

Interference of Courts in Arbitration

By Dr. Kamal Adnan Malas

International Arbitrator

Introduction:

In various jurisdictions, the role of Courts in arbitration remains a developing topic.

Arbitration is typically intended to provide a more efficient and less formal method of resolving disputes compared to traditional Courts litigation.

As a result, Courts usually adopt a non-intrusive stance, intervening only when necessary and as allowed by law.

The primary objective is to reduce judicial involvement to preserve the efficiency and independence of the arbitration process. Nevertheless, some level of judicial oversight is essential to ensure fairness and compliance with legal standards.

In many legal frameworks governing arbitration, specific Courts interventions are permitted. Therefore, Courts continue to play a significant role at different stages of the arbitration process.

Courts in various jurisdictions often take a deferential stance when reviewing arbitral awards, while still emphasizing the need to respect the inherent autonomy of the arbitration process.

In summary, while the arbitration process aims to be self-contained and efficient, judicial oversight acts as a safeguard to maintain the fairness, legality, and enforceability of the process and its outcomes. This delicate balance ensures that arbitration remains a reliable and trustworthy method for resolving disputes, also it helps in promoting the arbitration as an efficient dispute resolution mechanism.

Stages of Courts interference:

Courts interference in arbitration can occur at various stages of the arbitral proceedings and can take different forms.

The following outlines key elements of judicial intervention in arbitration in the three stages: Pre-Arbitration Intervention, During Arbitration Proceedings:, and After the Arbitral Award Intervention:

1. **Pre-Arbitration Intervention:** Courts may be involved before arbitration begins by:
 - **Enforcing Arbitration Agreements:** Courts can compel parties to arbitrate in accordance with their binding arbitration agreement.
 - **Staying Court Proceedings:** If a matter is subject to arbitration, Court shall stay litigation to allow arbitration to proceed.
 - **Interim Relief and Injunctions:** A party may seek a Court order to prevent the other party from proceeding with an arbitration while certain issue, such as validity of the arbitration agreement, is resolved in Court.
 - **Appoint arbitrators:** In cases where parties cannot agree on an arbitrator, a party may petition a Court to appoint an arbitrator or to review the qualifications of an appointed arbitrator, especially if there's a claim of conflict of interest. Also, Courts may intervene in the appointment of arbitrators the designated appointing authority does not act.
 - Appointing experts to evaluate the current status of the project.

2. **During Arbitration Proceedings Intervention:**
 - **Interim measures:** Courts can grant interim reliefs while arbitration is ongoing to protect parties' interests of subject matter of the arbitration. This can include measures like freezing assets or preserving evidence. This power is intended to prevent misuse and ensure the arbitration proceeding going on smoothly it is not interfering in the arbitration decision.
 - **Issuing Subpoenas:** Courts may be asked to compel witness testimony.

- **Document production,** Courts may be requested in disputes over production of documents to mandate the production of documents from private or government entities.
- **Extending the time limit:** In ad-hoc arbitration the tribunal may request extension of time from Court to issue the final award.
- **Enforcing partial award during the proceedings,** the parties may pursue the enforcement of partial awards issued by the arbitral tribunal. For instance, if the arbitration agreement stipulates that the arbitration costs and fees are to be equally divided between the parties, and one-party declines to fulfill their financial obligation, the other party may seek to enforce the award for those fees.
- **Issuing Judgment in primary issues** such as forgery or another criminal act.
- **Protecting role:** Courts may also step in to protect parties against perceived abuses or misconduct within arbitration.

3. After the Arbitral Award Intervention:

- **Setting Aside an Arbitral Award:** Courts can set aside can annul or vacate arbitration awards on limited grounds like if it is found to be in conflict with the public policy of the country, or if there were procedural irregularities, or for any other reason mentioned in the Arbitration Law of the country. This includes awards obtained by fraud or corruption, or those that violate fundamental principles of justice.
- **Enforcement of Arbitral Awards:** Courts play a crucial role in the enforcement of arbitral awards. If a party fails to comply with the award, the other party can approach the Court for enforcement. Courts typically provide enforcement mechanisms for arbitration awards under domestic laws and international treaties like the New York Convention.

Conclusion

While arbitration is intended to be a private and binding resolution process Courts interference in arbitration is an essential aspect of the legal framework surrounding alternative dispute resolution.

While Courts respect the autonomy and finality of arbitration, they retain certain powers to intervene when necessary. Ultimately, the goal is to ensure a fair, just, and efficient resolution of disputes while fostering confidence in the arbitration process.

The extent and nature of Courts involvement often depend on the jurisdiction and the specific legal framework governing arbitration in that locale.