

Why mediate in Bahrain?

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The Kingdom of Bahrain ('Bahrain') has always been at the forefront of alternative dispute resolution ('ADR') development within the region, with its arbitration legislation dating back to 1971, the establishment of its first ADR centre, the Bahrain Chamber for Dispute Resolution in 2009, and the verbatim adoption of the UNCITRAL Model Law on International commercial arbitration (Law No.9 of 2015).

Bahrain took another important step towards the development of its ADR Framework in 2019 with the promulgation of the mediation law for dispute resolution under (the Mediation Law (Decree No. 22 of 2019)), and Bahrain has worked ever since towards developing the awareness as well as the environment necessary for the mass adoption of mediation as an alternative method for dispute resolution.

What is mediation?

As defined by the Mediation Law, mediation is a process whereby disputants seek the assistance of a third party in reaching a settlement to a dispute. The role of said third party (i.e. the mediator) is to facilitate discussions and promote mutual understanding between disputants, allowing them to arrive - usually without offering suggestions - to an agreeable settlement.

Mediation as defined above has been utilised as a method for settling disputes as far as written history goes, usually undertaken, albeit informally sometimes, by benevolent parties in an effort to induce harmony amongst others. In this regard, and given that successful mediation usually results in a settlement agreement or contract, the result of mediation has always been recognised and contemplated within the framework of contract law and as such, mediation settlement becomes a binding contract that is enforceable under the legal principle 'Pacta Sunt Servanda' (which translates to 'Promises must be kept').

In light of the above, mediation offers benefits that arbitration and adjudication may not as mediation usually settles disputes within days if not hours, consequentially reducing the losses and costs incurred by disputants. For instance, Singapore Mediation Centre reports that 90 per cent of disputes referred to its centre were settled within one day.

In addition, mediation enables flexible solutions that judges and arbitrators may not offer and it gives the disputants certainty of knowing that they can refuse the settlement if it does not serve their interests in stark contrast to arbitration and/or adjudication where the litigant is unaware of the outcome of the proceedings. In this regard, and given the contractual nature of the mediation, relationship of the disputants is preserved.

Issues with Mediation

Viewing mediation's benefits, it begs the question 'why isn't mediation recommended more often by legal counsel?'. And the answer to this question has usually been that a mediation settlement, unlike a court

verdict or an arbitration award is not directly executable. Put differently, the adherence to its terms may not be enforced directly but rather a law suit must be filed similar to the enforcement of any other agreement. As such, whilst the overall process might be time consuming, possibly resulting in taking a risk with resources to mediate knowing that where a party decides to rescind the settlement terms or violate any of them, the non-violating party would find itself back at square one, requiring a fresh law suit to execute the agreement, and having to endure all required procedures.

Issues, no more

Given the benefits discussed, and the effect these benefits can have on economic and legal systems, the legislative trend has lately been to remedy mediation's main drawback, giving mediation settlements the status of an executable document, and limiting the grounds upon which parties may dispute the enforcement of mediation settlements. Essentially, the mediation settlements have been made enforceable similar to arbitration awards and provides them with the same level of protection provided to arbitration awards as well.

The epitome of such a trend has been the adoption of the United Nations Convention on International Settlement Agreements resulting from mediation, better known as the Singapore Convention. In essence, the Singapore Convention is to mediation, what the New York Convention is to arbitration. The effect intended behind such convention and such legislation in general is to promote mediation, and given the growing interest in faster and less costly methods of settling disputes, it is safe to say mediation is here to stay.

The Mediation Law

In line with this legislative trend with respect to mediation, Bahrain's Mediation Law gives mediation settlements the status of an executable document, thereby, mediation settlements made in Bahrain are now directly executable with the court without the need for filing a lawsuit on the merits. As for international mediation settlements, which are settlements arrived to after a mediation process where two or more of the disputants have their headquarters in different countries or where the essence of a dispute is in a country other than the country of the disputants, they shall be executed by filing a law suit. The lawsuits in this regard are perceived as a formality, whereby the court shall ensure that all requirements stipulated within the Mediation Law are met, without going into the subject of the settlement itself, akin to the procedures of enforcing an international arbitration award under the UNCITRAL Model Law for arbitration.

Noting that Mediation Law does not limit itself to civil or commercial mediation and it may be extended to cover mediation in some criminal and family matters as well.

Application so far

So far, great steps have been taken towards the full implementation of the Mediation Law. Soon after it came into effect amendments were made to Bahrain's criminal procedures law allowing for mediation to apply to a number of crimes including: breach of trust crimes; petty theft; issuing a bounced cheque; and other misdemeanours thereby, giving effect to mediation where arriving to a mediation settlement would result in the termination of criminal procedures and any sentence that may have been already issued

based on such procedures.

To ensure that mediation is applied in compliance with international standards, the Ministry of Justice, Islamic Affairs and Waqf ('Moj') requires certain requirements be satisfied by those applying to register as mediators, and in that vein has published guidance, for example an applicant must pass a certified training programme that provides practical examples of mediation sessions to. The Moj has also, directly and indirectly, encouraged local mediators to start training others in the craft. These efforts have resulted in more than 50 mediators being registered as court approved mediators, with many of those mediators being non-lawyers wanting to use their experience in their respective fields to aid disputants in resolving disputes related to their field of practice.

A final point worth reiterating is that given the recent trend followed by legislators within the region, it is fair to say that mediation is here to stay. With that being said, familiarising oneself with the process and its potential benefits, as well as learning how to contract for such a process can be advantageous from both a commercial and legal standpoint.

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