

HASHEMITE KINGDOM OF JORDAN

The Mediation Law for Civil Disputes Resolution No. (37) of The Year 2003

English translation by Fadi and Rami Hashem¹

SECTION ONE : CITATION²

- 1 This Law shall be called (The Mediation Law for Civil Disputes Resolution of The Year 2003) and shall come into effect from the date of its publication in the Official Gazette.³

SECTION TWO : MEDIATORS

- 2(a) There shall be established within the Court of Cassation a judicial department called the (Mediation Department), pursuant to a specification by the Minister of Justice of the courts in which this Department shall be established.
- 2(b) The Mediation Department shall be composed of a number of Cassation and First Instance judges, called (Mediation Judges), chosen by the President of the Court of Cassation, for the duration he specifies and he [*The President*] shall select from the employees of the Court the number [*of employees*] needed for this Department.
- 2(c) In addition to the Mediation Judges, the Minister of Justice may nominate (Private Mediators⁴) consisting of retired judges, lawyers and professionals known for impartiality and honesty. The Minister shall specify the conditions that Private Mediators must satisfy.

SECTION THREE : APPOINTMENT AND REFERENCE OF DISPUTE TO MEDIATION

- 3(a) The Case Management Judge may of his own accord and, after meeting with the legal attorneys of the disputants, refer the dispute to the Mediation Judge or one of the Private Mediators⁵ if he discovers that the nature of the dispute so necessitates, and he shall refer the dispute to mediation at the request of the parties in order to settle the dispute amicably, and in all cases the Judge shall when nominating the Mediator take into consideration the consent of both parties to the extent to which that is possible.
- 3(b) The First Instance Judge may of his own accord and after the attendance of the parties, refer the dispute to the Mediation Judge if he discovers that the nature of the dispute so necessitates, and he shall refer the dispute to the Mediation Judge at the request of the case parties, in order to settle the dispute amicably.
- 3(c) The parties may, with the approval of the Case Management Judge or the First Instance Judge, agree to settle the dispute by mediation by referring it to any person they deem fit, and in this case the mediator shall determine his fees, with the agreement of the parties of the dispute, and the Claimant shall recover the judicial fees that he paid, if the dispute is settled amicably.

SECTION FOUR : STATEMENT OF CLAIM / DEFENCE

- 4(a) The case file shall be passed to the Mediation Judge when the dispute is referred to him, and he may oblige the parties to present brief statements of their claim or defence.
- 4(b) When a dispute is referred to a Private Mediator, each party to the dispute shall present [*to the mediator*], within a period not exceeding fifteen days from the date of referral, a brief statement containing a summary of his claims / defences [*as the case may be*] together with the most important documents he relies on, and those statements and documents shall not be exchanged between the disputing parties.⁶

¹ Hashem Law Office, www.hlo-lawyers.com

² All italic text in square brackets and foot notes and section headers do not form part of the original text and have been added by the editors to provide commentary and ease of use.

³ Date of first publication : 30th April 2003

⁴ In order to operate such a system, it is supposed that someone, perhaps the Minister of Justice or an employee of the Ministry will be, or already has been, tasked with compiling an informal list of individuals and contact details, thereby creating an informal panel of Private Mediators. Such a list would be needed for use by the Case Management Judge under section 3a below.

⁵ See supra, foot note 9.

⁶ Whilst the parties will have already exchanged statements of claim/defence and counterclaim making further exchange unnecessary, it is not clear from the text why other documents, which will be relied on should not be exchanged, particularly if the

SECTION FIVE : ATTENDANCE

- 5(a) The attendance of the disputing parties, in addition to their legal attorneys if the circumstance so entails, shall be a condition for convening the mediation sessions, provided that if one of the disputing parties is a legal personality, the attendance of an authorized management representative, other than legal attorneys, shall be a condition for settlement of the dispute.
- 5(b) If without lawful excuse one of the disputing parties or his attorney fails to attend [*the Mediation*], the Case Management Judge or the First Instance Judge may drop the case [*where a claimant fails to attend*], cancel the defence [*where the defendant fails to attend*], or impose a penalty of not less than twenty Dinars⁷ and not exceeding two hundred Dinars in the First Instance Cases, and not less than fifty Dinars and not exceeding one thousand Dinars in Cassation Cases.

SECTION SIX : DUTIES OF THE MEDIATOR

6 The mediator shall :

- 6(a) Schedule a session [*for the mediation*] and serve notice on the disputing parties or their attorneys of its date and place of convening in accordance with the procedures prescribed in the Civil Procedures Law.
- 6(b) Meet the disputing parties and their attorneys and discuss with them the issues involved in the dispute and their claims, and he may meet with each party independently.
- 6(c) Take the measures he deems fit to close the gap between the views of the parties for the purpose of achieving an amicable settlement of the dispute, and for this purpose he may give his opinion, evaluate the evidence, present legal documents and judicial precedents and adopt other procedures which facilitate the mediation process.

SECTION SEVEN : CONCLUSION OF THE MEDIATION

- 7(a) The mediator must end the mediation process within a period not exceeding three months from the date of referral of the dispute to him.
- 7(b) If the mediator is able to achieve a settlement of the dispute, partially or fully, he shall present to the Case Management Judge or the First Instance Judge a report and attach to it a settlement agreement signed by the disputing parties to be certified by the Case Management Judge or the First Instance Judge and this agreement after it is certified shall be considered as a final binding judgment not subject to any means of appeal.
- 7(c) If the mediator is not able to achieve a settlement of the dispute, he shall present a report to the Case Management Judge or the First Instance Judge stating in it that the parties have not achieved a settlement, provided that he shall clarify in this report the extent of their own and their attorneys' commitment to attend [*participate in*⁸] the mediation sessions.
- 7(d) At the end of mediation the mediator shall give back to each party the statements and documents they had presented to him and the mediator shall not keep copies thereof, subject to legal liability.

SECTION EIGHT : CONFIDENTIALITY AND NON-ADMISSIBILITY

- 8 Mediation procedures shall be considered confidential and shall not be relied upon or any compromise therein by the disputing parties before any court or any other authority whatsoever.

providing party has consented to such exchange. However, discovery of documents in mediation is not the norm in any case. The bar against non-consensual disclosure by the mediator ensures that in the event that the mediation fails and the case proceeds to trial the presenting party's case is not prejudiced by the mediation process. A voluntary advance exchange of documents however can do much to facilitate the mediation process, sending out a message of good will and co-operation between the parties.

⁷ About twenty eight US Dollars nowadays'

⁸ Attending alone would appear to be insufficient to address the question as to commitment since attendance would be a matter of the record. A failure to attend would naturally be a direct indicator of the level of commitment, whereas it is possible to attend without participating, merely going through the motions to satisfy any instruction to mediate.

SECTION NINE : COSTS OF THE MEDIATION PROCESS

- 9(a) If the dispute is fully settled by judicial mediation, the claimant may recover one half of the judicial fees he paid, and deposit the other half of the fees in a safe box to be distributed at the end of every month to judges and employees of each of the Case Management and Mediation Departments as the president of the Cassation Court deems fit.
- 9(b) (1) If a Private Mediator [*nominated by the court*⁹] achieves a full settlement of the dispute, the claimant may recover one half of the judicial fees he paid, and the other half shall be paid to this Mediator as fees provided that they shall not be less than three hundred Dinars, and if it is less than this minimum the disputing parties shall be obliged to equally pay to the mediator the difference between this sum and the decided minimum.
- 9(b) (2) If the Private Mediator shall not achieve a settlement of the dispute, his fees shall be determined by the Case Management Judge provided that it shall not exceed two hundred Dinars which the claimant is obliged to pay to him, and this sum shall be considered as part of the case expenses.

SECTION TEN : MEDIATION JUDGE BARRED FROM CONDUCTING SUBSEQUENT TRIAL

- 10 The Mediation Judge shall not subject to nullity,¹⁰ examine the matter of the case which was previously referred to him for mediation.

SECTION ELEVEN : APPLICABILITY OF MEDIATION PROCESS¹¹

- 11 The provisions of this Law shall apply to cases being examined by Case Management and First Instance Judges, which have not yet been determined by a final binding judgment.

SECTION TWELVE : PRIORITY OF MEDIATION LAW

- 12 Any provision in any other legislation, which contradicts the provisions of this Law, shall not be effective.¹²

SECTION THIRTEEN : REGULATIONS

- 13 The Council of Ministers shall issue the regulations necessary for the application of the provisions of this Law.¹³

SECTION FOURTEEN : RESPONSIBILITY FOR APPLICATION OF PROVISIONS

- 14 The Prime Minister and the Ministers shall be charged with the application of the provisions of this Law.

⁹ This does not refer to party appointed mediators because the fees of party appointed mediators are agreed between the parties and may exceed the 300 dinar minimum

¹⁰ ie if the judge were to hear the case the decision would be null and void. This reflects the view expressed in **Glencot Dev & Design Co. Ltd v Ben Barrett & Son (Contractors) Ltd** [2001] BLR 207. TCC that information learnt by an adjudicator during mediation has the potential to prejudice the outcome of a subsequent trial.

¹¹ It would appear that in order to benefit from the provisions of this law the parties to a dispute should first commence litigation. The question that therefore arises is, what is the status of the settlements of private mediations conducted without recourse to litigation?

¹² Editors Comment : Whilst the translators consider that the intention of the legislator is for this legislation to prevail over all prior and subsequent legislation, does the legislature intend the legislation to form a central plank of the constitution which cannot be changed in the future?

¹³ No regulations have been issued to date, but if, as and when issued, such regulations will appear in the Official Gazette.