

Report Titled:

**The Casting Arbitrator
Between Palestinian Arbitration Law
and Comparative Arab Laws**

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Introduction:

The importance of the Casting Arbitrator and his / her appointment in the arbitration procedures can be seen in the idea that the Palestinian Arbitration Act (unlike the rest of arbitration acts in Arab countries) has included special text through which the topic of the Casting Arbitrator is organized. The aim of including Casting Arbitrators in the Palestinian Arbitration Act can be related to the formulation of arbitral tribunals. The Palestinian Arbitration Act No. 3 for the year 2000 allows the arbitral tribunal to be consisted of even numbers (as in two arbitrators) or uneven numbers (as seen in a tripartite arbitral tribunal). Unlike the Arab arbitration laws which conditions the arbitral tribunal to be consisted of only uneven number of arbitrators, therefore, whenever a disagreement occurs in an even arbitral tribunal, this said tribunal shall resort to appointing an Casting Arbitrator. This approach supports that semantic definition for the term " Casting Arbitrator" as the voice that favors one of the opinions on the other. The importance of this report lies in answering the related questions to this subject through revising and analyzing the text in the Palestinian Arbitration Act, and comparing it to the texts occurring in comparative Arab arbitration laws to investigate the best legal approach in the practical implementation of the arbitration process.

First: Defining The Concept of The Casting Arbitrator

The definition of the Casting Arbitrator can be seen in Article (1) of the Palestinian Arbitration Act No.3 of the year 2000 as follows: "The arbitrator who makes the arbitration judgment when majority is not achieved." In order to discuss this detail, one should note the mechanism of formulating arbitral tribunals according to the Palestinian Arbitration Act. Article 1/8 of the act states that: "An arbitration panel shall be formed of one or more arbitrators with agreement of parties." Through which one can understand the validity of having an even number of arbitrators in the tribunal. Unlike the rest of the other Arab arbitration laws which subject the tribunal to be formed of uneven numbers of arbitrators, The Egyptian Arbitration Law No. 27 of the year 1994 is in example due to Article 15/2 which states the necessity of having uneven numbers of arbitrators.

The Egyptian Law also provides for the nullification of the arbitration process if the number of arbitrators is even. So is the Arbitration Law in Bahrain which specifies in Article 11 that the tribunal must be consisted of a sole arbitrator or a tripartite arbitration tribunal.

Second: The Method of Appointing The Casting Arbitrator

The Palestinian Arbitration Act organizes the method upon which the casting arbitrator is appointed through article 8/2 which states: "If there is no agreement on the formation of a panel for arbitration, each party shall choose an arbitrator and the arbitrators shall choose a casting arbitrator unless the parties agree to proceed otherwise." One can understand through this article that the casting arbitrator can be chose through the agreement of both arbitrators whom were appointed by the parties of the dispute. Article 11 discusses the issue of the inability of either the parties or the tribunal of appointing a casting arbitrator, Article 11 also covers the cases where the casting arbitrator himself / herself refuses or rejects to proceed with his / her mission, and lastly, the validity of seeking the competent court for the purpose of appointing an arbitrator or a casting arbitrator in the event of an absence of an agreement that includes the method of appointing a substitute arbitrator or a casting arbitrator.

Third: The Role of The Casting Arbitrator in The Arbitral Proceedings.

The role of the casting arbitrator in the arbitral proceedings begins in the event that conflicting opinions between arbitrators arise. Article 38 of the Palestinian Arbitration Act states that arbitral award is established when the majority is obtained after processing the opinions in the case that the tribunal is comprised of uneven number of arbitrators. The problem however manifests itself in the cases where the majority is not obtained in terms of the opinions especially in even tribunals where the opinions of the arbitrators are split equally in half on the arbitration case. Therefore, there must be a solution for this issue, and the solution represents itself in having a casting arbitrator whose presence becomes necessary in the event of having conflicting opinions on the award and favoring one of the opinions on the account of the other. The legislature provides the casting arbitrator the mission of deciding the award in the session that he / she is appointed for according to Article 71 of The Council of Ministers Decision No, 39 for the year 2004 of the executive list for the arbitration law No. 3 for the year 2000.

In reference to the Arab Comparative Laws we find that there is not a clear text on the topic of the casting arbitrator, The Egyptian Law states, in Article 40, the mechanism by which the award is issued. The award is given by one arbitrator based on the majority after processing the award. unless otherwise a disagreement occurs between the parties of the dispute. The prior statement indicates the validity of the majority's approval. One can simply pretend that the idea of the majority's approval can act as an indicator for the casting arbitrator, Still however, this is still open for debate to the specialized legal persons.

The idea that the Palestinian Arbitration Act only allows for the formulation of an even number of arbitrators in the arbitral as well as the roles of the casting arbitrator in the arbitration process, prompted ACT Conflict Resolution to organize the first interactive session of the arbitration forum to further discuss these matters and comparing them to what is revealed in other Arbitration Laws in the Arab World. The goal is to check the correctness of the Palestinian Legislature in their approach of swimming against the tide of other Arab Laws. This is the motive that has driven the forum and its speakers to come to conclude and prefer the Arab Laws' approach in having the tribunal comprised of uneven number of arbitrators. The Arbitration Law in Palestine is in a persistent need of revision and reconsideration on the matters on forming the tribunal, as well as reshaping the number of arbitrators of the tribunal to only be uneven, Stating this clearly in the Palestinian Arbitration Law is important to evade any arising legal issues around the topic of the casting arbitrator, as well as the importance of adhering to the UNISTRAL's International Commercial Arbitration Rules.

