Arbitration - paper

Law

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clause is not binding on the consumer. Some of the most common conflicts (or disputes) are ï‚§ Conflict over project priorities ï‚§ Conflict over administrative procedures ï‚§ Personality conflicts ï‚§ Lack of respect for one another ï‚§ Conflict over technical opinions and performance ï‚§ Conflict over staff power resources ï‚§ Conflict over cost ï‚§ Conflict over schedules 2. How it works? The Arbitration Act 1996 lays down strict rules for how arbitration should work. However, arbitration is intended to be less expensive, less formal, and more flexible than court, so the rules of evidence are not as strict, and parties can usually have a say in how they want the hearing to be conducted. Parties can choose a single arbitrator with relevant experience, or select an arbitral panel of three or five arbitrators. Obviously, the larger the panel, the more expensive the process is going to be, and this model is likely to be used in high value commercial disputes. When arbitration is used in lower value consumer disputes, the arbitrator often makes a decision based on the written evidence which the parties send in, and doesn’t hold a hearing. This is a much quicker, cheaper process. Many arbitration schemes are run on behalf of a consumer sector such as the travel industry, and the organization that runs the scheme will appoint an independent arbitrator. Once the parties have decided to use arbitration and the process has begun, they usually give up their right to seek a resolution of the matter elsewhere, such as in court or tribunal. Some providers offer an internet-based arbitration service for money and consumer claims. Others, such as The Association of British Travel Agents (ABTA) make their arbitration service available online, so that all documents can be submitted by email. 3. The arbitration award After considering the parties' submissions, the arbitrator issues a final and binding 'award', this can be based on good practice and

reasonableness as well as on the law. The award usually includes reasons for the decision. Under the1996 Act there is very limited scope for appeal against an arbitrator's award. Usually, appeals can only be based on a claim that the arbitrator behaved unfairly. In most schemes the arbitrator's decision is binding on both parties. Arbitration awards can be enforced in court if necessary. 4. Is Arbitration final? Binding Arbitration awards are final and binding on all parties to the Arbitration. They may not be appealed except under very limited circumstances provided by statute. Awards may be confirmed in any court having jurisdiction and, thereafter, carry the same force and effect as an original court decision. - Types of Arbitration:- 1-High-Low Arbitration Also known as Bracketed Arbitration. This is an arbitration wherein the parties have agreed in advance to the parameters within which the arbitrator may render his or her award. If the award is lower than the pre-set “ low, " the defendant will pay the agreed-upon low figure; if the award is higher than the pre-set “ high, " the plaintiff will accept the agreed-upon high; if the award is in between, the parties agree to be bound by the arbitrator’s figure. The high and low figures may or may not be revealed to the arbitrator. 2-Baseball Arbitration A form of binding arbitration wherein each of the parties chooses one and only one number and the arbitrator may select only one of the figures as the award. In baseball arbitration, there are only two possible outcomes. 3-Night Baseball Arbitration Like baseball arbitration, this is a form of arbitration wherein the parties exchange their own determination of that value of the case, but the figures are not revealed to the arbitrator. The arbitrator will assign a value to the case and the parties agree to accept the high or low figure closest to the arbitrator's value. 4-Non-Binding Arbitration A procedure sometimes called “ non-binding arbitration"

is conducted much like a (binding) arbitration, except that when the arbitrator issues the award after the hearing, it is not binding on the parties and they do not give up their right to a jury trial. In that case, the arbitrator’s award is merely an advisory opinion. Many cases go to settlement or (binding) arbitration after this phase, or they can choose to go to a trial. 5- Mandatory Arbitration Also known as Judicial Arbitration or Court-Ordered Arbitration. A legislatively mandated or court administered scheme for the resolution of pending court cases (usually valued at under $50, 000), utilizing informal rules of evidence and procedure in a non-binding, advisory arbitration process that is ordered by the court at an early stage of a lawsuit. The availability of this process depends upon local state laws or court procedures. - Laws applicable in arbitration:- The law that applies to issues of recognition will always be the law of the state where this recognition is sought. In a large number of states this will be governed by 1958 New York Convention which harmonizes the recognition and enforcement of foreign arbitral awards. States regulate arbitration through a variety of laws. The main body of law applicable to arbitration is normally contained either in the national Private International Law Act (as is the case in Switzerland) or in a separate law on arbitration (as is the case in England). In addition to this, a number of national procedural laws may also contain provisions relating to arbitration. By far the most important international instrument on arbitration law is the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. Some other relevant international instruments are: - The Geneva Protocol of 1923 - The Geneva Convention of 1927 - The European Convention of 1961 - The Washington Convention of 1965 (governing settlement of international investment disputes) - The UNCITRAL

Model Law (providing a model for a national law of arbitration) - The UNCITRAL Arbitration Rules (providing a set of rules for an ad hoc arbitration) - IN EGYPT:- The Cairo Regional Centre for International Commercial Arbitration (hereinafter the Cairo Centre or the Centre) is an independent non-profit international organization. Pursuant to the Headquarters Agreement, the Cairo Centre and its branches enjoy all the privileges and immunities of independent international organizations in Egypt. The leading principle of the Cairo Centre aims at contributing to, and enriching the progress of the economic development scheme in both Asian and African Countries. In this regard, specialized services are being constantly and consistently provided to prevent or help settle trade and investment disputes, through fair operations of expeditious and economical procedures. This constitutes a wholly integral dispute-resolution mechanism which employs various effective processes of arbitration. It includes also Alternative Dispute Resolution techniques (ADR) such as conciliation, mediation and technical expertise. The Cairo Centre applies the Arbitration Rules of the United Nations Commission on International Trade Law, approved by the General Assembly of the United Nations by resolution No. 31/98 on December 15, 1976 (UNCITRAL Rules). The Cairo Centre adopted these Rules since its establishment with minor amendments required to adapt the UNCITRAL Rules to institutional arbitration and to satisfy the needs and desires of practitioners, including disputants, arbitrators, lawyers and businessmen, as well as to cope with modern practice, recent developments and comparative law in the field of international commercial arbitration . In fact, after putting arbitration and other Alternative Dispute Resolution (ADR) techniques in actual practice in the years following the Centre’s inception,

the need pressed for improving the Rules of the Centre. This need arose in view of the new developments of improving the laws of different states. Moreover, the world wide acceptance of arbitration as a popular and normal means getting more momentum in settling international commercial disputes and the rapid globalization of the world economy were important elements that pressed for adaptation of the Rules to the changing economic relations. Also, the removal of many old and traditional barriers that were set up by national systems in international trade resulted in the substantial increase and complexity of commercial disputes that required new amendments in the institutional rules. - Conclusion:- Arbitration is time-tested, cost-effective alternatives to litigation. Mediation, on the other hand, is a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute. This process can be effective for resolving disputes prior to arbitration or litigation. The main difference is that Arbitration places control of the outcome in the hands of the neutral Arbitrator. Arbitration involves presenting a case for an Arbitrator to make a legally binding decision. In mediation control of the outcome stays in the hands of the parties. The goal of mediation is to find common ground and creative solutions to develop an agreement that will satisfy both parties. Both are alternatives to the public legal system. Both have the advantage of being able to choose Arbitrators or Mediators who are construction experts (in my carrier) as opposed to judges who are generalists. Both are typically faster and less expensive than the court system. I suggest that in case of any conflict, parties must consider Mediation prior to Arbitration. Mediation can save time and money, by either resolving the matter or narrowing the issues to be arbitrated. - References: -

The North American Free Trade Agreement (NAFTA) - The Human Aspects of Project Management: Human Resources Skills for the Project Manager, Volume Two by Vijay K. Verma - New Directions in Project Management by Paul C. Tinnirello (ed) - JAMS —The resolution experts - Wikipedia-The free encyclopedia. - ADR now website - PMI online books. - MFC-Myles F. Corcoran-Construction Consulting, Inc. - The Cairo Regional Centre for International Commercial Arbitration