residence is the one that relates to the arbitration agreement.

b. If the subject of dispute in the arbitration agreement involves more than one country.

c. If the central headquarters of the parties to arbitration is located in the same country at the time of signing the arbitration agreement, and if one of the following places is located in another country:

(1) The place where arbitration occurs as designated by the arbitration agreement or if reference is made as to how it should be designated.

(2) The place of implementing a substantial part of the commitments resulting from trade relations between the parties.

(3) The place that is closely related to the subject of dispute.

3. The arbitration is considered foreign if it occurs outside Palestine.

4. Arbitration is considered private when it is entrusted to one or several arbitrators and when a specialized institution does not undertake it.

5. Arbitration is considered institutional when a specialized institution, which organizes and supervises the arbitration process, undertakes it. Either it is located inside or outside Palestine.

ARTICLE 4

This law does not apply to the following cases:

1. Cases concerning general order in Palestine.
2. Cases where arbitration is precluded.
3. Disputes involving the personal status.

CHAPTER TWO

Arbitration Agreement

ARTICLE 5

An Arbitration agreement is an agreement between two or more parties which stipulates to refer all or part of the dispute that results or may result in the future from disagreement on a particular legal relationship whether it is binding or non-binding.

1. The arbitration agreement can be a condition appearing on a separate contract or agreement.

2. The Arbitration Agreement must be in writing.
3. The Arbitration Agreement is deemed to be in writing when signed by the two parties whether by exchange of letters, faxes or other written means.
4. If arbitration is agreed upon following a dispute, the agreement should include the subject of arbitration, otherwise it is considered invalid.
5. The condition to arbitration shall be binding on the parties and may not be voided by the termination or cancellation of the Agreement.
6. The arbitration agreement cannot be canceled, unless the parties agree to do so.

ARTICLE 6

The death of a party to the Agreement shall not void the arbitration agreement unless the dispute concerns the deceased person.

ARTICLE 7

1. If one party to the arbitration has commenced a legal proceeding in a court of law against the other in a matter reserved for arbitration, the other party may submit a motion to the court requesting a stay of the proceeding and the court shall so order if it deems that the arbitration agreement is valid.
2. The court proceeding initiated in paragraph 1 of this Article shall remain in effect until the arbitration proceedings commence or until the arbitration decision is rendered.

CHAPTER THREE

The Arbitration Commission

ARTICLE 8

1. The composition of the Arbitration Commission is agreed upon by the parties and may be one or more arbitrators.

2. If the number of arbitrators is more than one, the arbitrator shall designate an arbitrator with a casting vote.

ARTICLE 9

The arbitrator must have legal capacity and shall enjoy full civil rights and shall not be convicted of a crime, felony or misdemeanor, be adjudicated bankrupt or be found guilty of dishonor.

ARTICLE 10

Without contravening this Law, if the Arbitration Agreement assigns an arbitration institute to arbitrate, the provisions of this Law shall apply to the arbitration proceedings, to the commission of arbitration which shall be subject to the supervision of the institute including the payment of associated costs.

ARTICLE 11

1. At the request of either party or the arbitration commission, the court may appoint an arbitrator or an arbitrator with a casting vote whose name appears on the list of certified arbitrators recognized by the Justice Department in the following instances:

a. If the arbitration agreement stipulates to refer the dispute to one arbitrator and the parties do not agree about the appointment of that arbitrator; or

b. If each party has the right to appoint an arbitrator and does not; or

c. If the appointed arbitrator refuses to arbitrate during fifteen days from his appointment; or

d. If an arbitrator withdraws or loses his legal capacity and the party(ies) fail to appoint a substitute; or

e. If the arbitrators cannot designate one to have a casting vote or disagree among themselves; or

f. If the additional arbitrator refuses to arbitrate and the arbitration agreement does not specify the way to appoint a substitute and the parties fail to agree on appointing a substitute.

2. The court shall make a decision within 15 days from date of notification and its decision is final and not subject to appeal.

ARTICLE 12

1. The arbitrator notifies by writing its acceptance to carry out the arbitration duty, or sign the arbitration agreement, or starts the arbitration work.. The Commission should underline, when accepting the arbitration, the duty of neutrality and impartiality.

2. The arbitrator may not without reason withdraw its acceptance to carry out its duty.

ARTICLE 13

1. An arbitrator cannot be dismissed except when proof of his impartiality is established.

2. Request for dismissal of the arbitrator may not be requested after his appointment unless compelling reason is discovered after appointment.

3. Without contravening paragraph (1) of this Article, the request to dismiss or set aside the arbitration commission is not permitted without cause.

ARTICLE 14

1. If the need to request the dismissal of the Arbitration Commission or one of its members arises, such request should be filed within 15 days from the date the Commission or the arbitration institution receives such a request. In case of an institutional arbitration such request must not be in contradiction with the rule governing the arbitration institution.

2. If the request of dismissal is rejected, the party who requested it can dispute such a decision at a special court within 15 days from the date of issue of the rejection decision. The decision of the court cannot be disputed.

3. The arbitration proceeding shall be suspended pending review of the request to dismiss.

ARTICLE 15

1. If the arbitrator's duty is terminated due to his death, dismissal, or any other reason, a substitute should be appointed according to the same procedure followed for the appointment of his predecessor, or in accordance with the rules of Article 11 of this legislation.

2. The arbitration process is suspended until the substitute arbitrator is appointed.

ARTICLE 16

The Arbitration Commission deals with the following:

1. Subject matter issues;
2. Arbitration Agreement issues;
3. Requests for dismissal of the Arbitration Commission or one of its members, and
4. Defenses related to the arbitration submitted for its reviews.

ARTICLE 17

The arbitration commission may refer any matter to the court on law issues.

ARTICLE 18

The parties can agree on the rules of procedure that should be followed by the Arbitration Commission. In case they fail to agree on such rules, the Arbitration Commission should apply the rules of procedure that it considers most suitable.

ARTICLE 19

1. In case the arbitration is institutional the commission applies the rules of procedure set by the arbitration commission chosen by the parties.

2. If the arbitration is international the Commission applies the procedure stipulated by the law chosen by the parties. In case of conflict of laws, the Commission applies the principles of the Laws of Palestinian where applicable with due consideration to the principles that govern the relations between the parties.

CHAPTER FOUR

Arbitration Proceedings

ARTICLE 20

The arbitration commission commences its duties immediately once the matter is referred to it and upon accepting to arbitrate the referred matter.

ARTICLE 21

If the parties fail to agree about the place of arbitration, the arbitration occurs at the place designated by the Commission. The latter can hold one or several sessions in the place it considers as suitable.

ARTICLE 22

1. Arbitration is carried out in Arabic language, unless otherwise stated by the parties. In case of use of different languages by the parties, the Commission can decide about which language is to be used.

2. The Arbitration Commission can ask any party to submit documents translated into the language that is used.

3. The Commission can hire a translator in case of difference in languages.

ARTICLE 23

1. The claimant must address to the defendant as well as to the Arbitration Commission, within the time frame set by the latter, a written description of all the claims and should define clearly the subject of dispute and attach all the relevant documents supporting his claims.

(a) The defendant should, within 30 days from the date he receives the claimant's letter, respond with a similar letter, giving details of his counter-claims and should attach the relevant documents supporting his views. He must send copies to the claimant and to the Commission.

(b) The commission may extend the period specified in paragraph 2(a) if it deems it necessary.

2. The Commission can, at any state of the arbitration process, request the parties to submit the original documents, except if it is otherwise stated by the parties.

ARTICLE 24

The Arbitration Commission sets a date for the meetings and informs the parties sufficiently ahead of time and hears and records the parties' depositions.

ARTICLE 25

The papers should be sent to the addressee at his place of work or residence or postal address as it appears in the arbitration agreement or in the contract calling for arbitration unless the parties agree otherwise.

ARTICLE 26

1. In case the claimant, with no acceptable reason, does not submit a written claim according to paragraph 1 of Article 23, the Arbitration Commission must order the end of the arbitration procedure.

2. In case the defendant, with no acceptable reason, does not submit his response according to paragraph 2 of Article 23, the Arbitration Commission should continue its procedure without considering this to be an admission from the part of the defendant of the claims made by the claimant. The Commission can base its decision on the documents submitted to it.

ARTICLE 27

The Arbitration commission shall hear all evidence and take the minutes of the proceedings and provide copies to the parties upon their request.

ARTICLE 28

1. The Arbitration Commission can, upon request by any one party, summon a witness to appear before the Court or submit a document.

2. The Arbitration Commission can ask a court of competent jurisdiction to issue a notification to the witness in case the latter refuses to appear before the Court.

ARTICLE 29

The Arbitration commission may request from a court of competent jurisdiction to have a witness who resides outside court's physical jurisdiction to give his testimony at another court of competent jurisdiction.

ARTICLE 30

Upon request by any one party, the Arbitration Commission can appoint an expert to look into a specific matter; the parties should provide the latter with all the supporting documents.

ARTICLE 31

1. The Arbitration Commission sends a copy of the expert's report to the parties and allows for discussion with the expert in a session set for that purpose.

2. Each party can bring one or more experts to give their opinion about the expert's report that was appointed by the arbitration commission.

ARTICLE 32

1. If a major document is disputed as false, the disputing party is charged by the Commission to prove his claim before competent authorities.

2. The arbitration procedure is suspended until the fraud is determined if the party claiming fraud submits a request within 7 days of his claim to fraud.

ARTICLE 33

The Arbitration Commission can, on its own initiative or upon request by a party, issue an order to speed the proceeding or declare a reservation about the proceedings if the arbitration agreement calls for such and such an order shall have the force of an order issued by a court of competent jurisdiction and is implemented as such.

ARTICLE 34

The Arbitration Commission can oblige the parties to deposit any amount it considers necessary for covering the expenses arising from the Arbitration process if any party refuses. The Commission can request from a special court to issue an order to the purpose.

CHAPTER FIVE*The Arbitration Decision and the Appeal***ARTICLE 35**

1. Each party to the arbitration may amend its application or its defenses or may provide additional material during the arbitration subject to the Commission's approval.

2. After closing of the parties' depositions, the Arbitration Commission issues an order to submit the case to judgment while allowing the parties if they wish so to submit closing memoranda within the time frame set by the Commission.

ARTICLE 36

The parties to the dispute may empower the Commission to resolve the dispute. The Commission can by itself propose an amicable settlement.

ARTICLE 37

If the parties agree to resolve the dispute before the Arbitration decision is issued, the Commission can issue a decision acknowledging the settlement under the Commission condition agreed upon and consider such decision its own.

ARTICLE 38

1. a. The Arbitration Commission issues its objective decision on the date set by the parties.

b. Unless the parties agree otherwise, the Commission shall make the decision within twelve months from commencement of the Arbitration; the Commission may make the decision within six months.

2. If the decision is not made within the period specified in paragraph (a) of this Article, either party may petition a court of competent jurisdiction to set another deadline for completion of arbitration proceedings; either party may at this complain to the court.

3. The Arbitration Commission shall render its final decision within three months from submission of case for judgment; the Commission may extend this period if deemed necessary.

4. Decision shall be made by consensus if one arbitrator is presiding or by casting vote if majority is not obtained.

ARTICLE 39

1. The arbitration decision must include a summary of the arbitration agreement, its party, its subject, the claims and requests and the reasons explaining the decision, along with the date and place of issue and the signature of the Arbitration Commission.

2. The Commission includes on its decision all charges, expenses and fees resulting from the arbitration and the method of payment.

ARTICLE 40

The Arbitration Commission issues its decision in the presence of the parties. In case of the absence of the parties, if one or more is absent, the Commission issues its decision and informs the absent party in writing, unless the parties agree otherwise.

ARTICLE 41

Without contravention of this Law, the arbitration shall not be published either in whole or in part unless the parties agree or upon court approval.

Article 42

1. The Arbitration Commission can by itself and upon request by one of the parties, and under condition of informing the other party, correct any

mistake in the decision within thirty days from the decision which may have occurred in figures or in writing and the correction is made on the original of the decision, and is signed in the presence of the parties.

2. The correction shall be made within thirty days from the date of the decision if the Commission is initiating the correction or within thirty days from the request for correction if a party is requesting the correction.

3. The Arbitration Commission, upon request by one of the parties, and within 30 days from the date he is informed of the decision, and on conditions of informing the other party, can explain a particular point that appears in the arbitration decision or part of it. The explanatory note shall become part of the decision.

4. If the Arbitration Commission is unable to convene due to the death or illness of the arbitrator, a court of competent jurisdiction shall preside over the matter unless otherwise is expressly agreed.

ARTICLE 43

Any party can appeal the arbitration decision for one of the following reasons:

1. If a party to the arbitration is declared incompetent.
2. The ineligibility of the Arbitration Commission or one of its members.
3. Contravention of the general laws of Palestine.
4. Invalidity or expiry of the arbitration Clause.
5. Misconduct by the Arbitration Commission or disrespect of the rules and conditions of arbitration.
6. Invalidity of the arbitration decision or its procedure.
7. If such a decision was reached by illegal or fraudulent means.

ARTICLE 44

The appeal request shall be submitted to a court of competent jurisdiction within thirty days from date of decision if rendered in the presence of the parties, or on the day following notification. If the appeal is made pursuant to paragraph 7 of Article 43, then the appeal shall start running from the date of discovery of fraud.

ARTICLE 45

1. In case the time limit stipulated in Article 44 expires without appealing the arbitration decision, the court of competent jurisdiction, upon request by one of the parties issues a decision acknowledging the arbitration and giving executive status. The court's decision is considered final and is enforced like a court decision.

2. If the Court refuses the appeal, it has deemed the decision valid and becomes executory.

3. If the court decides to nullify the arbitration decision, it can resubmit the case to the Arbitration Commission to review the points defined by the Court.

ARTICLE 46

Without contravention of Article 44 of this Law regarding deadlines, the rules of appellate proceeding shall apply to appeals.

ARTICLE 47

The arbitration decision, after being acknowledged by the Court of competent jurisdiction, has the same power and effect as a court decision and is implemented in the same way a court decision is implemented.

ARTICLE 48

With consideration of the legislation in force in Palestine and in accordance with international agreement to which Palestine is a party, the court can by itself refuse to record or implement a foreign arbitration decision in the following instances:

1. If the decision contradicts the general law in Palestine.

2. If the decision is not compatible with our international conventions and agreements that are in force in Palestine.

ARTICLE 49

The party sentenced by a foreign arbitration decision can request the Court of competent jurisdiction not to register the decision based on one of the following conditions:

1. If one of the reasons outlined in Article 43 is proven to the Court.
2. If a court in the country where the decision was issued nullified the decision or blocked its implementation.
3. If the sentenced party proves that the decision has been appealed in the country where it was issued and that judgment has not been rendered, the domestic court must suspend the recording of the decision until final decision is made abroad.
4. If one of the Courts in Palestine issued a sentence contradicting the decision in a case involving the same parties and the sentence involved the same subject and the same events.

ARTICLE 50

The party applying for registration for a foreign arbitration decision should provide the Court with the following:

1. Certified copy of the foreign Arbitration decision, according to the procedures in force in the country where the decision was issued. The Palestinian political or consular representative in the country where the decision was issued should authenticate this copy.
2. The decision should be translated into Arabic by a legal translator whose signature is authenticated by the political or consular Palestinian representative in the country of the applicant or is translated by a certified Palestinian translator.

ARTICLE 51

The defendant is notified by a copy of the application for registration along with the attached documents according to the notification procedure.

ARTICLE 52

The defendant can after being notified of the application, send his response to the Court, within 30 days from the day he was notified and shall notify the plaintiff.

ARTICLE 53

The Court's decision to register or refuse to register a foreign Arbitration decision can be disputed through appeal, within 30 days, from the day following notification, in case the decision is taken in his absence.

CHAPTER SIX*Final Provisions***ARTICLE 54**

The Minister shall issue decrees, instructions and the rules for the official list of arbitrators pursuant to article (11) of this Law.

ARTICLE 55

The Council of Ministers shall approve the regulations to this Law within six months from its publication.

ARTICLE 56

The provisions of this Law shall apply to any arbitration under way when this Law goes into effect.

ARTICLE 57

All that contravenes this Law shall be repealed.

ARTICLE 58

1. This legislation will come into force 30 days from the date it is published in the official Gazette Bulletin.

2. All concerned shall implement this Law.

