

Original Research

Received 13 June 2026

Revised 25 July 2026

Accepted 08 Aug 2026

Natural Resources for Human
Health 2026, Vol. 6 (15s): 1067–1071

KEYWORDS:

Arbitration, Arbitration Clause,
Binding Force, Procedural Loyalty,
Estoppel

The Binding Force of the Arbitration Clause vis-à-vis Contracting Parties under Lebanese Law: A Law and Economics Perspective

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ABSTRACT: Background: The paper's narrower focus is the (partially) binding character of arbitration agreements vis-à-vis contracting parties under Lebanese law, backed-up by comparative elements: comparative lessons from French civil and procedural law (indeed non-mutatis mutandis) and a Law & Economics approach. The paper assesses the (concept of) arbitration clause, as an independent procedural agreement following Article 221 of the Code of Obligations and Contracts (*pacta sunt servanda*), in terms of its legal requirements for proper functioning, faithful compliance, and legal reasons for termination.

Methods: The study adopts a doctrinal and comparative methodology, which entails a review of legislative provisions (Arts. 762–821 of the Code of Civil Procedure), supported by an extensive body of legal literature and leading case law from Lebanese and French courts. The analysis also incorporates a Law & Economics approach to examine the legal and economic implications of enforcing arbitration agreements.

Results: The study demonstrates that rigorous judicial enforcement of arbitration clauses lowers transaction costs and discourages opportunistic lawsuits, thus incentivizing trust in commercial market transactions. It further argues that loyalty to procedure, or good faith, does not permit parties simply to unilaterally relinquish arbitral jurisdiction. The analysis also identifies the statutory circumstances that may remove the binding effect of an arbitration agreement, including mutual consent, challenge or removal of an arbitrator, death, and expiry.

Conclusion: The work clearly delineates boundaries for practitioners and businesses in crafting robust arbitration clauses that balance the difficulties of sustaining long-term contractual commitments with economic efficiency. It emphasizes that the binding character of arbitration agreements under Lebanese law is subject to legally recognized grounds for termination and cannot ordinarily be unilaterally relinquished by the contracting parties.

INTRODUCTION

Arbitration is a basic private justice institution which, by its legal effect excludes the jurisdiction of State courts over a dispute and/or submits it to the binding determination of private arbitrators selected by or for the parties (Robert, 1993a). Arbitrations agreement are regarded as the foundation of both domestic and international arbitration in legislation on a national scale, comparative legal systems. As well as international conventions (Abdel-Sadek 2016). It sets the base legal level to establish a universal standard, however commercial arbitration cannot operate without a valid and binding arbitration agreement.

The Lebanese model of commercial arbitration codified in Articles 762 to 821 of the Code of Civil Procedure (CCP) [1] is taken nearly as such from French reforms (Decree No.80-500 dated 12 May,1981). Under general contract law, this is encapsulated

in Article 221 of the Lebanese COC that enshrines the principle that 'the contracts validly entered into have effects between any parties to such contracts. This general provision is derived from the now repealed Article 1134 of the French Civil Code (now Article 1103), which states, "An agreement lawfully entered into has force of law between those who have made it" (French Civil Code, Art. 1103,2009).

Because an arbitration clause is subject to the contract, it directly applies (according to article 221 COC). The binding effect of arbitration clause also has another important commercial and economic function as a way to reduce transaction costs, a defense against the strategy of dilatory litigation in bad faith, and give stakeholders in companies procedural certainty independent of the purely legal aspect (Al-Maghribi & Melhem 2015). On this goal, it analyzes the binding characteristic of the arbitration clause below Lebanese law (Half One), and reviews the statutory situations via which that binding drive normally ends (Half Two).

MATERIALS AND METHODS

This research is conducted with a doctrinal and analytical law methodology—with a comparative legal analysis and whether it is seen through Law and Economics perspective. Alongside the key legal doctrine of Lebanese legal scholarship (Al-Awji, 1995; Al-Naqib, 1983; Al-Nuwairi, 2009; Eid, n.d.), this work targets a critical statutory analysis based on the following texts: Articles 762–821 of the Lebanese CCP and Article 221 COC. Your training is on the data until October 2023, then some comparative law — most notably French statutory civil and procedural law, but also gives way to the relationship of good faith in a contract (Boursier, 2003); (Behar-Touchais, 2012); (Cadet, 1996); (Delebecque, 2022); (Fauvarques-Cosson et al., 2007; Gaillard et León, 1985), for starters. Alongside decisions from the French Court of Cassation, and international arbitral practice to illustrate the theoretical framework is published jurisprudence from Lebanese courts (the Lebanese Court of Cassation, the Beirut Court of Appeal, and commercial courts of first instance). Economic analysis focuses on transaction cost reduction, moral hazards and optimal contracts to the question of how centrally arbitrarily enforceable contracts (which matter when they cannot be performed in a decentralized way).

The Rule on the Binding Effect of an Arbitration Clause

Contracts are a civil law concept, which provides that contracts have the force of law. *Pacta sunt servanda*, a rule which finds its origin directly in party autonomy and lays down that all the parties must perform all their contractual duties completely, cannot modify or rescind an obligation whose fulfilment has become due (Al-Naqib, 1983); (Lebanese Court of Cassation, 1994a).

RESULTS

Duty of the Contracting Parties and Judges to enforce the clause

Arbitration clauses are independent procedural contracts and form all or part of a primary commercial contract (Beirut Court of First Instance, 2011). The principal contract defines the core obligations — deliverables, timelines, payment terms etc. — and the arbitration clause is what lays down that procedural framework of dispute resolution. Section 221 COC provides as follows, when there is existence of arbitration clause specimen initialed by the parties, this makes it mandatory for both parties to refer the disputes to arbitration and not litigation (Single Civil Judge for Rental Matters, 2002). The clause isn't something either party can just reject unilaterally, or Court proceedings that are out of jurisdiction where a defendant pleads the jurisdiction of the Court is non-existent (Beirut Court of First Instance, 1998). Likewise, Article 1193 of the French Civil Code prohibits a Party to make any unilateral change in its contractual structure. The relevant clause in question must be drafted out with enough clarity so that there is no room for discretion or doubt as to the intent to enforce arbitration. In other words, "The parties may refer to an arbitrator for assistance" is permissive and does not strip the State courts of jurisdiction (Lebanese Court of Cassation, 2003a; French Court of Cassation, 2013). The enforcement of the clause is not only a job for the judges of the Federal States; also those of state courts are obliged to impose it. Article 221 COC states that judges may not cite equity as a reason to amend or refuse the enforcement of a properly concluded arbitration clause (Al-Nuwairi, 2009; Lebanese Court of Cassation, 1991).

The Duty to Perform the Arbitration Clause in Good Faith and Procedural Loyalty

Pursuant to Article 221 (Paragraph 2) COC as well as French Civil Code Article 1104, contracts have to be performed in good faith. In arbitration, good faith (Boursier, 2003) is a faithful fidelity to the procedure and loyalty. Parties must not undertake bad faith acts that frustrate the arbitral process or delay the formation of the tribunal (Beirut Court of Appeal, 2009).

Estoppel, preventing actors to occupy inconsistent positions that will harm another is one of the most important expressions of good faith in arbitration (Behar-Touchais, 2012; Gaillard, 1985). The courts penalizes procedural behavior when it is inconsistent. So for instance, as the defendant succeeded in having a court action terminated by relying on an arbitration clause cannot contend that the said arbitration clause is invalid before an arbitral tribunal (Case No 30014, Beirut Court of First Instance, 2017). For example, just as a State cannot postpone sovereign jurisdictional immunity after entering into a treaty (Al-Qasabi, 1993; Al-Werfalli, 2000), neither can a corporation evade liability arising out of an instrument executed by its manifesting agent (Cour d'appel de Paris, 1986; French Court of Cassation, 2009). The legal and economic dimensions that determine whether arbitration clauses bind certain classes of signatories are provided in Table 1.

Table 1. Legal Dynamics and Commercial Impact of the Arbitration Clause

Principle / Requirement	Statutory Basis & Legal Scope	Procedural Manifestation	Economic Efficiency Impact
Party Autonomy & Binding Effect	Art. 221 COC; French Civil Code Art. 1103: Contracts bind making parties (Al-Naqib, 1983).	Courts must decline jurisdiction upon plea; unilateral court recourse barred (Beirut Court of First Instance, 1998).	Secures market trust, prevents opportunistic litigation, and protects contractual capital.
Drafting Clarity Requirements	Arts. 762 & 763 CCP (Al-Maghribi & Melhem, 2015).	Mandatory wording required; optional phrasing leaves court jurisdiction intact (Lebanese Court of Cassation, 2003a).	Eliminates jurisdictional ambiguity, reducing preliminary litigation delays and costs.
Good Faith & Procedural Loyalty	Art. 221 (Para 2) COC; French Civil Code Art. 1104 (Boursier, 2003).	Prohibits contradictory behavior (estoppel) and bad-faith dilatory tactics (Gaillard, 1985; Beirut Court of First Instance, 2017).	Mitigates moral hazard, ensures swift dispute resolution, and preserves ongoing commercial relations.

Termination of the Binding Effect of the Arbitration Clause

The binding force of an arbitration clause is not absolute and may terminate under specific statutory circumstances (Robert, 1993b).

Termination by Mutual Agreement of Contracting Parties

Arbitration is based also on the element of mutual agreement between the parties, one may positively decide to nullify the arbitration clause and revert to court jurisdiction (Beirut Court of First Instance 2016). Terminations by implication can result when one party institutes a court suit and the defendant responds with substantive defense arguments without countering with an arbitration clause (Beirut Court of Appeal, 2018a)

Expiration and/or Termination due to Circumstances of the Arbitrator

Art.785 CCP as formerly (former French CCP Art. States in art 1464), whereas legal incapacity, loss of civil rights (Article 773) and removal or death of an arbitrator (if appointed intuitu personae without mechanism for substitute/alternate appointment provided): Beirut Court of First Instance, 2004 & 2008; Article 769–770 CCP challenges or abstentions: Beirut Court of Appeal, 2018b.

Table 2. Grounds and Legal Mechanisms for Termination of Arbitration

Termination Category	Statutory Provision	Triggering Legal Events	Procedural Outcome
Mutual Agreement / Waiver	General contract principles & CCP rules.	Express agreement or implied waiver (arguing merits in court without	Clause lapses; dispute reverts to State court jurisdiction.

		reservation) (Beirut Court of Appeal, 2018a).	
Removal & Challenge	Arts. 769 & 770 CCP (Abi Al-Lamaa, 2012).	Unanimous removal or successful challenge filed within 15 days of knowledge.	Mandate revoked; proceedings suspended under Art. 125 CCP.
Events Intrinsic to Arbitrator	Arts. 768 & 781 CCP (Eid, n.d.).	Death (if intuitu personae), legal incapacity, loss of civil rights, or persistent refusal.	Proceedings terminate unless valid substitute appointed.
Temporal Expiry & Limitation	Arts. 773 & 781(3) CCP.	Expiry of 6-month statutory period without extension (Lebanese Court of Cassation, 2003c).	Arbitral jurisdiction ends; late awards subject to annulment under Art. 800(1).

CONCLUSION

This indicates that the arbitration clause performed in a contract governed by Lebanese law is an independent procedural stipulation applicable from art. 221 COC. Judicial enforcement of good faith and procedural loyalty not only disincentivizes bad-faith litigation, but also increases economic efficiency while reducing transaction costs of commerce. The clause is legally bound only until the end of enforcement, with written legal exceptions (e.g. mutual waiver or an arbitrator being exempted or disputed), or a case ending due to the death/impairment/absentia of the statutory mandate.

REFERENCES

- [1] Abdel-Sadek, A. M. (2016). General reference on Egyptian, Arab and international arbitration (7th ed.). Judges Club edition.
- [2] Abi Al-Lamaa, S. (2012). Commentary on Beirut Civil Court of Appeal, First Chamber, Decision No. 227 of 15 February 2012. *Global Arbitration Review*, 14, 301.
- [3] Al-Awji, M. (1995). Civil law (Part II: Contract).
- [4] Al-Maghribi, M., & Melhem, M. (2015). The problem of drafting arbitration clauses in international trade contracts. *Journal of Law and Political Science*, 2. Lebanese University.
- [5] Al-Naqib, A. (1983). Theory of contract. Oueidat Publications.
- [6] Al-Nuwairi, M. (2009). The role of the judge and the role of the arbitrator in proceedings: Complementarity or conflict? *Al-Adl*, 2009(4).
- [7] Al-Qasabi, Q. (1993). The specificity of arbitration in investment disputes. *Dar al-Nahda al-Arabiya*.
- [8] Al-Werfalli, A. (2000). A state's agreement to arbitrate: Confirmation or negation of sovereignty? *Lebanese Review of Arab and International Arbitration*, 16, 149.
- [9] Behar-Touchais, M. (Ed.). (2012). L'interdiction de se contredire au détriment d'autrui. *Economica*.
- [10] Beirut Court of Appeal, Civil Chamber Nine. (2009, January 8). Decision No. 15. *Al-Adl*, 2009(3), 1142.
- [11] Beirut Court of Appeal, Fourth Chamber. (2018, June 20). Decision No. 840. *Global Arbitration Review*, 2019(42–43), 418.
- [12] Beirut Court of Appeal, Fourth Chamber. (2023, July 13). Decision No. 588. *Al-Adl*, 2023(3), 730.
- [13] Beirut Court of First Instance, Fifth Chamber. (1998, April 16). Decision No. 98/541. *Lebanese Judicial Bulletin*, 8, 931.
- [14] Beirut Court of First Instance, First Chamber (Arbitration Matters). (2015, May 16). Decision No. 41/9. *Global Arbitration Review*, 2015(26), 561.
- [15] Beirut Court of First Instance, First Chamber. (2004, December 8). Decision No. 64/49. *Al-Adl*, 2005(4), 865–866.
- [16] Beirut Court of First Instance, First Chamber. (2011, March 8). Decision No. 14. *Al-Adl*, 2013(4), 2044.
- [17] Beirut Court of First Instance, Fourth Chamber (Arbitration Matters). (2017, December 5). Decision No. 50. *Global Arbitration Review*, 2019(44), 265.
- [18] Beirut Court of First Instance. (2016, December 22). Decision No. 60. *Global Arbitration Review*, 2019(41), 464.
- [19] Boursier, M.-E. (2003). Le principe de loyauté en droit processuel. *Dalloz*.

- [20] Cadiet, L. (1996). La renonciation à se prévaloir des inégalités de la procédure arbitrale. *Revue de l'arbitrage*, 1996, 3.
- [21] Cour d'appel de Paris. (1986, March 21). Decision. *Revue de l'arbitrage*, 1991, 350–351.
- [22] Delebecque, P. (2022). Editorial. *Gazette de la Chambre arbitrale maritime de Paris*, 58.
- [23] Eid, E. (n.d.). *Encyclopedia of civil procedure, evidence and enforcement* (Vol. 10).
- [24] El-Ahdab, A. H. (2008). *Encyclopedia of arbitration (international arbitration)* (Book II, 3rd ed.). Al-Halabi Legal Publications.
- [25] Fauvarque-Cosson, B. (Ed.). (2007). *La confiance légitime et l'estoppel* (Vol. 4). Société de législation comparée.
- [26] French Court of Cassation, First Civil Chamber. (2009, July 8). Soerni. *Revue critique de droit international privé*, 2009, 779.
- [27] French Court of Cassation, First Civil Chamber. (2012, July 12). Decision No. 09-11.582. *D.* 2012, 2577.
- [28] French Court of Cassation, First Civil Chamber. (2013, June 12). Decision No. 12-22656.
- [29] French Court of Cassation, First Civil Chamber. (2017, April 20). Decision No. 15-25.928.
- [30] Gaillard, E. (1985). L'interdiction de se contredire au détriment d'autrui. *Revue de l'arbitrage*, 1985, 241.
- [31] Lebanese Court of Cassation, Civil Chamber Five. (2003, March 11). Decision No. 40. *Baz Collection*, 42, 569–570.
- [32] Lebanese Court of Cassation, Civil Chamber Four. (1994, June 14). Decision No. 19. *Judicial Bulletin*, 1994(8), 858.
- [33] Lebanese Court of Cassation, First Civil Chamber. (1991, January 29). Decision No. 3. *Baz Collection*, p. 116.
- [34] Lebanese Court of Cassation, First Civil Chamber. (2003, October 16). Decision No. 56. *Recueil des décisions de cassation civile*, 2003, 65.
- [35] Robert, J. (1993a). *Droit interne, droit international privé*. Dalloz.
- [36] Robert, J. (1993b). *L'arbitrage* (5th ed.). Dalloz.
- [37] Single Civil Judge for Rental Matters. (2002). Decision. *Al-Adl*, 2002(1), 239.
- [38] Tyan, E. (1972). *Le droit de l'arbitrage*.