

## Equality Under The Law

One of the fundamental principles of any legal and regulatory framework is the non-discriminatory approach to equality of all under the Law. While this basic principle is usually applied and adhered to during the litigation process, there are some concerns arising from the pre-litigation contractual handling of possible disputes especially when one of the parties in a particular contract is a government department, ministry or public sector institution.

Our experience over the years in representing numerous public and private sector clients during the various stages of ICT products and services procurement processes has shown some interesting differences in the approach to contractual negotiations. In most cases, contractual definitions in clauses related to Applicable Law, Courts of Jurisdiction and Dispute Resolution actually depend on the *nationality or country of registration* of the private sector counterpart in the contract.

In the case of contracts with foreign companies, government representatives concede these clauses and accept Arbitration, typically under International Chamber Of Commerce Rules, as the mechanism for the resolution of possible disputes. This also implies that Jordanian Law is not applicable and Jordanian Courts have no jurisdiction over such contracts. Needless to say, parties to such contracts go to extreme lengths in order to avoid disputes mainly because the collective cost of the arbitration process (arbitrator fees, third country arbitration location and expenses) is usually quite high.

This is different when the counterpart is a Jordanian company and Jordanian Law is by default the Applicable Law in a contract. In this case government representatives categorically refuse arbitration as the mechanism for resolving disputes (even when conducted under Jordanian Arbitration Law) and they insist on Jordanian Courts having sole jurisdiction. While the private sector counterpart would think twice before appointing competent and costly legal advisors and going to court in order to resolve a dispute, such a decision on the government's side is taken very lightly simply because lawyers representing the government are public sector employees and their salaries and costs are covered regardless.

In practice, Jordanian private sector counterparts in government related ICT products and services related contracts are actually being discriminated against when compared to foreign companies. Needless to say this litigation cost dimension becomes even more

important as a case drags on in the legal system for a number of years.

To redress this discriminatory situation, one solution would be to agree on Arbitration under Jordanian Arbitration Law as the only mechanism for dispute resolution in ICT products and services contracts. Any arbitration award should also be final and incontestable. An arbitration panel would typically consist of three persons, one appointed by each party and the third appointed by consensus. Each party would cover the fees and expenses of its own arbitrator. The fees and expenses of the third arbitrator would be equally split between and covered jointly by the parties regardless of the outcome of any arbitration award.