

# Chapter IX : Dispute Resolution

Alternative Dispute Resolution “ADR”:  
Arbitration Mediation Conciliation

Why are businesspersons turning to an alternative dispute resolution (ADR)?

# Why are businesspersons turning to an alternative dispute resolution (ADR)?

- **To save Money, Time and Flexibility.**
- **The parties themselves can control:**
  1. **how** they will attempt **to settle** their dispute.
  2. what **procedures** will be used.
  3. whether a **neutral third party** will be **present or make a decision**.
  4. and whether that **decision** will be legally **binding or nonbinding**.

# Binding Alternative Dispute Resolution

# Arbitration

# Arbitration: concept

- Method to resolve a dispute by which an **arbitrator** (a neutral third party or a panel of experts) **hears a dispute** and **imposes a resolution** on the parties.
- Arbitration differs from other forms of ADR in that the **third party** hearing the dispute makes **an enforceable decision** for the parties called a **reward**.
- **Usually**, the parties in arbitration agree that the third party's decision will be *legally binding*, **although** the **parties can also agree to nonbinding** arbitration.
- In **nonbinding arbitration**, the **parties can go forward with a lawsuit** if they do not agree with the arbitrator's decision.

# Arbitration: Process

- Like a trial but the **procedures** are much **less restrictive** than those governing litigation
- **In Egypt** legal issues of **family and inheritance law cannot be settled by arbitration.**

# Arbitration Clause

- **Before dispute arises** : parties include an arbitration clause in a **written contract** specifying that any dispute arising out of the contract will be resolved through arbitration rather than through the court system.
- **After dispute arises** : Parties can also **agree to arbitrate** a dispute after it arises.
- the arbitration provisions are **severable**, or can be separated, from the rest of the contract
- when the challenge is to the **validity of a contract as a whole**, and not specifically to an arbitration clause within the contract, an arbitrator must resolve the dispute. **This is true even if the contract later proves to be unenforceable.**





# Arbitration Clause severability

**An arbitration  
clause within a  
contract**

**Question  
of  
Contract  
Validity**

Settled by

**Arbitration**

```
graph LR; A[An arbitration clause within a contract] --> B[Question of Contract Validity]; B -- "Settled by" --> C[Arbitration];
```

The diagram is a flowchart illustrating the concept of arbitration clause severability. It consists of three blue rectangular boxes connected by arrows. The first box on the left contains the text 'An arbitration clause within a contract'. An arrow points from this box to a second box in the middle, which contains the text 'Question of Contract Validity'. From the second box, an arrow points to a third box on the right, which contains the text 'Arbitration'. The arrow connecting the second and third boxes is labeled 'Settled by'.

# Arbitration Clause

- **No party** will be **ordered** to submit a particular dispute **to arbitration** unless the court is convinced that **the party has consented** to do so.
- the courts will **not oblige arbitration** if it is clear that the prescribed arbitration rules and procedures are **inherently unfair** to one of the parties.
- The terms of an **arbitration agreement** can **limit the types of disputes** that the parties agree to arbitrate.

# Unenforceable arbitral awards

- **The award will be set aside only if:**
  - the **arbitrator's conduct** or **"bad faith"** substantially **prejudiced** the rights of one of **the parties**.
  - if the **award violates** an established **public order policy**,
  - or if the **arbitrator exceeded** her or his **powers** (by **arbitrating issues** that the parties did **not agree to submit to arbitration**)

# Enforcement of Foreign Arbitral Awards

- There must be no conflicting judgments from an **Egyptian court in the same matter**
- There must be **no violation of the Egyptian public order**

# Nonbinding Alternative Dispute Resolution

# Negotiation

- process in which **the parties attempt to settle** their dispute informally, **with or without attorneys** to represent them.
- Parties may even try to negotiate a settlement **during a trial** or **after the trial**.

# Mediation / Conciliation

- a **neutral third party** acts as a **mediator** and **works with both sides** in the dispute to facilitate a resolution .
- The mediator assists the parties throughout the mediation process **to help them find a solution** to their dispute **by themselves**.
- The **mediator** normally **talks with the parties** separately as well as jointly, emphasizes points of agreement, and **helps the parties to evaluate their options**.
- the mediator **may propose a solution** (called a mediator's proposal), he or she does **not** make a **decision** resolving the matter.

# Early neutral case evaluation

- the parties select a **neutral third party** (generally an **expert** in the subject matter of the dispute) to **evaluate** their **respective positions**.
- The parties explain their positions to the case evaluator, and the case **evaluator assesses the strengths and weaknesses of each party's claims**



# Mini-trial

- **each party's attorney** briefly argues the party's **case before the other** and a panel of **representatives from each side** who have the **authority to settle the dispute** and an **adviser**.
- a **neutral third party** (usually an expert in the area being disputed) acts as an **adviser**.
- the **parties fail** to reach an agreement, **the adviser renders an opinion** as to how a court would likely decide the issue.

# Providers of ADR Services

- **American Arbitration Association “AAA”**
- **International Chamber of Commerce “ICC”**
- **Hong Kong International Arbitration Centre “HKIAC”**
- **Cairo Regional Center For International Commercial Arbitration “CRCICA”**
- **Firms**
- **online dispute resolution (ODR)**
  - **best for resolving small- to medium sized business liability claims, which may not be worth the expense of litigation or traditional ADR method.**