INTERNATIONAL CHAMBER OF COMMERCE - PALESTINE

Jerusalem Arbitration Center Promotional Event
Sydney, Australia
30 July 2013

Speaker: Adv. Mazen Qupty, ICC Palestine
Jerusalem Arbitration Center

JAC
A non-profit joint venture between ICC Palestine and ICC Israel in order to establish a specialized dispute resolution institution
JAC

In Association with

International Court of Arbitration Paris

ICA
BEFORE JAC

• Israelis cannot sue Palestinians in the Palestinian territories

• Enforcement of judgements in Israel, against Palestinians, is not efficient

• Israelis cannot enforce judgement in the Palestinian territories

• Lack of trust in the Israeli legal system

• Commercial activities between Israeli and Palestinian business men on a cash basis or on a very strong collateral (bank guarantees or Letters of Credit)
CREATING JAC

- Israeli business men, headed by Mr. Oren Shachor (President of ICC Israel), together with Palestinian business men, headed by Mr. Sameer Huleileh (CEO of PADICO, largest Palestinian investment company) Initiated the idea of establishing JAC

- In 2009, ICC Palestine was established and accepted as a member of ICC

- In 2010, the ICC Board in Paris approved the participation of ICA with JAC

- During the years 2011 - 2013: ICC-P, ICC-I & ICC prepared all the legal documents and agreements for the establishment of JAC

- November the 18th, 2013: The launching of JAC
JAC

• Will provide a forum for the independent, impartial, professional, apolitical and enforceable resolution of business disputes

• Business disputes related to Israel, the West Bank and the Gaza Strip, including East Jerusalem

• In accordance with the rules of arbitration of JAC
**STRUCTURE**

**Role**: JAC’s highest authority regarding all JAC matters, except those related to JAC’s arbitration proceedings

**Board**
- 7 members

- **Israeli co-Chairman**
  (ICC President, Israel)
- **Intl. Chairman**
  (ICC President, Turkey)
- **Palestinian co-Chairman**
  (ICC President, Palestine)

- One Palestinian representative
- One Israeli representative
- One Intl. ICC representative
- Intl. Chairman appointee
STRUCTURE

The Court shall have the powers and authorities granted to it under JAC’s arbitration rules. It is the independent arbitration body of the JAC.

Role

President (Mr. Yves Derains)

Two members representing Palestine

Vice President

Three Intl. members

Two members representing Israel

Court

9 members

Court President & members shall be appointed jointly by ICC-I and ICC-P with the consent of the ICA. Members also need the consent of the Court President.
STRUCTURE

Role

Responsible to administer arbitral proceedings before the arbitral tribunal

Secretariat

3 members

One ICC Palestine representative

Intl. Secretary General (Ms. Nadia Darwazeh)

One ICC Israel representative

The JAC shall have two representative offices, one in Tel Aviv and one in Ramallah which shall serve as alternative addresses for the submission of documents to the secretariat in accordance with the rules (1(6))
STRUCTURE

Role

Responsible to assist with the administration of the JAC affairs

General Manager

Until the board decides to appoint a general manager the functions and duties of general manager will be fulfilled jointly by the general managers of ICC Palestine & ICC Israel
JAC JURISDICTION

- **Monetary Jurisdiction**: the request shall not exceed 7M USD
- **Territorial Jurisdiction**: disputes related to Israel, the West Bank, the Gaza Strip and East Jerusalem
- **Substantial Jurisdiction**: the dispute is a business dispute
HEARING PLACE

• JAC Hearing Center will be located in East Jerusalem. The place of the hearing shall be the JAC Hearing Center, unless otherwise agreed by the parties (15(2))

• East Jerusalem was chosen by both parties because of its special status for each of the parties.

• The arbitral tribunal may decide, in exceptional circumstances and after consultation with the parties, to conduct some or all of the hearings via video conferencing (15(3))
SEAT OF ARBITRATION AND PLACE OF HEARING

• The parties may agree in writing, in their arbitration agreement, the seat (or legal place) of their arbitration (15(1))

• Unless the parties agree otherwise, the parties shall be deemed that the seat of arbitration shall be Paris, France and, in accordance with article 1522 of French code of civil procedure (15(2))

• The parties expressly waive their right to sit aside the award (15(2))
SPECIAL ARRANGEMENTS WITH ICA

• Transfer of disputes to ICA in case one of the Jurisdiction Conditions is not met (6(3)(iii))

• ICC hearings shall take place at the JAC Hearing Center in East Jerusalem, (6(3)(vii)), in accordance with the ICC International rules of arbitration

• Refer the appointment of one or more arbitrators to the ICA, which shall be in accordance with the rules of ICC as appointing authority (9(8))
ARBITRATORS

• A national or resident of Israel, the West Bank, or the Gaza Strip, including East Jerusalem shall not be confirmed or appointed as a sole arbitrator or president of an arbitral tribunal (10(d))

• The court may confirm or appoint persons as sole arbitrators or co-arbitrators and presidents of arbitral tribunals, provided that the court is satisfied with their sufficient experience (10(c))
Parties to the JAC arbitration may be represented in the proceedings by any legal counsel.

Both parties can be represented by an Israeli, Palestinian or any International legal counsel.
WAIVER OF REcourse

• Decisions of the court regarding the jurisdiction shall be binding on the parties (6(3)(vi))

• The decision of the court as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final (8(4))
WAIVER OF RECOURSE

• Every award shall be binding on the parties. They undertake to carry out any award and shall be deemed to have waived their right to any form of recourse (31(6))

• By submitting the dispute to arbitration under the rules, the parties shall be deemed to have waived their right to any form of recourse, including appeal, and sitting aside or annulment (35)
WHY **JAC** ARBITRATION?

ADVANTAGES FOR PALESTINIANS

<table>
<thead>
<tr>
<th>Before</th>
<th>After</th>
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<tbody>
<tr>
<td>Israeli companies are the strong party, they impose court system and Israeli Law</td>
<td>New choice JAC Arbitration</td>
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<td>Israeli Courts Israeli local arbitration</td>
<td>JAC Arbitration International credibility ICA umbrella</td>
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<td>Lack of trust in the Israeli legal system</td>
<td>Full trust</td>
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### WHY JAC ARBITRATION?

#### ADVANTAGES FOR PALESTINIANS

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<tr>
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<tbody>
<tr>
<td>4</td>
<td>Represented by Israeli law firms</td>
<td>Represented by Palestinian, International or Israeli law firms</td>
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<tr>
<td>5</td>
<td>Hearing by Israeli judges</td>
<td>International, Palestinian &amp; Israeli arbitrators</td>
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<tr>
<td>6</td>
<td>High cost court fees (2.5%)</td>
<td>Lower cost fees</td>
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### WHY JAC ARBITRATION?

**ADVANTAGES FOR PALESTINIANS**

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<td>7</td>
<td>Language barrier (Hebrew)</td>
<td>English (lower barrier)</td>
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<td>8</td>
<td>Governing law: Israeli law</td>
<td>If not agreed, as determined by the arbitral tribunal (18(1))</td>
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<td>9</td>
<td>Place of hearing: Israel</td>
<td>Hearing in East Jerusalem only</td>
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<tr>
<td>10</td>
<td>Major involvement of Israeli courts</td>
<td>Minor involvement of Israeli courts (approval of arbitration award)</td>
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<tr>
<td>11</td>
<td>Full control on interim measures by Israeli courts</td>
<td>The court of the “seat” (25(2))</td>
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<td>12</td>
<td>No scrutiny of the judgement</td>
<td>Scrutiny of the award by JAC court (29)</td>
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## WHY JAC ARBITRATION?
### ADVANTAGES FOR PALESTINIANS

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<tbody>
<tr>
<td>13</td>
<td>The judgement is open to the public</td>
</tr>
<tr>
<td>14</td>
<td>Enforcement of judgement is in Israel</td>
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WHY **JAC** ARBITRATION?

ADVANTAGES FOR **ISRAELIS**

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<tr>
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<th>Professionalism</th>
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<tr>
<td>1</td>
<td>• International arbitrators</td>
<td>• Quality control by ICA</td>
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<td>• Transfer of requests over 7M USD to ICA, hearing in E. Jerusalem</td>
<td>• Scrutiny of the award by JAC Court</td>
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<td>2</td>
<td><strong>Credibility</strong></td>
<td>• Full trust of both parties in the proceedings and the arbitral tribunal</td>
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<td>• Willingness of both parties to implement the award</td>
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<td>3</td>
<td><strong>Speed</strong></td>
<td>• Time limit to final award is twelve months (26(1))</td>
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<td>• Cost reduction of proceedings</td>
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<td>4</td>
<td><strong>Enforcement</strong></td>
<td>Next two slides</td>
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### WHY **JAC** ARBITRATION?

**ADVANTAGES FOR ISRAELIS**

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| **4.a**
Israelis cannot sue Palestinians in the Palestinian territories | JAC award is considered as an Intl. arbitration award |
| **4.b**
Enforcement of judgements in Israel, against Palestinians, is not efficient | Palestinian arbitration law (article 48) adopts the conditions of NY convention for the enforcement of foreign arbitration awards |
| **4.c**
Israels cannot enforce judgement in the Palestinian territories | JAC award can be enforced in Palestine after approval by Palestinian court |
### WHY **JAC** ARBITRATION?

**ADVANTAGES FOR ISRAELIS**

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<td>4.d</td>
<td>Israelis cannot impose attachment on accounts in Palestinian banks</td>
<td>Palestinian courts can grant interim measures if the seat of arbitration is Palestine</td>
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<td>4.e</td>
<td>Israelis cannot impose attachment on Palestinian properties in PA</td>
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THANK YOU

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Contact: mazen.qupty@quptylawfirm.com