

Legal Regulation & Education: Doing the Right Thing?

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An Arab Perspective on the Obligation of Confidentiality in Mediation

Mediation is currently one of the most visible alternative mechanisms for the settlement of trade disputes. This is mainly attributable to the fact that it is non-adversarial, egalitarian, more flexible and less expensive when compared with the lengthy procedures and other complexities associated with litigation.

In addition, its inbuilt obligation of confidentiality is regarded as one of the most important advantages that characterize mediation as a mechanism of alternative dispute resolution. The disputing parties, the mediator(s) and other persons who are involved in the mediation process or in its management, are required to respect the confidentiality of all data, statements and opinions and other information relating to the process of mediation. The scope of this obligation is not limited to the information or opinions that are disclosed in the process, but extends to the contents and outcomes of those proceedings as well as other related materials. This obligation applies equally to all the information that may be disclosed prior to reaching an agreement to mediate. These include, for example, discussions on the desirability of mediation; the terms of the agreement; the choice of the mediators; and the invitation to mediate and the acceptance of such an invitation or its rejection. It is also prohibited to refer to those mediation communications in subsequent judicial or arbitration proceedings or similar procedures.

This study attempts to analyse the importance of the confidentiality obligation to the success of the mediation process in the Arab world. It does this by taking a close look at the conventions and draft laws that have been considered in Egypt and Qatar. It also examines the significance of such a provision or term in guaranteeing the inadmissibility of mediation communications in subsequent judicial, arbitral or similar proceedings.