

# Mediating in Lebanon: From Old to New?

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**Abstract** Mediation is an ADR method yet to incorporate into the Lebanese legal system: there is no statutory framework governing or providing for mediation procedures in Lebanon, although a draft law on judicial mediation has been submitted in 2009 by the Government to the Parliament for approval.

As such, mediation is only governed by the general provisions governing any civil transactions within the Lebanese Code of Obligations and Contracts. By the same token, having few cases on the subject, this tends to show that either mediation is rarely used or that it leads to very few controversies, which is a sign of success.

Despite the absence of (statutory or case) law in that field, mediation has been practiced in Lebanon for many years now and is today evolving as a recognized means of effective dispute resolution.

As a sign of this trend, several centers for mediation have been established in Lebanon, endowed with their own mediation rules.

## 1 The Existing Situation of ADR in Lebanon

Several alternative dispute resolution mechanisms have grown under Lebanese law. This is notably the case for arbitration which was integrated into the Lebanese Code of Civil Procedure (CCP) in 1983 (articles 762–821) and which gave rise to abundant and very favorable case law for the past 20 years. The legislator has also mentioned conciliation as an alternative mechanism for dispute resolution at articles 460 and 461 of the CCP without however establishing a conciliation standard mechanism the same way as the one relating to arbitration; article 461 of the CCP gives the litigants the right to have recourse, at any time during proceedings before the courts, to conciliation and upon successful completion thereof, to request

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the judge to issue a decision endorsing the outcome of the conciliation. Article 460 CCP gives the judge before whom an action has been brought to attempt to conciliate between litigants.

The law on arbitration does not provide for any relation between arbitration and mediation. It does not further provide for multi-tier arbitration. However, practically, it is always possible to provide for mediation as preliminary step that precedes arbitration. This is also the case for some specific disputes such as labor disputes, where the law provides for mandatory conciliation prior to having recourse to statutory arbitration as well as consumers disputes which, as will be seen further below.

## 2 The Basis for Mediation in Lebanon

### 2.1 *The Notion of Mediation*

Mediation has not yet been integrated into the Lebanese legal system. There is no general statutory framework governing or providing for a mediation procedure in Lebanon. This makes it hard to identify the notion of mediation as perceived by the Lebanese legal system. Notably, the Lebanese Code of Civil Procedure which encompasses many provisions on arbitration –at articles 762 *et.seq.* – does not include any articles on mediation. However, a draft law on Judicial Mediation<sup>1</sup> has been submitted in 2009 by the Government to the Parliament for approval (**Draft Law on Mediation** or **Draft Law**). It has not to date been discussed or voted in Parliament and thus, remains until further notice a draft law that has no legal force in Lebanon.

A sort of “mediation” can however be found as a means of dispute resolution in some specific Lebanese regulations, namely, the Consumer Protection Law and the Law pertaining to the “Mediator of the Republic.”<sup>2</sup> Such a procedure is of a statutory nature: it is mandatory and therefore does not equate to the conventional mediation subject-matter of this study.

This does not, nevertheless, exclude the practice of mediation which, albeit not yet codified and limited in scope, is an old tradition in Lebanon. Hence, the practice of mediation *via* what is referred to as the *Sheikh Solh* - an elderly of the village deemed wise and old enough to resolve disputes- has for long been considered in Lebanon as standard practice for dispute resolution that aims at resolving disputes amicably without the need to resort to courts. It survives nowadays in some Lebanese villages where family clans still play an important role in the village’s political life and social peace. It is also considered as part of the customs of some

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<sup>1</sup>See the French version of the Draft Law on Mediation as submitted by the Government upon the CPM’s proposal to the Parliament in June 2009 and as published by the “Centre Professionnel de Médiation” on the following link: [http://www.cpm.usj.edu.lb/doc/loi\\_fr%20version%201-2009.pdf](http://www.cpm.usj.edu.lb/doc/loi_fr%20version%201-2009.pdf)

<sup>2</sup>See also Sect. 2.2 below.

villages where some men (normally old enough to be considered wise), known for their integrity and moral standing would act as mediators for conflicts between members of the village. This is especially the case when an accident or a crime occurs and where the victim and the assaulter belong to two different clans; the *Sheikh Solh* of both clans come together with other third parties in order to resolve the matter and to avoid possible vendettas between the two clans. This has been recently the case in the Bekaa valley where the clan leaders and elderly *Sheikh Solh* have interfered to resolve a dispute relating to a murder of one of the clans' member and which ended up in an agreement between the clans to hand over any assaulters to the Lebanese authorities and to ban any action of retaliation or vendetta.

Mediation is further used today to attempt to find fair solutions in family disputes. It is standard practice before confessional tribunals which deal in Lebanon with personal status issues; this is the case for divorces where the confessional judge invite the couples in dispute to his office in an attempt to have them discuss the dispute and agree on a pacific solution. This is primarily the case in marital disputes that involve an international parameter with couples having dual citizenships or multiple residences, in Lebanon and abroad. It is also the case for child custody and inheritance disputes.<sup>3</sup>

Mediation can finally be practiced in Lebanon on conventional basis. Mediation agreements are binding as contracts under General Contract Law. This is also corroborated by the proliferation of Mediation Centers, the last of which being a private center – the Lebanese Mediation Center (**LMC**) – recently established within the Chamber of Commerce, Industry and Agriculture of Beirut and Mount Lebanon (**CCIABML**) and endowed with specific mediation rules that have adopted recent trends in international mediation as will be seen further below. It can also be witnessed through the existence of other mediation centers, the first of which – the *Centre Professionnel de Médiation (CPM)* – having been established in 2006 within Saint Joseph University as a private center dealing with conventional mediation.<sup>4</sup>

## 2.2 *The Existing Legal Basis for Mediation*

As previously mentioned, there is no preexisting legal framework for mediation in Lebanon, save for some specific legislations that provide for mediation in certain disputes.

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<sup>3</sup>See J. Hawari Bourgély, "L'état des lieux de la médiation au Liban et les règles déontologiques et formation des médiateurs," *Lebanese Review of Arab and International Arbitration*, Issue No.49, pages 10 *et. Seq.*; See also, M. Issa El Khoury, "Spécificité du rôle de l'avocat dans la médiation: l'exemple des litiges complexes," *ibid.*, pages 17–18.

<sup>4</sup>For further information on the CPM practice, see the CPM's official website on the following link: <http://www.cpm.usj.edu.lb/en/>

However, this study will introduce the provisions of the Draft Law on Mediation where appropriate as this Law, having been submitted by the Government, may show the conception Lebanon may have and if endorsed, would adopt with respect to mediation. Article 1 of the Draft Law gives the parties the right to resort to mediation in order to “avoid a dispute” or “resolve it” in matters where compromise is permitted.

Hence, the Lebanese Code of Obligations and Contracts<sup>5</sup> states (COC) that *“one may not compromise in questions of civil or personal status, or relating to public policy or personal rights, but one may enter into a compromise concerning the pecuniary interests resulting from issues of civil status or criminal matters.”* Furthermore, the same Code provides<sup>6</sup> that *“one may not compromise on alimony: but that one may compromise on the method used to pay for alimony or on the method of payments of amounts which are already due.”* It also provides that *“one may also compromise on an amount, which is less than the legal share”* as *“one may also compromise on an amount, which is less than the legal share as established by the law, of acquired inherited rights, provided that the parties are aware of the amount of the succession.”*<sup>7</sup>

Article 2 further determines the mission of the mediator as to “encourage dialogue” between the parties under his/her administration in order to enable them to reach a solution they agree on themselves and which then should be consecrated in a “contract.”

Herewith are the following documents relating to mediation in Lebanon:

- Annex I: Draft Law on Judicial Mediation dated 15 June 2009 (in French);
- Annex II: Lebanese Consumers Protection Law issued in January 2005 (in English); and
- Annex III: the CCIABML Rules of Mediation (2012) (in English)

Two areas, as previously mentioned, are expressly concerned with mediation under the Lebanese Law; hence, article 82 of the Lebanese Consumers Protection Law (CPL)<sup>8</sup> provides for statutory mediation for disputes arising out of the application or interpretation of the Consumers Protection Law between a consumer and a professional or a factory and which amount does not exceed 3 million LBP, that is 2.000 USD. Articles 83 to 96 of the CPL thoroughly provide for the mediation procedure that should be followed for disputes falling within the scope of article 82

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<sup>5</sup>Article 1037 of the COC.

<sup>6</sup>Article 1039 of the COC.

<sup>7</sup>Article 1040 of the COC.

<sup>8</sup>See notably, Articles 82–103 of the Lebanese Consumers Protection Law relating to Mediation; The English version of the Law No. 695 of 4 February 2005 pertaining to Consumers Protection is available on the following link: <http://www.brandprotectiongroup.org/pdf/consumer.pdf>; For ease of reference it has also been attached at Annex 2 herewith. The full text of the Consumers Protection Law can be found in its Arabic original version on the following link: [http://www.economy.gov.lb/public/uploads/files/6589\\_1683\\_4515.pdf](http://www.economy.gov.lb/public/uploads/files/6589_1683_4515.pdf)

of the CPL. For the rest or if the mediation was not successful, the dispute shall be referred to a dispute resolution committee established under article 97 of the CPL for final and binding determination. Article 82 of the CPL clarifies the purpose of mediation which is made in “*an attempt to reconcile between the two parties.*”

Furthermore, in 2005,<sup>9</sup> the legislator established an optional mediation procedure for disputes arising between citizens and state entities, to be conducted according to the terms of the law by an appointed mediator referred to as the “*Médiateur de la République.*” It should be noted however that the Mediator’s position has not, to date, been filled due to political reasons. Although such mediation is not comparable to private and contractual mediations, its adoption by the Lebanese lawmaker may show a certain political awareness and some willingness to increase the use of mediation in certain areas.

The above mentioned laws do not refer to cross-border mediation and solely relate to internal mediation.

Out of court and annexed mediations are possible in Lebanon if both parties agree to them as per the general rules pertaining to the freedom of contracting enshrined within the COC. However, article 2 of the Draft Law on Mediation gives the judge or the court seized with a dispute the power to propose to the litigants either *ex officio* or upon the request of one the parties to resolve the dispute through mediation. In case both parties agree thereon, the court has to temporarily stay the proceedings, nominate a mediator and refer the parties to mediation. During the mediation phase, the judge maintains the power to issue all kinds of measures he/she deems necessary. Article 2 also envisages the possibility of referral of a dispute pending before the court to mediation in case both parties agree thereon in writing. The same procedure as described above would apply.

There is no record of the number of mediation procedures conducted in Lebanon as such practice began recently to expand as explained above. However, the practice of mediation seem to be growing in Lebanon with the recent bill (Draft Law) submitted by the Government with respect to mediation as well as the establishment of a new center in 2012 within the CCIAMBL. The Beirut Bar Association has recently taken more interest in mediation and signed in June 2013 a convention with the CPM for the creation of a mediation cell within the Association aiming at training lawyers wishing to be involved in mediation.<sup>10</sup> Other syndicates have also taken interest in mediation; hence, the Associations of Medical Doctors as well as the Order of Engineers and Architects in Beirut have both recently organized seminars in collaboration with the CPM on the importance of mediation in medical and construction disputes

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<sup>9</sup>See Law No. 664 of 4 February 2005 pertaining to “*Médiateur de la République*” (Mediator of the Republic) in Lebanon, which can be found (in French) on the following link: <http://www.cpm.usj.edu.lb/doc/Loi-Mediateur.pdf>

<sup>10</sup>See the Article “*la médiation, le Cheikh Solh du XXI Siècle*”, published in “*L’Orient Le Jour*” Newspaper, 12 October 2013, on the following link: [http://photos.usj.edu.lb/pdf/pdf\\_1257-2067.pdf](http://photos.usj.edu.lb/pdf/pdf_1257-2067.pdf)

### 3 The Mediation Agreement/the Agreement to Submit the Dispute to Mediation

Lebanon did not adopt a general legislation pertaining to conventional mediation. Thus, the mediation agreement will be examined with reference to the Draft Law on Mediation as well as the CCIABML Mediation Rules (the “CCIABML Rules”), the most recent arbitration center and the only one to have specific mediation rules. Although they do not constitute state legislations, the Draft Law (if adopted) and the Rules (if chosen by the parties) would apply on the mediation procedure. Both documents would however show the conception of mediation and may affect its practice in Lebanon as well as any possible mediation laws that might be adopted in Lebanon.

The Draft Law mostly targets judicial mediation conducted after a dispute has been brought before courts. Therefore, the Draft Law does not contain provisions relating specifically to mediation agreements. However, as previously mentioned, the Draft Law provides at article 1 for the possibility to agree on mediation prior to any dispute without determining the form, content or scope of such mediation agreements. Article 2 devoted to judicial mediation does also mention the duty of the court to stay the proceedings and refer the parties to mediation in the event there was a mediation agreement made in writing for this purpose. From the sum of the above, it could be inferred that mediation agreements prior or during the proceedings are possible if made between the parties. Regarding the signature of the agreement and whether such agreements should be signed by the parties, the provisions of the Draft Law remain silent. The form of such agreements may however be subject to the general provisions relating to contracts as contained in the COC which give effect to the freedom of the parties to contract save where the law specifically provides otherwise.

As for the CCIABML Rules, article 6 provides for the requirement that the mediation agreement be signed by the parties wishing to have recourse to mediation. According to article 6, the mediation agreement should, prior to its signature, be sent for approval by the CCIABML, after which it would be signed by the parties. It further notes that the mediation agreement “*provides the essential legal basis for mediation*” and “*will normally be signed at the beginning of the mediation day on behalf of the parties and the mediator.*” Such mediation agreement seems to relate to the event the parties agreed to submit a dispute to mediation after it has arisen. The event of a mediation agreement that has been signed prior to the dispute has not been contemplated in this article. However, article 6, *in fine*, envisages the event where there is a non-signed pre-mediation contract and notes that “*in any mediation contract with the parties, the mediator will observe its terms as to confidentiality, even though the agreement has not yet been signed.*” This provision, if read *a contrario*, would confirm that any signed pre-mediation agreement should be given full effect. This is so notably that the CCIABML Rules give in annex three template mediation clauses, the second of which constituting a typical pre-dispute

mediation clause which puts upon the parties the obligation to submit their disputes to mediation once these occur.

Concerning the form and content of mediation agreements, neither the Draft Law nor the CCIABML Rules provide for the exact form and content thereof. It could be inferred that both should be made in writing and preferably signed by both parties in implementation of the general provisions of the Code of Obligations and Contracts as well as the Code of Civil Procedure in this respect, notably to ensure they are duly proven as under Lebanese law written evidence shall prevail and is in principle the means of evidence adopted for agreements.<sup>11</sup> An exception to this principle would be that in commercial matters where under the Lebanese Code of Commerce, commercial matters can be proven by oral testimony.<sup>12</sup>

Article of 3 of the Draft Law determines the content of the judge's decision to refer the parties to mediation and which should contain (1) the parties' express consent; (2) the name of the mediator; (3) the period of the mediation as of the date of the notification of the appointment to the mediator with one possible renewal; (4) the amount of the advance on the mediator's fees and the share to be borne by each its parties.

The agreement to mediate would entail the obligation on each of the parties to refer the dispute to mediation. This is a plain application of the binding effect of agreements under Lebanese law which are compulsory upon those who have agreed on them as per article 221 of the COC.<sup>13</sup> This is well reflected at both article 2 of the Draft Law which requires the judge to stay proceedings and refer the dispute to settlement via mediation if both parties agree to that or in the existence of written mediation agreement and article 2 of the CCIABML Rules which requires referral to arbitration in the existence of a mediation agreement. It should be noted that mandatory referral to mediation does not entail the requirement for the parties to agree on a solution at the end of the mediation. It entails the requirement for both parties to resort to mediation in an attempt to resolve the dispute, without having to agree on the outcome of the dispute.

As there is no official law on mediation in Lebanon, there are no provisions directly relating to the liability resulting from the breach of the mediation agreement. However, as the mediation agreement is so far in Lebanon an agreement that has not been specifically dealt with by the law, it remains subject to the general principles enshrined within the COC and governed by article 221 (paragraph 2) which requires the parties to perform contracts in good faith. This may entail liability upon the party that fails to participate in the mediation procedure without a valid reason. As the mediation agreement generates an obligation to perform an act

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<sup>11</sup>For details on the form of contracts and means of proof in Lebanese Civil Law, see articles 143 *et seq.* of the CCP, notably 253 where oral testimony is not admitted in principle for civil contracts which exceed a certain amount.

<sup>12</sup>See article 257 (1) of the CCP.

<sup>13</sup>Article 221 of the COC, originally drafted in French provides as follows: "*Les conventions régulièrement formées obligent ceux qui y ont été parties.*"

and as under Lebanese law and due to “individual freedoms” such obligations can only be performed either by penalty/day inflicted by the judge in order to overcome a party’s reluctance or by damages paid by the party having failed to duly participate in the mediation phase.<sup>14</sup> There are no records of any case law that has ruled as such regarding mediation agreements.

The deadlines with respect to prescription and limitation periods relating to future pleadings before national courts or arbitrators are suspended until the end of the mediation phase. This is what has been adopted by the Draft Law at article 12.

As there are no law in this respect, proceedings before national courts or arbitrators may be stayed in the event of a mediation procedure until the end of the procedure upon the judge’s discretion. This is reflected at article 2 of the Draft Law as previously mentioned. However, under the CCIABML Rules, proceedings may be launched or pursued despite the conduct of mediation.

## 4 The Mediator

As previously mentioned, Lebanon did not adopt a general legislation pertaining to conventional mediation. Thus, there are no provisions governing the mediator’s status.

As for the Draft Law, article 5 provides for the requirements that should be met in the person of a prospective mediator as follows:

- Not to have been sentenced in criminal matters;
- To hold a degree or certificate of practice of mediation;
- To have sufficient experience that qualifies him/her to conduct mediation in light of the nature of the dispute; and
- To be independent and impartial from the parties and to comply with confidentiality requirements.

As for the CCIABML Rules, article 3 gives the parties the option to either nominate an mediator of their own or to choose an mediator from the panel of mediators of the CCIABML provided in both cases that the mediator comply with the code of conduct of the Lebanese Arbitration Center.

As for the CPM, it gives the parties the same option provided also the mediator complies with the code of ethics of the CPM.

Under the Draft Law, the mediator is to be appointed by the judge. The parties have no possibility to nominate or appoint the mediator on their own. Under the CCIABML Rules and the CPM, the parties directly choose the mediator either from the panel of the center or otherwise.

The main duties of the mediator as per article 6 of the Draft Law is (1) to confirm in writing his/her approval to conduct mediation while asserting his independence and impartiality from the parties as well as confidentiality; (2) to invite the parties to

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<sup>14</sup>See articles 250 and 251 of the COC pertaining to the performance of contracts.



the start mediation sessions; (3) to encourage the parties to have discussions under his administration while treating them equally; in this respect, the Draft Law notes that the mediator has no investigative powers but may where necessary and after having had the agreement of both parties, hear third parties.

Article 4 of the CCIABML Rules thoroughly lists the duties of the mediator which include that of hearing both parties' pleadings and drafting a settlement agreement when appropriate.

There are no express duties of disclosure in any of the above rules. However, such duty can be inferred from the mediator's express duties of impartiality and independence.

There are no express provisions as to the responsibility of the mediator however such responsibility results from any breaches of the provisions relating to the mediator's ethics and conduct as provided for under the CCIABML Rules as well as the Code of Ethics of the CPM<sup>15</sup> and articles 6 and 10 of the Draft Law as may be the case.

As previously mentioned, there exist, to the best of our knowledge, only two Mediation Centers in Lebanon: first, the "Centre Professionnel de Médiation" established in Beirut by Saint Joseph University in 2006 and which appears to be the first mediation institution to be established in Lebanon; second, the LMC established in 2012 through a cooperation agreement signed between the CCIABML and the International Finance Corporation an International Organization that is member of the World Bank Group.

Regarding the CMP, while being a private center, the CPM meets both academic and professional objectives. Academically, the CPM offers a one-year mediation training consisting of 8 sessions (of 3 days each), including psychological and legal trainings, as well as developing communication skills, at the successful end of which the participants get the possibility to be registered as members of the CPM Mediators' List subject to ethical requirements, such as independence and diligence.<sup>16</sup> On a professional level, the CPM may receive requests for intervention as mediator on different topics and would choose one or more of the mediators registered on its list for this purpose.

As for the LMC, it offers its services to the business community, private clients and the public sector. Its mission covers training and accreditation of mediators, conducting commercial mediation cases and raising awareness on the benefits of mediation.

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<sup>15</sup>*Op.cit.*

<sup>16</sup>See the rules of ethics adopted by the CPM at the following link: <http://www.cpm.usj.edu.lb/service-regl-ethi.html>

## **5 The Process of Mediation**

As previously mentioned, Lebanon has not, to date, adopted a general legislation pertaining to conventional mediation. Thus, there are no provisions that govern the mediation process.

## **6 Failure of the Mediation and Its Consequences**

As previously mentioned, Lebanon has not, to date, adopted a general legislation pertaining to conventional mediation. Thus, it is not possible to determine the legal consequences of a failure to mediate.

## **7 Success of Mediation and Its Consequences**

As previously mentioned, Lebanon has not, to date, adopted a general legislation pertaining to conventional mediation. Thus, there are no provisions governing the consequences regarding the success of a mediation process. However, article 8 of the Draft Law requires any settlement agreement to be submitted to the relevant court which should endorse it and order its enforcement.

Reference is made to the discussion relating to the application of the general rules of Contract Law (COC) to mediation agreements executed in Lebanon.

## **8 Costs of the Mediation**

As previously mentioned, there are no provisions governing the costs of mediation. However, under article 9 of the Draft Law, it is for judge to determine the costs of the mediation as well as the fees of the mediation and the shares that should be borne by each party.

## **9 Cross-Border Mediation**

### ***9.1 Notion and Main Features***

As previously mentioned, Lebanon has not, to date, adopted a general legislation pertaining to conventional mediation and which may include cross-border mediation.

## ***9.2 Recognition and Enforcement of Foreign Mediation Settlements***

As previously mentioned, Lebanon has not, to date, adopted a general legislation pertaining to conventional mediation. However, cross- border mediation may be admitted and enforced in Lebanon as a foreign agreement.

## **10 E-Justice**

As previously mentioned, Lebanon has not, to date, adopted a general legislation pertaining to conventional mediation and thus, there are no provisions governing e-justice. Reference is made to the discussion on the provisions of the COC that are applicable to mediation agreements.