

The Arbitration and Mediation Act of the Kingdom of Morocco (2022)

Translators' Notes: This is a non-official translation of the Dahir n° 1-22-34 of 23 chaoual 1443 (24 May 2022) promulgating the Law n° 95-17 on Arbitration and Conventional Mediation.¹ It is prepared by Ms. Hanane Rharrabi, Doctor of Laws and Professor of Law, and Mr. Kai-chieh Chan, PhD Candidate in International Law.²

First Section

Arbitration

Chapter I

Definitions and General Rules

Article 1

In the present Act:

- "Arbitration" refers to the submission of a dispute to an Arbitral Tribunal which is instructed by the parties to adjudicate under an arbitration agreement;
- "Arbitral Tribunal" refers to the sole arbitrator or a college of arbitrators;
- "Rules of Arbitration" are texts that define a specific procedure to be followed in an arbitration;
- "Institutional Arbitration" refers to Arbitration organized by a permanent arbitration center or institution;
- "*Ad hoc* Arbitration" refers to the Arbitration that takes place outside an arbitration institution;

¹ Original in Arabic published in the *Bulletin officiel du royaume du Maroc* ("BORM", **Official Bulletin**) n° 7099 of 13 kaada 1443 (13 June 2022).

² *Disclaimer*: The information contained in this text is for educational and information purposes only. It is not intended to constitute legal or any professional advice, and should not be relied on or treated as a substitute for specific legal advice relevant to particular circumstances. Although we make reasonable efforts to update the translation, we make no representations, guarantees or warranties that its content is accurate, complete or up-to-date.

- “Arbitral Award” refers to a decision rendered by an arbitrator, an Arbitral Tribunal or an arbitration institution;
- “Competent Court” refers to the court having jurisdiction to decide the dispute, if it is not the subject of an arbitration agreement between its parties;
- “President of the Competent Court” refers to the president of the court of first instance or the president of the administrative court of first instance or the president of the commercial court of first instance, or his or her deputy.
- “Competent Court of Appeals” refers to the Court of Appeals, the Administrative Court of Appeals or the Commercial Court of Appeals.

Article 2

The arbitration agreement is the undertaking by the parties to resort to Arbitration to settle a dispute that has arisen or may arise in respect of a specific legal relationship, whether contractual or not.

The arbitration agreement may take the form of an arbitration contract (“*compromis*”) or an arbitration clause.

Article 3

The arbitration agreement shall be made in writing, by virtue of an authenticated deed or a private contract, or minutes drawn before the chosen Arbitral Tribunal, or by any other means agreed by the parties.

The arbitration agreement is deemed to be in writing if it is contained in a document signed by the parties or in an exchange of letters, telegrams or any other means of written telecommunication or electronic communication drawn up in accordance with the legal texts in force, or in the exchange of statements, in which the existence of such an agreement is argued by one party before an Arbitral Tribunal and uncontested by the other.

Any express reference in a written contract to the provisions of a model contract, an international convention or any other document containing an arbitration clause shall be considered to be an arbitration agreement in writing where the reference clearly states that such clause forms part of the contract.

Article 4

The arbitration contract is the agreement by which the parties to a dispute that has already arisen submit it to an Arbitral Tribunal.

The arbitration agreement may be concluded even during a proceeding already commenced before a court.

Where there is an agreement to arbitrate during the proceedings before a court, the court must refer the parties to Arbitration. That decision is considered as a written arbitration agreement.

In that case, the court shall take note of the agreement of the parties in dispute to arbitrate.

Article 5

To be valid, the arbitration contract must include the determination of the subject matter of the dispute.

The arbitration agreement shall also contain all information relating to the identification of the parties, their addresses, their places of origin and their e-mail addresses.

The arbitration contract is null and void if it provides for the appointment of the Arbitral Tribunal but one of the arbitrators chosen refuses, or is unable to perform the task assigned to him, unless the parties agree to replace that arbitrator.

The same rule applies to sole arbitrator.

Article 6

An arbitration clause is an agreement by the parties to a contract to submit to Arbitration all or part of any dispute arising out of or in connection with that contract.

Article 7

To be valid, the arbitration clause must be stipulated in writing in the main agreement or in a document unequivocally referred to therein.

Article 8

The arbitration clause is deemed to be an agreement independent of the other clauses of the contract. The annulment, invalidity, lapse, termination, cessation of the contract or the cessation of its effect for any reason whatsoever shall not affect the arbitration clause included therein where the clause is valid in itself.

Article 9

The filing of a lawsuit before the Competent Court, the objection of annulment, invalidity, termination, lapse or end of the contract and the cessation of the effects of the main contract for any reason whatsoever shall not result in the suspension of the arbitration procedure. The

Arbitral Tribunal shall have jurisdiction to rule on the validity or the annulment of the main contract.

Article 10

Arbitration can be *ad hoc* or institutional.

In case of an *Ad hoc* Arbitration, the Arbitral Tribunal shall be in charge of conducting it and determining the procedure that should be followed, unless the parties have agreed otherwise or have chosen specific arbitration rules.

When arbitration is submitted before an arbitration institution, the latter shall be in charge of organizing it and guaranteeing its good conduct according to its rules.

In all cases, rules relating to the rights of defense must be respected.

Article 11

The mission of arbitrator can only be assigned to a natural person in full capacity, having the minimum of scientific knowledge and experience to carry out the said mission and who has not been the subject of a final and binding decision for acts contrary to honor, probity or good morals, or of a disciplinary sanction which has led to the dismissal from an official position, or one of the pecuniary sanctions provided for in Section VII of Book 5 of the Commercial Code (Law n° 15-95), or having been the subject of a commercial disqualification or deprivation of the exercise of a civil right.

If the agreement designates a juridical person, the latter shall only has the power to organize and ensure the proper functioning of the arbitration without having the competence to decide a dispute, which must be submitted to an Arbitral Tribunal composed of one or several natural persons.

Article 12

Subject to the provisions of Article 13 below, natural persons who, habitually or by profession, carry out duties as arbitrators, either individually or within a legal entity, must be registered on the list of arbitrators.

The methods of compiling the list and the conditions of registration and removal are determined by a regulatory text. Only individuals with scientific knowledge and experience maybe be registered.

Article 13

The parties to the dispute may appoint the Arbitral Tribunal from outside the list of arbitrators provided for in Article 12 above. The President of the Competent Court may also, if necessary, appoint one or more arbitrators from outside the list after summoning the parties.

Article 14

Subject to the provisions of the Dahir of Ramadan 9, 1331 (August 12, 1913) forming the Code of Obligations and Contracts, as amended and supplemented, and in particular article 62 thereof,³ all persons enjoying full capacity, whether natural or juridical, may enter into an arbitration agreement in order to resolve disputes relating to the rights of which they dispose freely, within the limits and in accordance with the forms and procedures provided for in the present Law.

Article 15

The arbitration agreement may not concern the settlement of disputes relating to the status and capacity of individuals, or to personal rights that cannot be a subject matter of commerce.

Article 16

Disputes relating to the State's unilateral acts, territorial authorities, or any other entities having public authority prerogatives shall not be subject to arbitration.

Nevertheless, financial disputes arising therefrom may be the object of an arbitration contract, except for those relating to tax law.

The disputes relating to contracts concluded by the State or territorial authorities can be subjected to an arbitration agreement, subject to the provisions relating to control or mandate set out in the legislation or regulations applicable to the said contracts.

Failure to comply with the provisions of the preceding paragraph has no effect on the validity of the arbitration agreement.

Article 17

State-owned enterprises subject to the law of commercial companies, public establishments and institutions can enter into arbitration agreements.

Article 18

Where a dispute submitted to an Arbitral Tribunal under an arbitration agreement is brought before a court, the court shall declare the claim inadmissible until the end of arbitration proceedings or the annulment of the arbitration agreement.

If the Arbitral Tribunal has not yet been seized, the Competent Court shall also declare the claim inadmissible.

³ Article 62, Dahir of Ramadan 9, 1331 (August 12, 1913) forming the Code of Obligations and Contracts: "An obligation without cause or based on an illicit cause is null and void. A cause is illicit when it is contrary to good morals, public order or the law."

In either case, the defendant must make the request before any decision on the merits. The Competent Court cannot declare the action inadmissible on its own motion.

The Competent Court shall decide the objection of inadmissibility raised in accordance with the provisions of this Article in a separate and preliminary decision. This decision can only be appealed at the same time as an application against the decision on the merits.

The grounds for refusal of enforcement, application for setting aside, or reconsideration by the Competent Court for the first time may not be invoked if one of the parties could have invoked them before the Arbitral Tribunal before the issuance of the Arbitral Award.

Article 19

The arbitration agreement shall not preclude a party from requesting, either before or during the arbitration proceedings, that the interim relief judge (*juge des référés*) take any provisional or conservatory measures in accordance with the provisions of the Code of Civil Procedure. The parties may withdraw from the said measures in accordance with the same provisions.

Chapter 2

Domestic Arbitration

Section 1: The Arbitral Tribunal

Sub-section 1: Constitution of the Arbitral Tribunal

Article 20

The Arbitral Tribunal shall consist of a sole arbitrator or of several arbitrators, the parties being free to determine the manner of appointment and the number of arbitrators, including the president, either in the arbitration agreement or by referring to the arbitration rules of the institution chosen.

If the parties fail to agree on the number of arbitrators, it shall be fixed at three, subject to the provisions of Article 22 below.

For the Arbitration to be valid, the number of arbitrators must be odd when there are several arbitrators.

Article 21

If the arbitrator or arbitrators appointed by the arbitration agreement do not meet the legal requirements for the performance of this function, or for any other reason which impedes

the composition of the Arbitral Tribunal, a new arbitrator or arbitrators shall be appointed, either by agreement of the parties or in accordance with Article 22 below.

Article 22

Where the parties appoint an even number of arbitrators, the Arbitral Tribunal shall be completed by an arbitrator chosen in accordance with the parties' agreement or, failing that, by the order of the President of the Competent Court, after summoning the parties in accordance with Articles 12 and 13 above.

In the case of Institutional Arbitration, the procedure for the constitution of the Arbitral Tribunal shall be completed in accordance with the provisions of the arbitration institution chosen.

Article 23

If the Arbitral Tribunal has not been appointed in advance and the manner and date of selection of the arbitrators have not been determined or if the parties have not agreed thereon, the following procedures shall be followed:

1. When the Arbitral Tribunal is composed of a sole arbitrator, he shall be appointed by the President of the Competent Court at the request of one of the parties;
2. Where the Arbitral Tribunal is composed of three arbitrators, each party shall appoint one of them. The two appointed arbitrators shall agree on the appointment of the third arbitrator. Where one of the parties fails to appoint its arbitrator within fifteen days of receipt of a request to do so from the other party, the President of the Competent Court shall make the appointment at the request of one of the parties. If the two appointed arbitrators fail to agree on the appointment of the third arbitrator within fifteen days of the appointment of the last of them, the President of the Competent Court shall proceed with such appointment at the request of one of the parties or of one of the arbitrators or of both of them, by an order that is subject to no appeal. The president of the Arbitral Tribunal shall be the arbitrator appointed by the two co- arbitrators or by the President of the Competent Court.
3. If there is more than one claimant or respondent to the arbitration, and the claimants or respondents fail to agree on the appointment of a sole arbitrator within fifteen days of a request to do so by the opposing party, the President of the Competent Court shall make the appointment at the request of one of the parties.
4. The procedures referred to in 2nd paragraph above of the present Article shall be followed when the Arbitral Tribunal is composed of more than three arbitrators.
5. The President of the Competent Court shall ensure that the arbitrator appointed meets the conditions required by the present law, those agreed upon by the parties and the language of the arbitration. The President shall make his decision after consulting the parties, and the decision is subject to no appeal.

At the request of one of the parties or of one of the arbitrators, the President of the Competent Court shall rule on difficulties relating to the constitution of the Arbitral Tribunal,

irrespective of which party has made the appointment, by a decision that is subject to no appeal.

Sub-section 2: Challenge of the Arbitral Tribunal

Article 24

An arbitrator may be challenged for the following reasons:

1. The person has been convicted of one of the offenses listed in Article 11 above by virtue of a final and binding decision;
2. He or his spouse or his ascendants or descendants have a direct or indirect personal interest in the dispute;
3. There is a parenthood or in-law relationship between the person or his spouse and one of the parties up to the fourth degree or between the arbitrator and the counsel of one of the parties;
4. There is an ongoing lawsuit or when there has been a lawsuit concluded in less than two years between one of the parties and the person or his spouse or their ascendants or descendants or between the person and the counsel of one of the parties;
5. There is a subordination link between the person or his spouse or his ascendants or descendants and one of the parties or his spouse or his ascendants or descendants or between the person and the counsel of one of the parties;
6. There is known friendship or hostility between the person and one of the parties or their counsel;
7. The person is a creditor or debtor of one of the parties or of their counsel;
8. The person has previously pleaded, appeared or testified as a witness in the dispute submitted to the Arbitral Tribunal;
9. The person had to act as a legal representative of one of the parties or their counsel.

The following are not considered as grounds for challenge:

- current professional relationships between the arbitrator and the representative of one of the parties to the dispute;
- current relations between members of the Arbitral Tribunal;
- future disputes between the arbitrator and one of the parties in a past arbitration.

Article 25

An arbitrator who considers himself to be subject to a challenge shall notify the parties. In this case, the arbitrator can accept the appointment only after the parties' express agreement or after the time limit for challenge provided for in Article 26 below has expired, and without the parties proceeding to challenge him.

Article 26

The applicant for a challenge shall submit its request in writing to the arbitrator who is the subject of the challenge within 8 days from the date on which it became aware of the constitution of the Arbitral Tribunal or of the grounds for the challenge.

If the arbitrator does not withdraw voluntarily within 3 days from the date of the request, the party making the challenge may submit the request to the President of the Competent Court having jurisdiction over the seat of the arbitration or, if it has not been determined by the parties, the Court having jurisdiction over the domicile or residence of the challenged arbitrator.

After summoning the parties and the arbitrator who is the subject of the challenge, the President of the Competent Court or the deputy President shall decide on the said request within 10 days by a an order which is subject to no appeal.

Any challenge to the same arbitrator in the same arbitration proceedings and on the same or another ground of which it is proved that the challenger had knowledge prior to the first challenge is inadmissible.

When an arbitrator is successfully challenged, the arbitration which he or she has taken part is deemed to be invalid, including its Award.

Article 27

When an impediment hinders the performance of an arbitrator's mandate, or when the arbitrator fails to commence or ceases to perform his mandate, or is late in accepting his mandate without good cause, thereby causing a delay in the arbitration proceedings, without he withdrawing from office or without the parties agreeing to his termination, the President of the Competent Court may, at the request of one of the parties, terminate the mandate and remove the said arbitrator by a decision which shall be subject to no appeal.

In this case, the arbitrator's mandate is terminated by an order having the effect of removal.

Such order shall appoint an arbitrator to replace the arbitrator who has been removed.

The arbitration proceedings shall be suspended when the mandate of one of the arbitrators is terminated for any reason, until the appointed arbitrator accepts the arbitration appointment replacing the arbitrator whose mandate has been terminated.

Article 28

An arbitrator may only be removed with the unanimous consent of the parties in accordance with Article 11 above. Such removal terminates the arbitrator's mandate upon notice of the corresponding order.

In this case, another arbitrator shall be appointed in accordance with the rules governing the appointment of the arbitrator whose mandate has been terminated.

Article 29

When a request for challenge or removal of an arbitrator is submitted to the President of the Competent Court, the arbitration proceedings shall be suspended *ipso jure* until the request is decided, unless the arbitrator in question agrees to resign.

Difficulties relating to the challenge or removal of arbitrators shall be brought before the President of the Competent Court who, after summoning the parties and the arbitrator concerned by the challenge, shall make a decision which shall be subject to no appeal.

Article 30

The constitution of the Arbitral Tribunal is only complete if the designated arbitrator or arbitrators accept their mandate.

The acceptance of the mandate is established in writing, by the signature of the arbitration agreement or by the drafting of a deed indicating the beginning of the mandate.

An arbitrator who has accepted the mandate must, at the time of acceptance, declare in writing any circumstances that may give rise to doubts as to his impartiality and independence.

Arbitrators must declare their acceptance of the assignment within 15 days from the date of service of the identity of the arbitrators appointed.

Arbitrators must complete their mandate to the end of their term of office. An arbitrator shall not, under penalty of payment of damages, withdraw from his office without a legitimate reason after accepting his mission. He may withdraw only after having sent a notice mentioning the reasons for his resignation.

Article 31

The arbitrators are bound by professional secrecy in conformity with the provisions of the Criminal Code.

Sub-section 3 : Procedures and Events

Article 32

The arbitration proceedings shall start from the day of the constitution of the Arbitral Tribunal unless the parties agree otherwise.

Prior to any consideration of the merits of the case, the Arbitral Tribunal shall issue an order, either on its own motion or at the request of one of the parties, on the validity or limits of its jurisdiction and on the validity of the arbitration agreement.

Such order may be appealed within 15 days of its pronouncement before the President of the Competent Court, who shall issue an order subject to no appeal after summoning the parties.

Article 33

The Arbitral Tribunal may conduct the arbitration in the manner that it considers appropriate, in compliance with the present law, without having to implement the rules applied in the courts, unless the parties agree otherwise in the arbitration agreement.

The Arbitral Tribunal may, during the course of the proceedings, modify the rules that it has previously established.

The parties may agree on the place of arbitration within or outside the Kingdom of Morocco. In the absence of an agreement to this effect, the Arbitral Tribunal shall determine the seat of arbitration, taking into account the circumstances of the case and the domicile of the respondent(s) to the arbitration, without precluding the Arbitral Tribunal from meeting at any place it deems suitable for the arbitration proceedings, such as the hearing of the parties to the dispute, witnesses or experts, the examination of documents, the inspection of merchandise or goods or the deliberations among the members of the tribunal, etc.

If all the arbitrators are unable to attend, the Arbitral Tribunal may, if necessary and with the agreement of the parties, meet remotely using modern telecommunications technology.

Parties to arbitral procedure shall be treated on equal footing. Each of them shall have a full and equal opportunity to present its case, to develop its case and to exercise its right of defense.

Article 34

The Arbitration shall be conducted in Arabic unless the parties agree otherwise.

The language of Arbitration shall be used as the language in which data, correspondences, written pleadings, exhibits and arguments, hearings, meetings and oral arguments are prepared, as well as that of any decision, order or award of the Arbitral Tribunal, unless otherwise agreed by the parties or decided by the Arbitral Tribunal.

The Arbitral Tribunal may, on its own motion or at the request of the parties or their representatives, request the translation of the documents submitted into the language of the arbitration by a court-certified translator.

Regardless of the language of Arbitration, the Arbitral Tribunal may in all cases decide to issue awards, decisions and orders in Arabic, unless the parties explicitly object to this before the constitution of the Arbitral Tribunal is completed. Agreements regarding the language of Arbitration do not constitute objection within the meaning of this Article.

Article 35

The claimant of the Arbitration shall present, within the time limit agreed between the parties or fixed by the Arbitral Tribunal, with a written or electronic statement of claims, which shall contain its name, its address, as well as the surname, first name and address of the respondent to the arbitration, a statement of the facts of the case and the identification of the issues in dispute and its claims.

The statement of claim shall be accompanied by all supporting documents and exhibits and shall be transmitted to the other parties to the arbitration by all available means.

Article 36

The respondent to the Arbitration shall have the right to submit a written or electronic submission in response, which includes its defenses or ancillary or counterclaims, together with all exhibits and evidence.

Article 37

If a party has evidence in its possession, the Arbitral Tribunal may order that party to produce it on its own motion or at the request of one of the parties.

Article 38

Copies of memoranda, documents or other materials submitted to the Arbitral Tribunal by one of the parties shall be communicated to the other party. The same applies to expert reports and all other evidence. The parties shall be given a period of time to submit their responses and comments.

Subject to the rejection from the Arbitral Tribunal, each of the parties to the Arbitration may amend or supplement its claims or defenses, or file additional documents during the arbitration proceedings, in accordance with the procedural rules agreed upon or set by the Arbitral Tribunal.

Article 39

Unless the parties agree otherwise, the Arbitral Tribunal may hold oral pleadings to allow each of the parties to plead on the merits of the case and present their evidences and arguments; it may be limited to the presentation of briefs and written submissions.

The parties to the Arbitration shall be notified of the dates of the hearings that the Arbitral Tribunal decides to hold and at least five days before the date it sets for that purpose.

Minutes of the debates during hearings held by the Arbitral Tribunal shall be drawn and copies of the minutes shall be delivered to the parties.

Article 40

Unless the parties agree otherwise, the failure of the claimant in the arbitration to file the statement of claim within the time limit without justification will result in the termination of the arbitration proceedings by decision of the Arbitral Tribunal.

If the respondent in the arbitration fails to file a statement of defense within the time limit, the Arbitral Tribunal shall, unless the parties agree otherwise, continue the arbitration proceedings without this being regarded as an acknowledgement by the respondent in the arbitration of the merits of the statement of claim by the claimant in the arbitration.

In the event of failure of either party to attend one of the hearings or that of a failure to produce the documents and evidence requested without a reasonable explanation, the Arbitral Tribunal may continue the arbitration proceedings and make an award with respect to the dispute on the basis of the evidence before it.

Article 41

The Arbitral Tribunal may carry out any inquiry, in particular by hearing witnesses, appointing experts, or by any other measure of investigation.

It may also hear any person it deems useful to be heard.

Hearings before the Arbitral Tribunal shall be conducted in accordance with the applicable procedure.

The parties may be represented or assisted by any person of their choice.

Article 42

Unless otherwise agreed by the parties, the Arbitral Tribunal may, at the request of one of the parties, take any interim or conservatory measure it deems necessary within the scope of its mandate.

If the party against whom the award has been made fails to comply with it, the party in whose favor the award has been made may apply to the President of the Competent Court for an enforcement order.

Article 43

If there are multiple arbitrators, all of them shall participate in the work and activities of the Arbitration as well as in drafting all the minutes, unless the parties have allowed them to delegate one of them to perform a certain duty.

Subject to the objections of the parties or the co-arbitrators, the presiding arbitrator shall have the right, *ipso jure*, to decide procedural matters relating to the proceeding at the request of either party.

Article 44

The Arbitral Tribunal has jurisdiction to rule on all issues and defenses that are relevant to the determination of the claims submitted to it.

During the arbitration proceedings, if the Arbitral Tribunal is requested to decide on an issue beyond its jurisdiction, or if a claim of forgery of a document or a material is presented and a public prosecution has been initiated against such forgery before the Courts, the Arbitral Tribunal may continue hearing the dispute if it considers that the decision on that matter or on the forgery would not affect the decision on the merits of the dispute. Otherwise, it may suspend the procedure until a final and binding decision on forgery is rendered on the issue. The suspension of the arbitration proceedings results in the suspension of the time limit for arbitration starting from the date of the initiation of the public action.

Article 45

The Arbitral Tribunal shall decide the dispute in accordance with the rules of law agreed upon by the parties.

If the parties do not agree on the rules of law to be applied to the dispute, the Arbitral Tribunal shall apply the objective rules of law which it considers most closely related to the dispute. In any case, it shall take into account the terms of the contract in dispute, trade usages and customs and usual previous dealing between the parties.

Article 46

If the parties expressly agree that the Arbitral Tribunal shall act as *amiable compositeur*, the tribunal shall, in this case, decide on the subject matter of the dispute in accordance with the rules of fairness and equity.

Article 47

If the parties agree to settle the dispute during the arbitration proceedings, the Arbitral Tribunal shall terminate the proceedings and certify the settlement after having established the terms of the settlement by means of an Award.

Such Award shall have the same effect as any other Arbitral Award on the merits of the case.

The Arbitral Tribunal shall order termination of the proceedings when it considers that the continuation of the arbitration proceedings has become unfruitful or impossible for any reason.

Article 48

If the arbitration agreement does not determine a time limit to render the Arbitral Award, the arbitrator's mandate is terminated after 6 months following the last acceptance of the arbitrator's mandate.

The agreed or statutory time limit may also be extended by a same period by virtue of parties' agreement, and may otherwise be extended by a same period according to the circumstances of each case by a reasoned order subject to no appeal issued by the President of the Competent Court after summoning the parties and upon the request of one of them or of the Arbitral Tribunal.

If the Arbitral Award is not rendered within the time limit referred to in the preceding paragraph, any party to the arbitration may request the President of the Competent Court to terminate the arbitration proceedings by an order subject to no appeal, as long as the cause of the failure to render the Arbitral Award within the aforementioned time limit is not attributable to the party making the request. The parties may then refer the dispute to the court that originally had jurisdiction over the dispute.

Article 49

Upon completion of the procedural steps and when the Arbitral Tribunal considers that the case is ready, the Arbitral Tribunal shall fix the date for the deliberations and the date for rendering the Award. The Arbitral Tribunal may change this date according to the circumstances of the case, subject to compliance with the time limit for the arbitration proceedings.

Subject to the provisions in Article 47 above, no new claim, argument or submissions may be submitted after that date; no new evidence may be produced after the deliberation, except at the request of the Arbitral Tribunal.

Section 2: The Arbitral Award

Article 50

The Arbitral Award shall be made, after deliberation by the Arbitral Tribunal, by a majority of votes. Arbitrators vote either in favor of or against the draft Arbitral Award.

In the event of a split vote, the president of the Arbitral Tribunal shall have the casting vote. Dissenting opinion may be incorporated in a separate document.

The deliberations of the arbitrators are secret.

The award shall be signed by each of the arbitrators.

If an arbitrator refuses to sign or is unable to do so for whatever reason, the other arbitrators shall record this in the Arbitral Award and state the reasons for the refusal to sign. The Award shall have the same effect as if it had been signed by each of the arbitrators.

Article 51

The Award shall be made in writing in a paper or electronic document. The arbitration agreement shall be mentioned therein and shall include the following information:

- The date of the Award and the place where it was made;
- The names of the arbitrators who made the Award, their nationality, their capacity, their elected or real domicile and their e-mail addresses;
- The surnames, first names, as well as their real or elected domicile or residence of the parties and the name of their representatives;
- If one of the parties is a legal entity established under private or public law, the Arbitral Award must include its name, type, administrative or registered office, as the case may be;
- A statement of the facts, the claims of the parties, the defenses and exhibits presented as well as the issues that were decided.

The Arbitral Award shall provide the reasons on which it is based, unless the parties have agreed otherwise in the arbitration agreement or during the arbitration proceedings, or where the law applicable to the arbitration proceedings does not require the award to state the reasons on which it is based.

The Arbitral Award must be reasoned when one of the parties is a legal person established under public law.

Article 52

The Arbitral Award shall fix the arbitrators' fees, the costs of arbitration, and their allocation between the parties.

If the parties and arbitrators do not agree on the determination of the arbitrators' fees, such fees shall be determined by a separate decision by the Arbitral Tribunal.

The separate decision on the determination of the arbitrators' fees shall be notified by the Arbitral Tribunal by all available means of service.

Such decision may be appealed within 15 days from the date of its receipt before the President of the Competent Court, whose decision is subject to no appeal.

Article 53

Arbitral Awards rendered by arbitrators pursuant to the present Act has *res judicata* effect with respect to the dispute it resolves and has enforceability ("*force exécutoire*") in accordance with the provisions of the present Law.

The rules on provisional execution of judgments are applicable to Arbitral Awards for which exequatur is not required.

Article 54

The Arbitral Tribunal communicates to each of the parties a copy of the Arbitral Award, within a time limit of 7 days starting from its issuance.

The publication of the Arbitral Award or excerpts can only be made upon authorization by the parties to arbitration.

Article 55

The Arbitral Award terminates the mandate of the Arbitral Tribunal with respect to the issues that it deals with.

Nevertheless, any material or calculation error in the Arbitral Award may be rectified after consultation with the parties:

- a. On its own motion by the Arbitral Tribunal within 30 days after the award is rendered;
- b. At the request of one of the parties within 15 days from the date of notification of the Arbitral Award.

The parties may submit a request for interpretation of the Award under the same conditions above.

At the request of one of the parties, the Arbitral Tribunal may make a supplementary award within 60 days of the notification of the Award concerning an outstanding claim, after summoning the parties.

If the Arbitral Tribunal fails to decide on the claim within the above-mentioned period, the provisions of Article 56 below shall apply.

To this end, the original of the Arbitral Award and a copy of the arbitration agreement shall be deposited by the Arbitral Tribunal, one of the arbitrators, or the most diligent party, with the registry of the Competent Court within 15 full days following its issuance.

Article 56

If the Arbitral Tribunal cannot meet again, the President of the Competent Court shall hear the case at the request of one of the parties.

After summoning the parties, the President of the Competent Court shall make a decision subject to no appeal within 30 days.

The Arbitral Award issued to this effect shall be considered as an integral part of the original Arbitral Award. The provisions of Article 50 above are applicable thereto.

The party who considers that it has been prejudiced by the failure of the Arbitral Tribunal to reconvene to decide on the correction of a material error or the interpretation of an award

may bring an action based on the rules of civil liability against the Arbitral Tribunal or against the arbitrator responsible for compensation of the loss it has suffered.

Article 57

Requests presented in accordance with articles 55 and 56 of the present Act shall suspend the execution of the supplementary Arbitral Award and the time limits for recourse until the notification of the Arbitral Awards or the order of the President of the Competent Court, as the case may be.

An application to supplement the Arbitral Award in respect of a claim that has not been decided shall suspend the time limits for recourse until notification of the supplementary Arbitral Award or the decision made at the end of the procedure for reconsideration, as the case may be.

The Arbitral Award rendered in this regard shall be considered an integral part of the original Arbitral Award. The provisions of Article 50 above shall be applicable thereto.

Article 58

Arbitral Award is subject to no recourse except as provided in Articles 59, 60 and 61 of the present Act.

Article 59

Arbitral Award may be subject to a request for reconsideration before the Competent Court of Appeals that would have heard the case if no arbitration agreement existed according to the provisions of Code of Civil Procedure.

Article 60

Arbitral Awards, even granted exequatur, are not opposable to third parties, who may nonetheless submit third party objections in accordance with the requirements of the Code of Civil Procedure before the Competent Court that would have heard the case if no arbitration agreement existed.

Article 61

Notwithstanding anything to the contrary, Arbitral Awards may be subject to an application for setting aside pursuant to normal procedures before the Competent Court of Appeals that falls within the jurisdiction of the place where they were rendered.

Such application is admissible as soon as the Award is rendered and within a period of 15 days from the date of notification of the Award.

Article 62

The application for setting aside can only be filed in the following cases:

1. If the Award was rendered without arbitration agreement, or in case the arbitration agreement was invalid, or if the Award was rendered after the termination of the arbitral proceedings;
2. If the Arbitral Tribunal was improperly constituted, the sole arbitrator was improperly appointed or in a manner inconsistent with the arbitration agreement;
3. If the Arbitral Tribunal has ruled without complying with its mandate or on matters outside the scope of the arbitration or has disregarded the limits of the agreement or has declared that it does not have jurisdiction even though it did have jurisdiction. However, if the decisions on matters submitted to Arbitration are separable from those not submitted, only the part of the Award which contains decisions on matters not submitted to Arbitration may be set aside;
4. Where the provisions of Articles 50, 51 and 52 below have not been complied with;
5. Where one of the parties was not given the opportunity to present its case for not being given proper notice on the appointment of an arbitrator or of the arbitral proceedings or for any other reason relating to the duty to respect the rights of defense;
6. If the Arbitral Award is made in violation of public policy;
7. In case of a failure to comply with the due procedures agreed between the parties or a failure to apply a law applicable to the subject matter of the dispute by mutual agreement.

The Competent Court of Appeals decides on its own motion to set aside the Arbitral Award when deemed contrary to the public policy of the Kingdom of Morocco or when it finds that the subject matter of the dispute is not arbitrable.

The Competent Court of Appeals rules in accordance with the procedure for urgent matters.

The time limit for filing the application for setting aside stays the execution of the Arbitral Award.

The exercise of this remedy within the time limit shall also suspend the enforcement of the Arbitral Award.

Article 63

Unless otherwise agreed, where the Competent Court of Appeals sets aside the Arbitral Award, it shall rule on the merits of the case within the limits of the Arbitral Tribunal's mandate unless the setting aside is based on the absence or the invalidity of the arbitration agreement.

In case of setting aside, the court shall rule on the dispute on the basis of a prior agreement contained in a clause or arbitration contract or following the request from the parties.

Article 64

Where the Competent Court of Appeals rejects or declares the application of setting aside inadmissible or fails to act on it, it shall order the enforcement of the Arbitral Award on its own motion and such judgment shall be final.

If the Competent Court of Appeals finds, in the cases submitted to it in accordance with the 1st paragraph, that such application was brought in an abusive manner, it shall order the applicant to pay compensation for the damage suffered by the other party, without the amount of damages being less than 25% of the amount awarded in the Arbitral Award.

Article 65

The judgments of the Competent Court of Appeals on setting aside can be appealed to the Supreme Court in accordance with the provisions of the Code of Civil Procedure.

Article 66

The Competent Court of Appeals shall examine the claims against Arbitral Awards in chambers.

The parties shall have the right to withdraw all documents after the court has rendered its judgment and the time limits for recourse have expired or all remedies provided for by the law in force have been exhausted.

Article 67

The Arbitral Award shall be enforceable only after exequatur has been granted by order of the President of the Competent Court within whose jurisdiction the Award was rendered, in accordance with the procedure for urgent matters and after summoning the parties.

If the dispute is referred to the Competent Court of Appeals and the parties have agreed to arbitrate, the Arbitral Award shall be deposited at the clerk's office of the Competent Court of First Instance.

After summoning the parties, the order of exequatur shall be issued by the President of the Competent Court where the Arbitral Award has been filed in accordance with the procedure for urgent matters.

Article 68

The applications for exequatur of Arbitral Awards rendered at the end of disputes in which a party is a legal person established under public law fall within the jurisdiction of the President of the Administrative Court of First Instance, under whose territorial jurisdiction the Arbitral Award will be enforced, or the President of the Administrative Court of Rabat, when the enforcement of the Arbitral Award concerns the entire national territory.

Article 69

The exequatur shall be affixed to the original of the Arbitral Award.

The order granting exequatur shall be subject to no appeal.

Nevertheless, the application for setting aside the Arbitral Award entails, by operation of law, a recourse against the decision granting exequatur, which results in an immediate withdrawal of the President of the Competent Court from his office in case he has not yet rendered such order.

Article 70

The Competent Court must grant the exequatur in full if the time limits for filing an application for setting aside have been exhausted without such action being taken, provided that the Arbitral Award does not contradict rules of public policy ("*ordre public*").

The order refusing exequatur must be reasoned.

It may be appealed, in accordance with ordinary procedures, within fifteen days of its notification. In this case, the Competent Court of Appeals shall hear, at the request of the parties, the arguments that they could have put forward against the Arbitral Award by way of an application for setting aside, as long as the time limit for the application for setting aside has not been exhausted without it being exercised.

The Competent Court of Appeals shall rule on this appeal in accordance with the procedure for urgent matters after summoning the parties.

Chapter III

International Arbitration

Article 71

This Chapter applies to international arbitration without prejudice to the provisions of the international treaties ratified by the Kingdom of Morocco and published in the Official Bulletin.

Article 72

An Arbitration is international within the meaning of the present Chapter if it involves interests of international trade and at least one of the parties is domiciled or based abroad.

Article 73

The arbitration agreement may, directly or by reference to Rules of Arbitration, appoint the arbitrator or the arbitrators or specify the method of their appointment as well as their substitution.

If the constitution of the Arbitral Tribunal encounters a difficulty and unless otherwise provided, the most diligent party may refer the matter to:

1. If the arbitration takes place in the Kingdom of Morocco, the President of the Commercial Court of First Instance who will thereafter declare the Arbitral Award enforceable;
2. If the arbitration takes place abroad and if the parties have agreed on the application of the Moroccan arbitration law, the President of the Commercial Court of First Instance of Casablanca.

Article 74

The arbitration agreement may, directly or by reference to the Rules of Arbitration, determine the procedure applicable to arbitration proceedings. It may also subject the arbitration to the procedural rules it provides.

In the absence of necessary procedure and arrangements in the arbitration agreement, the Arbitral Tribunal fixes the rules either directly or by reference to the law or to the Rules of Arbitration.

Article 75

Where arbitration is subject to this Act, the provisions of the second Chapter shall apply without prejudice to any special agreement between the parties and subject to the specific articles provided for in this Chapter.

In any case, the rules relating to the rights of defense and the equal treatment of the parties to the arbitration shall be respected.

The arbitration agreement freely determines the rules of law that the Arbitral Tribunal shall apply to the merits of the dispute. In the absence of a choice by the parties of the applicable rules of law as above, the Arbitral Tribunal shall decide the dispute in accordance with the rules of law it deems appropriate.

In any case, the Arbitral Tribunal shall take into account the provisions of the contract binding on the parties as well as the relevant customs and usages of trade.

Article 76

The Arbitral Tribunal shall decide as *amiable compositeur* only if the parties have expressly agreed that it shall do so.

In this case, the Tribunal decides the case in accordance with the rules of fairness and equity.

Article 77

After summoning the parties, Arbitral Awards shall be recognized and declared enforceable in Morocco by the President of the Commercial Court of First Instance within whose jurisdiction they were rendered, or by the President of the Commercial Court of First Instance of the place of enforcement if the seat of the arbitration is located abroad, provided that their recognition and enforcement are not contrary to national or international public policy.

Article 78

The existence of an Arbitral Award is evidenced by the production of its original accompanied by the arbitration agreement or copies of these documents whose authenticity is certified. If these documents are in a foreign language, a translation into Arabic by a court-certified translator must be produced.

Article 79

The application for recognition and enforcement of the Arbitral Award shall be granted in full if the time limit for an application for setting aside, provided for in Article 83 below, has been exceeded without this remedy being exercised, as long as the recognition or enforcement is not contrary to national or international public policy.

Such order is subject to appeal.

Article 80

The appeal against the decision granting recognition or enforcement is admissible only in the following cases:

1. The Arbitral Award was rendered in the absence or the invalidity of an arbitration agreement or after the termination of the arbitral proceedings;
2. The Arbitral Tribunal was improperly constituted or the sole arbitrator was improperly appointed;
3. The Arbitral Tribunal did not rule in accordance with its mandate;
4. The rights of defense were not respected;
5. The recognition or enforcement is contrary to national or international public policy.

Article 81

The appeal provided for in Articles 79 and 80 above shall be filed with the Competent Commercial Court of Appeals within fifteen days from the notification of the order.

After summoning the parties, the court shall decide according to the procedure for urgent matters.

Article 82

Subject to agreement of the parties, the Arbitral Award rendered in Morocco in international arbitration matters may be subject to an application for setting aside in the cases provided for in Article 80 above.

The order granting exequatur of the Arbitral Award is subject to no appeal. Nevertheless, the application for setting aside the Arbitral Award entails, by operation of law and within within the limits of the court's jurisdiction, a recourse against the decision granting exequatur, which results in an immediate withdrawal of the President of the Competent Court from his office in case he has not yet rendered such order.

Article 83

The application for setting aside provided for in Article 82 above shall be brought before the Competent Commercial Court of Appeals in where the Arbitral Award was rendered. Such application is admissible as soon as the award is rendered and within a period of 15 days from the date of notification of the award.

Article 84

The time limit for exercising the remedies provided for in Articles 79, 80, 81 and 82 above shall stay the enforcement of the Arbitral Award.

An application submitted within the time limit shall also stay enforcement, unless the Arbitral Award is provisionally enforceable. In that case, the Competent Commercial Court of Appeals may stay the enforcement by a separate order which is subject to no appeal.

The rules on provisional execution of judgments are applicable to Arbitral Awards.

Article 85

Contrary to the provisions of Article 64 above, the Competent Commercial Court of Appeals cannot decide the merits of the dispute if it sets aside an international Arbitral Award.

Second Section

Conventional Mediation

Article 86

In order to prevent or resolve a dispute, the parties may agree to the appointment of a mediator in order to facilitate settlement of such dispute.

Article 87

The mediation agreement is a contract by which the parties agree to appoint a mediator to facilitate the conclusion of a settlement to put an end to the dispute that has arisen or may arise.

Subject to the provisions of the Dahir of Ramadan 9, 1331 (August 12, 1913) forming the Code of Obligations and Contracts, as amended and supplemented, and in particular Article 62 thereof,⁴ all persons enjoying full capacity, whether natural or juridical, may enter into a mediation agreement in respect of disputes relating to the rights of which they dispose freely and in compliance with the matters excluded from the scope of a settlement. It may only be concluded subject to the reservations, conditions or limits laid down for the validity of the settlement under articles 1099 to 1104 of the aforementioned Dahir.⁵

Article 88

The mediation agreement may be concluded:

- after the dispute has arisen. It is then called a mediation contract (*"compromis de médiation"*).
- before the dispute arises by being included in the main contract or in a contract that refers to it. It is then called a mediation clause.
- during the proceedings before the courts. In this case, to be valid, the most diligent party shall bring this to the attention of the Competent Court within 7 days from its conclusion. That court shall certify the agreement of the parties to mediate.

Article 89

⁴ Article 62, Dahir of Ramadan 9, 1331 (August 12, 1913) forming the Code of Obligations and Contracts: *"An obligation without cause or based on an illicit cause is null and void. An cause is illicit when it is contrary to good morals, public order or the law."*

⁵ Article 1099, Dahir of Ramadan 9, 1331 (August 12, 1913) forming the Code of Obligations and Contracts: *"In order to settle, one must have the capacity to dispose of the objects included in the settlement in return for a consideration."*

Article 1100, Dahir of Ramadan 9, 1331 (August 12, 1913) forming the Code of Obligations and Contracts: *"One cannot settle on a question of State or public order, or on other personal rights which are not subject to trade; but one can settle on the pecuniary interest which results from a question of State or from a tort."*

Article 1101, Dahir of Ramadan 9, 1331 (August 12, 1913) forming the Code of Obligations and Contracts: *"What cannot be the subject of a commutative contract between Muslims cannot be the subject of a transaction between them. However, the parties can settle on rights or goods, even if their value is uncertain."*

Article 1102, Dahir of Ramadan 9, 1331 (August 12, 1913) forming the Code of Obligations and Contracts: *"One cannot settle on the right to alimony; one can settle on the method of providing alimony, or on the method of payment of arrears already due."*

Article 1103, Dahir of Ramadan 9, 1331 (August 12, 1913) forming the Code of Obligations and Contracts: *"One may settle on the rights of inheritance already acquired for a sum less than the legitimate portion established by law, provided that the parties know the share of the estate."*

Article 1104, Dahir of Ramadan 9, 1331 (August 12, 1913) forming the Code of Obligations and Contracts: *"Where the settlement involves the creation, transfer or modification of rights in real estate or other objects subject to hypothecation, it must be in writing and has no effect with respect to third parties unless it is registered in the same form as the sale."*

The mediation agreement shall be made in writing, by virtue of an authenticated deed or a private contract, or by minutes drawn up before the Competent Court, or before the appointed mediator, or by any other means agreed by the parties.

The mediation agreement is deemed to be in writing if it is contained in a document signed by the parties or in an exchange of letters, telegrams or any other means of written telecommunication or electronic communication drawn up in accordance with the legal texts in force, or in the exchange of statements of claim or defense, in which the existence of such an agreement before the mediator is argued by one party and uncontested by the other.

An express reference in a written contract to the provisions of a model agreement or an international convention, or any other document containing a mediation clause, shall constitute an integral part of the mediation agreement established in writing, where such reference clearly contemplates that such clause forms an integral part of such agreement.

Article 90

To be valid, the mediation contract must include the determination of the subject matter of the dispute.

If the appointed mediator does not accept the mission entrusted to him/her, the parties may agree on the appointment of another mediator. Failing this, the agreement is invalid.

Article 91

The mediation clauses shall be included, in writing, in the main agreement or in a document that refers to the mediation clause. It must expressly state that it concerns conventional mediation subject to the provisions of the present Section.

Article 92

The party that intends to apply the mediation clause shall immediately inform the other party and the mediator by any means available.

Article 93

The Competent Court may only examine a dispute that was the subject of a mediation agreement after the mediation procedure has been exhausted or the mediation agreement has been invalidated. It shall dismiss the application if the objection relating to the existence of a mediation agreement is raised by one of the parties, unless such agreement is null and void.

The court shall not dismiss the application on its own motion as long as the parties do not raise the objection.

Article 94

The duration of the mediator's mandate is initially set by the parties and may not exceed 3 months from the date on which the mediator accepts the mandate. The parties may, however, extend this period by agreement concluded in the same manner as the as those used for the mediation agreement. In any case, the extension shall not exceed a total of three additional months.

Article 95

The mediation procedure is confidential. Unless otherwise agreed by the parties, discussions and compromises in favor of the parties to the dispute may not be invoked before the Courts or other bodies.

Article 96

The mediator is bound by professional secrecy in conformity with the provisions of the Criminal Code.

Article 97

Mediation may be performed by a natural person or a legal entity.

The mission of mediator can only be assigned to a natural person in full capacity who has not been the subject of a final and binding decision for acts contrary to honor, probity or good morals, or of a disciplinary sanction which has led to the dismissal from an official position, or one of the pecuniary sanctions provided for in Section VII of Book 5 of the Commercial Code (Law n° 15-95), or having been the subject of a commercial disqualification or deprivation of the exercise of a civil right.

The mediator shall notify the parties by all available means as soon as he has accepted the mandate.

Such notice sent to the mediator shall specify the fees or the manner in which the fees are to be determined and paid. The agreement between the mediator and the parties is only valid if these elements are mutually agreed upon in writing.

The mediator must be independent, neutral, impartial and have integrity.

The mediator may only withdraw from his office by virtue of the parties' waiver or when the mediation period has expired without the parties having reached a settlement, or by order of the Competent Court in cases provided for in Article 93 above.

After being appointed, the mediator who believes that there is a cause or element in himself that may affect his independence, impartiality or neutrality shall notify the parties. In this case, he can only accept the mandate after the parties' agreement.

Article 98

The mediator may hear the parties and attempt to reconcile their points of view in order to enable them to find a solution to the conflict between them.

For the purposes of the mediation, the mediator may consult consenting third parties with the agreement of the parties.

The mediator may call upon any expertise that may facilitate his role in the mediation with the agreement of the parties.

Article 99

The mediator concludes his mission by drafting a settlement proposal, in the form of a document containing the facts of the dispute, the terms of its settlement, the agreement of the parties and the solutions found to resolve the dispute submitted. It is submitted to the parties.

The mediator signs the settlement document with the parties when they agree and returns it to them.

In the event that a settlement is not reached for any reason whatsoever, the mediator shall deliver to the parties a signed document certifying that no settlement has been reached.

Subject to the provisions of Article 100 below, the settlement reached by the parties is subject for its validity and effects to the provisions of Title IX of Book Two of the Dahir of 9 ramadan 1331 (12 August 1913) forming the code of obligations and contracts.

Article 100

The settlement has, between the parties, the force of *res judicata* and can be accompanied by the of exequatur by the President of the Court territorially competent within 7 days.

Third Section

Transitional and Miscellaneous Provisions

Article 101

The provisions of this Chapter do not override any texts that establish special procedures for the settlement of certain disputes.

Article 102

All time limits provided for in this Law refer to full days in accordance with Article 512 of the Code of Civil Procedure.

Article 103

The provisions of the eighth chapter of the Fifth Title of the Code of Civil Procedure, approved by Dahir n° 1-74-447 of Ramadan 11, 1394 (September 28, 1974), as amended and supplemented, shall apply on a transitional basis to:

- Arbitration and mediation agreements concluded before the date of entry into force of this law;
- Arbitration claims pending before Arbitral Tribunals or disputes submitted to mediation or Court proceedings relating thereto, on the date mentioned in the 1st paragraph above until their final settlement and the exhaustion of all remedies.

Article 104

References to the provisions of the Eighth Chapter of the Fifth Title of the Code of Civil Procedure in existing laws and regulations, which are repealed in accordance with Article 105 below, shall be deemed to be references to the analogous provisions of the present Act.

Article 105

Subject to the provisions of Article 103 above, this Act shall enter into force on the day following its publication in the Official Bulletin.

From this date, the provisions contrary to this law, in particular those of the Eighth Chapter of the Fifth Title of the Code of Civil Procedure, approved by the Dahir promulgating the Law n° 1-74-447 of Ramadan 11, 1394 (September 28, 1974) shall be repealed.