



Thoughts on the Constitutionality of Arbitration in the Disputes of the Emirates Securities and Commodities Markets

by

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First: Introduction

Mediation¹, negotiation², conciliation³, early neutral evaluation⁴ and arbitration⁵ are all alternative means to resolve civil and commercial disputes away from the circles of the judiciary, for cases in which the law permits individuals to resort to alternative methods to settle their disputes⁶.

¹ Mediation is one of the alternative methods to resolve disputes. Through this method, a negotiation takes place between the parties via the intervention of a third neutral party called the Mediator. So mediation is a flexible negotiation process that is managed by the mediator in order to find a resolution to the conflict, and in which the mediator uses a varied set of skills to bring the points of view closer together. It is not within the mediator's power to issue an abiding and final decision to the dispute, yet rather this is considered one of the rights left to the parties involved. Additionally, the mediator usually assists the parties in clarifying the strong and weak aspects of the arguments they are relying upon, and looks for various options for the parties to settle these arguments and draw them closer. Generally, the negotiation sessions are secret, and the parties are entitled to place a pre-condition by which both parties are prevented from resorting to other alternatives to resolve the dispute between them prior to the completion of the mediation phase. From more details, see: Niemic, Robert J., Stienstra, Donna & Ravitz, Randall E., "Guide to Judicial Management of Cases in ADR", Federal Judicial Center, 2001, pp. 128-130; Adams, George W., "Mediating Justice: Legal Dispute Negotiations", CCH Canadian, 2003 pp. 149-189. Mediation was introduced as one of the means to resolve disputes related to the stock exchange in the USA in the year 1989 by the National Association of Securities Dealers (NASD). Gross, Jill L., "Securities Mediation: Dispute Resolution for the Individual Investor", Ohio State Journal on Dispute Resolution, Vol. 21, No. 2, 2006, p 331. Grant, J Kirkland, "Securities Arbitration for Brokers Attorneys and Investors" Greenwood Publishing Group Inc., 1994, p. pp4-5. Statistics issued by the Financial Industry Regulatory Authority (FINRA) –which is a party that supervises arbitration boards of securities disputes that comprise 90% of the stock exchange disputes, and was recently established in 2007 after being integrated into the New York stock exchange in order to supervise and organize the American markets and the mediators in them as a self-censoring organization- show that there is a tendency by investors to resolve their disputes through mediation, as the Arbitration and Mediation Center affiliated with the National Association of Securities Dealers (NASD) was able to resolve close to 82% of the disputes before the mediators which was 1401 disputes in 2005. As for 2006 and up till October of that year, statistics show that the number of disputes reached 966, and 84% of these were resolved through mediation processes. For more details, see: National Association of Securities Dealers (NASD), the Dispute Resolution Statistics, October 2006.