International
Comparative
Legal Guides

Practical cross-border insights into international arbitration work

International Arbitration 2023

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1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your jurisdiction?

The arbitration agreement must always be in writing, either in an authenticated or private document or in a written record drawn up before the chosen arbitral tribunal.

The arbitration agreement shall be deemed to be in writing if it is contained in a document signed by the parties or in an exchange of letters, telexes, telegrams or any other means of telecommunication considered an agreement evidencing its existence, or in an exchange of statements of claim or defence, in which the existence of such an agreement is alleged by one party and not disputed by the other.

Any 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 deemed to be an arbitration agreement drawn up in writing, where the reference clearly states that the said clause forms part of the contract.

The arbitration agreement must, on pain of nullity, specify the subject matter of the dispute.

The arbitration agreement must also include all data relating to the identification, address and domicile of each party, in addition to their email address.

The arbitration agreement is null if it includes the appointment of the arbitral tribunal and one of the appointed arbitrators refuses or is unable to perform the assignment entrusted to him, unless the parties agree to compensate him. The same provision shall apply to the sole arbitrator.

1.2 What other elements ought to be incorporated in an arbitration agreement?

The other elements ought to be incorporated in an arbitration agreement are:

- Appointment of the arbitrator(s) or provision for the modalities of their appointment.
- The place and language of arbitration.
- The applicable law.
- The costs of arbitration.
- Confidentiality.
- The possible derogations.

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

The approach of Moroccan courts to the enforcement of arbitration agreements is in line with international standards in this area, and Morocco has generally been regarded as an arbitration-friendly country.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in your jurisdiction?

In Morocco, arbitration is governed by Law no. 95-17 on arbitration and conventional mediation (Law no. 95-17), which has been in force since June 14, 2022.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

In Law no. 95-17, there is a chapter dedicated to national arbitration and another one dedicated to international arbitration.

Generally speaking, the domestic arbitration regime is more restrictive than that governing international arbitration, which is more liberal and therefore better suited to international disputes.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

Yes, Law no. 95-17 is based on the UNICTRAL Model Law with some additions but no significant differences.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in your jurisdiction?

Law no. 95-17 does not contain any mandatory rules governing international arbitration proceedings. The parties are free to choose the rules governing the proceedings. In the absence of a choice by the parties of the applicable rules of law, the arbitral tribunal shall decide the dispute in accordance with the rules of law that it considers appropriate. In all cases, the arbitral tribunal shall comply with the provisions of the contract and shall take into account relevant international trade customs and usages.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your jurisdiction? What is the general approach used in determining whether or not a dispute is "arbitrable"?

Yes, there are subjects that cannot be referred to arbitration under the governing law of Morocco. The arbitration agreement cannot be concluded for the settlement of disputes concerning the status and capacity of persons or personal rights outside the framework of the transaction. Disputes relating to unilateral actions of the State, local authorities or other authorities enjoying the privileges of public power cannot be submitted to arbitration. However, the resulting financial disputes may be subject to an arbitration agreement, with the exception of those related to the application of a tax law.

3.2 Is an arbitral tribunal permitted to rule on the question of its own jurisdiction?

Yes. The arbitral tribunal must, before considering the matter, decide by order, either on its own motion or at the request of one of the parties, on the validity of the arbitration agreement and the limits of its jurisdiction. This order may be appealed within 15 days of its issuance before the competent court, which shall issue an order after summoning the parties, which shall not be subject to appeal.

3.3 What is the approach of the national courts in your jurisdiction towards a party who commences court proceedings in apparent breach of an arbitration agreement?

According to Article 18 of Law no. 95-17, when a party commences court proceedings in apparent breach of an arbitration agreement, the competent court must declare the claim inadmissible. The defendant must raise the objection of inadmissibility before any defence on the merits, and the court may not raise the objection of inadmissibility of its own motion.

3.4 Under what circumstances can a national court address the issue of the jurisdiction and competence of an arbitral tribunal? What is the standard of review in respect of a tribunal's decision as to its own jurisdiction?

Domestic courts will address the issue of the jurisdiction and competence of an arbitral tribunal, particularly in the following circumstances:

- Prior to any examination of the merits of the case, the arbitral tribunal shall rule by order, either of 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.
  An appeal against this order may be lodged within 15 days from the day it was made with the president of the competent court, who, after summoning the parties, shall issue an order that is not subject to appeal.
- If the arbitral tribunal has not been appointed in advance and the manner and date of appointment of the arbitrators have not been fixed, or where the parties are in disagreement.
- If it is established that the arbitrator(s) appointed by the arbitration agreement do(es) not meet the conditions provided for by Law no. 95-17 to carry out this mission, or for any other reason which has prevented the composition of the arbitral tribunal, one or more new arbitrators shall be appointed, either by agreement of the parties or by order of the competent court after summoning the parties.
- Where the parties appoint an even number of arbitrators, the arbitral tribunal shall be completed by an arbitrator chosen either in accordance with the agreement of the parties or, as the case may be, by order of the president of the competent court, after summoning the parties.
- The president of the competent court or his deputy shall decide on the request by a non-appealable order within 10 days after summoning the parties and the arbitrator who is the subject of the challenge request.
- Where the arbitrator is unable or unwilling to carry out his mission or ceases to carry it out or is late in accepting it without a valid excuse, thereby causing a delay in the arbitration proceedings, and the arbitrator has not withdrawn and the parties have not agreed to revoke him, the president of the competent court may, at the request of any of the parties, terminate the arbitrator's mission by revocation, by a non-appealable order.

3.5 Under what, if any, circumstances does the national law of your jurisdiction allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

The arbitral tribunal cannot take jurisdiction over persons or entities that are not themselves parties to an arbitration agreement. Indeed, Article 60 of Law no. 95-17 provides that arbitration awards are not enforceable against third parties, even if they have the enforcement formula. Third parties may lodge an opposition, under the same conditions provided for by the Code of Civil Procedure, before the competent court as if there had been no arbitration agreement. On October 3, 2022, in the case of *Ynna Holding v. Five FCB*, the Supreme Court overturned a ruling that had condemned Ynna Holding, the parent company of Ynna Asment, even though it was not a signatory to the contract linking Ynna Asment, a subsidiary of Ynna Holding, to the French firm Five FCB in 2007.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in your jurisdiction and what is the typical length of such periods? Do the national courts of your jurisdiction consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

Article 32 of Law no. 95-17 provides that, unless otherwise agreed by the parties, the arbitration proceedings shall commence on the day on which the constitution of the arbitral tribunal becomes complete. Article 387 of the Code of Obligations provides that: "[A]ll actions arising from an obligation are prescribed by fifteen years, except for the following exceptions and those determined by law in particular cases." The common law principle is therefore the 15-year limitation period. Indeed, the following Article provides for a good number of exceptions by admitting shorter limitation periods ranging from one to five years. In commercial matters, Article 5 of the Commercial Code provides that obligations arising in the course of trade between merchants, or between merchants and non-merchants, are prescribed by five years, unless otherwise specifically provided by law.

3.7 What is the effect in your jurisdiction of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

The arbitration proceedings continue after introduction of the trustee/receiver into the procedure.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

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 merits of the dispute, the arbitral tribunal shall apply the objective rules of law that it considers most relevant to the dispute. In all cases, it shall comply with the terms of the contract in dispute, and take into consideration the usages and customs and what is customary between the parties.

The same provisions apply to international arbitration and, in this case, the arbitral tribunal shall comply with the provisions of the contract and take into account relevant international trade customs and usages.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

Generally, the law chosen by the parties should prevail. However, if the arbitral award is contrary to Moroccan public policy, it will not be applicable in Morocco.

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

The parties may choose the law applicable to the arbitration agreement. If the parties do not agree on the rules of law to be applied to the merits of the dispute, the arbitral tribunal shall apply the objective rules of law that it considers most relevant to the dispute. In all cases, it shall comply with the terms of the contract in dispute, and take into consideration the usages and customs and what is customary between the parties.

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

In domestic arbitration, the arbitral tribunal shall consist of one or more arbitrators. The parties are free to designate the number of arbitrators and the manner of their appointment, including the appointment of the chairman, either in the arbitration agreement or by reference to the arbitration rules of the chosen institution.

In the absence of an agreement between the parties on the number of arbitrators, the number of arbitrators shall be three.

Where there are many arbitrators, their number must be odd (otherwise the arbitration is void).

The mission of arbitrator can only be entrusted to a natural person in full capacity, possessing a minimum level of experience and scientific competence enabling him to carry out his mission as arbitrator. This person must not have been the subject of a final judgment for acts contrary to honour, probity or good morals, or have been the subject of a disciplinary sanction resulting in his removal from an official position, or of one of the financial sanctions provided for in Title VII of Book V of Act no. 15.95 of the Commercial Code, or by the deprivation of his right to carry on business or of one of his civil rights.

If the agreement designates a legal person, this person shall only have the power to organise the arbitration and to ensure its proper arbitration and to ensure that it runs smoothly, but it has no power to decide the dispute, which must be entrusted to an arbitral tribunal composed of one or more natural persons.

In international arbitration, there is no limit to the autonomy of the parties to select arbitrators provided by law.

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

Yes, Article 23 of Law no. 95-17 in Morocco provides for a default procedure in case the method chosen by the parties to select the arbitrators fails.

If the arbitral tribunal has not been appointed in advance and the manner and date of appointment of the arbitrators have not been fixed, or if the parties are in disagreement, the following procedures shall be followed:

1. Where 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 arbitrator. The two appointed arbitrators shall agree on the appointment of the third arbitrator. Where one of the parties fails to appoint its arbitrator within 15 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. Where the two appointed arbitrators do not agree on the appointment of the third arbitrator within 15 days of the appointment of the last of them, the president of the competent court shall make such appointment by means of an order which shall not be subject to appeal, at the request of one of the parties or of one or both of the arbitrators. The arbitral tribunal shall be presided over by the arbitrator chosen by the first two arbitrators or by the arbitrator appointed by the president of the competent court.
3. If there are several claimants or several respondents and the members of one of the parties have not agreed to appoint an arbitrator jointly 15 days after receipt of a request to this effect from the other party, the president of the competent court shall appoint the arbitrator at the request of one of the parties.
4. The procedures referred to in point 2 above 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 he appoints by means of a non-appealable order fulfils the conditions required by Law no. 95-17 and those agreed upon by the parties, and the language of the arbitration, after summoning the parties.

The president of the competent court shall rule, at the request of one of the parties or of one of the arbitrators, on all difficulties relating to the constitution of the arbitral tribunal, regardless of the party appointing it. His decision shall not be subject to appeal.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

Yes. A court may intervene and select arbitrators in the following situations:

- Where the parties appoint an even number of arbitrators, the arbitral tribunal shall be completed by an arbitrator chosen either in accordance with the agreement of the parties or, where appropriate, by order of the president of the competent court.
- If the arbitral tribunal has not been appointed in advance and the manner and date of appointment of the arbitrators have not been fixed, or where the parties are in disagreement, as mentioned in the answer to question 5.2.

5.4 What are the requirements (if any) imposed by law or issued by arbitration institutions within your jurisdiction as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators?

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

An arbitrator who is aware of the existence of a ground for challenge in his person shall inform the parties thereof, and in such a case, he may accept his assignment only after their express agreement or after the expiry of the time limit for challenge, without being challenged.

The law provides for cases in which the arbitrator may be challenged when his independence is understood, in particular if:

- He or his spouse or his ascendants or descendants have a direct or indirect personal interest in the dispute.
- There is a relationship or alliance between the arbitrator or his spouse and one of the parties to the dispute up to the fourth degree, or between the arbitrator and the defence of one of the parties.
- There is an ongoing lawsuit or when the lawsuit has been concluded for less than two years between one of the parties and the arbitrator or his spouse or their ascendants or descendants, or between the arbitrator and the defence of one of the parties.
- There is a relationship of subordination between the arbitrator or his spouse or ascendants or descendants and one of the parties or his spouse or ascendants or descendants, or between the arbitrator and the defence of one of the parties.
- There is a known friendship or enmity between the arbitrator and one of the parties, or between the arbitrator and the defence of one of the parties.
- He is a creditor or debtor of one of the parties or of the defence of one of the parties.
- He has previously arbitrated or represented others, or has given evidence, in the dispute before the arbitration.
- He has acted as guardian or legal representative of one of the parties or of the defence of one of them, as the case may be.

It must be noted that the following are not considered grounds for challenge:

- Professional relationship between the arbitrator and the representative of one of the parties to the dispute.
- The existing relationship between the arbitrators who are members of the arbitral tribunal.
- Disputes arising between the arbitrator and one of the parties in connection with a completed dispute submitted to arbitration.

The challenger shall submit his challenge in writing to the arbitrator who is the subject of the challenge within eight days of the date on which the challenger became aware of the constitution of the arbitral tribunal. If the arbitrator does not withdraw voluntarily within three days from the date of filing the request, the challenger shall submit his request to the president of the competent court within whose jurisdiction the place of arbitration or the domicile or residence of the challenged arbitrator is located, if the place of arbitration has not been designated by the parties.

The president of the competent court or his deputy shall decide on the request by a non-appealable order within 10 days after summoning the parties and the arbitrator who is the subject of the challenge.

A second challenge shall not be admissible in the same arbitration, against the same arbitrator, for the same reason, or for a reason of which it is established that the claimant was aware before submitting his first challenge.

Where an arbitrator is challenged, the arbitration proceedings in which he has taken part shall be deemed null and void, including the arbitral award.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in your jurisdiction? If so, do those laws or rules apply to all arbitral proceedings sited in your jurisdiction?

Law no. 95-17 provides for a certain number of rules concerning domestic and international arbitration. Parties are, however, free to choose their own set of procedural rules. Article 45 of Law no. 95-17 provides that 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 merits of the dispute, the arbitral tribunal shall apply the objective rules of law that it considers most relevant to the dispute. In all cases, it shall comply with the terms of the contract in dispute, and take into consideration the usages and customs and what is customary between the parties.

In the same way, Article 75 of Law no. 95-17, applicable to international arbitration, provides that the arbitration agreement shall freely determine the rules of law to be applied by the arbitral tribunal to the substance of the dispute. In the absence of a choice by the parties of the applicable rules of law, the arbitral tribunal shall decide the dispute in accordance with the rules of law it considers appropriate.

In all cases, the arbitral tribunal shall comply with the provisions of the contract and shall take into account relevant international trade customs and usages.

6.2 In arbitration proceedings conducted in your jurisdiction, are there any particular procedural steps that are required by law?

No, there are no particular procedural steps required by law.

6.3 Are there any particular rules that govern the conduct of counsel from your jurisdiction in arbitral proceedings sited in your jurisdiction? If so: (i) do those same rules also govern the conduct of counsel from your jurisdiction in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than your jurisdiction in arbitral proceedings sited in your jurisdiction?

Moroccan arbitration law does not impose specific ethical rules applicable to counsel. Lawyers admitted to a Moroccan bar must comply with the ethical rules applicable to them, which

are set out in Law no. 28-08 on organising the lawyer profession (Law no. 28-08).

6.4 What powers and duties does the national law of your jurisdiction impose upon arbitrators?

Arbitrators enjoy wide powers under Moroccan law, as follows:

- First, they may determine their own jurisdiction.
- Second, if a party has evidence, the arbitral tribunal can, of its own motion or at the request of a party, require its production.
- Third, in the absence of a choice as to the governing law by the parties, the arbitral tribunal may determine the law applicable to the dispute.
- The duties of the arbitrators are, as follows:
  - An arbitrator who is aware of the existence of a ground for challenge in his person must inform the parties thereof.
  - Arbitrators are bound by professional secrecy under penalty of application of all of the provisions set out in the criminal law.
  - An arbitrator who has accepted his assignment must declare in writing, at the time of his acceptance, any circumstances likely to give rise to doubts as to his impartiality and independence.
  - Arbitrators are required to accept their assignment within 15 days of being notified of the identity of the other appointed arbitrators.
  - Every arbitrator must continue his mission until its conclusion; he cannot, after having accepted it, under penalty of engaging his civil liability, withdraw without legitimate cause and must send a notice to the parties mentioning the reasons for his withdrawal.
  - Arbitrators must treat the parties equally and provide them with full opportunity to present their case.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in your jurisdiction and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in your jurisdiction?

Yes, according to Moroccan law on the exercise of the profession of lawyer, in order to practise as a lawyer in Morocco, it is necessary to be a Moroccan national or a national of a State linked to the Kingdom of Morocco by a convention recognising the right of nationals of both States to practise as lawyers in the other. Such rules do not apply to domestic or international arbitration seated in Morocco, and lawyers who are not registered to the Moroccan bar may represent parties in private proceedings, such as arbitration, as there is no express prohibition under the law.

6.6 To what extent are there laws or rules in your jurisdiction providing for arbitrator immunity?

Law no. 95-17 does not provide for arbitrator immunity. Arbitrators can be sued in some instances; for example, if they renounce their mission after having accepted it (Article 30) or if they violate confidentiality (Article 31).

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

National courts may be seized by the parties in arbitration proceedings to decide certain procedural issues, including:

- The appointment of arbitrators where the parties cannot agree on their choice, in accordance with the rules agreed by the parties or, failing that, the rules established by an arbitration institution.
- The challenge of an arbitrator on grounds of partiality or incapacity, in accordance with the rules agreed by the parties or, failing that, the rules established by an arbitration institution.
- Deciding on the jurisdiction of the arbitral tribunal, including disputes as to the existence or validity of the arbitration agreement.
- The taking of interim or conservatory measures, such as a safeguard order or an order to pay, provided that such measures are compatible with the subject matter of the arbitration claim.
- The annulment of the arbitral award on the grounds listed exhaustively by law, such as the incapacity or partiality of the arbitrator, the violation of the arbitral procedure or the incompatibility of the award with public policy.
- Enforcement of the arbitral award in accordance with the procedural rules applicable to the enforcement of court decisions.

7 Preliminary Relief and Interim Measures

7.1 Is an arbitral tribunal in your jurisdiction permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitral tribunal seek the assistance of a court to do so?

Yes, Article 41 of Law no. 95-17 provides that the arbitral tribunal shall carry out all investigations, including the hearing of witnesses, the appointment of a commission of experts, or any other measure of inquiry. It may also hear any person it deems useful to hear.

In addition, and concerning the court assistance, Article 42 of Law no. 95-17 provides that, unless otherwise agreed, 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 enforce it, the party in whose favour it has been made may apply to the president of the competent court for an enforcement order on application.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

Yes, Article 19 of Law no. 95-17 provides that the arbitration agreement does not prevent a party from having recourse to the interim relief judge, either before the commencement of the arbitration procedure or during its course, to request the adoption of any provisional or conservatory measure in accordance with the provisions laid down by the Code of Civil Procedure, and their withdrawal is carried out according to the same provisions.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

In practice, Moroccan courts follow the provision of Law no. 95-17, making sure that the arbitral tribunal has not been yet appointed when they are asked to order interim measures.

7.4 Under what circumstances will a national court of your jurisdiction issue an anti-suit injunction in aid of an arbitration?

Moroccan law does not provide for anti-suit injunctions.

7.5 Does the law of your jurisdiction allow for the national court and/or arbitral tribunal to order security for costs?

Law no. 95-17 does not provide for security for costs in the case of arbitration.

7.6 What is the approach of national courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in your jurisdiction and in other jurisdictions?

As regards the approach of Moroccan courts to the enforcement of preliminary and interim measures ordered by arbitral tribunals, in general, Moroccan courts respect measures ordered by arbitral tribunals, unless there are legitimate grounds for refusing enforcement, such as lack of jurisdiction or invalidity of the arbitration agreement.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in your jurisdiction?

The claimant in arbitration shall, within the time limit agreed between the parties or set by the arbitral tribunal, submit a written or dematerialised statement of claim, which shall include the name of the claimant and its address, the name of the respondent and its address, a presentation of the facts of the dispute, while specifying the subject matter of the dispute and the claims. This statement of claim shall include all documents and evidence relied upon by the party. The statement of claim shall be notified to the other parties to the arbitration by any means.

The respondent to the arbitration may reply to this statement of claim by submitting a written or dematerialised statement of defence or counterclaim, together with all documents and evidence.

If a party has evidence, the arbitral tribunal can, of its own motion or at the request of a party, require its production.

The opposing party shall be notified of an extract from any memorandum or data or other document or expert and other reports submitted to the arbitral tribunal, and shall be given a period of time in which to present their submissions and observations. The parties to the arbitration may amend or supplement their claims or defences or present additional evidence during the arbitration proceedings, in accordance with the procedural rules agreed upon or issued by the arbitral tribunal, unless the latter refuses.

In international arbitration, the rules agreed upon by the parties apply. If the rules are silent, the tribunal has discretion to conduct the proceedings as it deems appropriate.

8.2 What powers does an arbitral tribunal have to order disclosure/discovery and to require the attendance of witnesses?

Pursuant to Article 41 of Law no. 95-17, the arbitral tribunal shall carry out all investigations, including the hearing of witnesses, the appointment of a commission of experts or any other measure of inquiry.

It may also hear any person it deems appropriate. The hearing shall be conducted in accordance with the applicable procedure.

8.3 Under what circumstances, if any, can a national court assist arbitral proceedings by ordering disclosure/discovery or requiring the attendance of witnesses?

The arbitration agreement shall not prevent a party from having recourse to the *juge des référés* (judge in charge of the emergency/fast-track proceedings), either before the commencement of the arbitration proceedings or during the course of them, to request the adoption of any provisional or conservatory measure in accordance with the provisions laid down in the Code of Civil Procedure, and their withdrawal shall take place in accordance with the same provisions. These measures include the disclosure of documents or the attendance of witnesses. The court will not order the attendance of witnesses and will not order disclosure/discovery.

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal and is cross-examination allowed?

There are no specific rules. The parties and the arbitral tribunal may determine the applicable rules. In general, they are sworn before the tribunal. Cross-examination is not regulated by law, but it is a common practice.

8.5 What is the scope of the privilege rules under the law of your jurisdiction? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

Arbitrators are bound by professional secrecy under penalty and application of all of the provisions set out in the criminal law. The deliberations of the arbitrators are secret.

In-house counsel documents/correspondence are not covered by legal privilege. Only documents that are exchanged between lawyers or between lawyers and their client may be covered by legal privilege.

In addition, the obligation of confidentiality is generally recognised in arbitration practice, and may be expressly stipulated by the parties in the arbitration agreement.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of your jurisdiction that the award contains reasons or that the arbitrators sign every page?

The arbitral award is made, after deliberation by the arbitral tribunal, by a majority of votes. All arbitrators must vote in favour or against the draft award.

The deliberations of the arbitrators are secret.

The arbitral award must be made in writing on paper or electronically. It must refer to the arbitration agreement and contain a brief statement of the facts, the claims of the parties and their respective pleas, the exhibits, an indication of the issues to be resolved by the award and an operative part ruling on these issues.

The award must state the reasons on which it is based, unless the parties have agreed otherwise in the arbitration agreement or the law to be applied to the arbitration proceedings does not require the award to state the reasons.

An award in a dispute to which a person governed by public law is a party must always state the reasons on which it is based.

The award must contain:

1. The name, nationality, capacity and address of the arbitrators who made it.
2. The date of its issuance.
3. The place where it was made.
4. The surnames, first names or company names of the parties, as well as their domicile or registered office (and, where applicable, the names of the lawyers or any other person who represented or assisted the parties).

The arbitral award must fix the arbitrators' fees, the arbitration expenses and the manner in which they are to be apportioned between the parties. If the parties and the arbitrators do not agree on the fixing of the arbitrators' fees, such fees shall be fixed by an independent decision of the arbitral tribunal. This decision may be appealed to the president of the competent court whose decision is final and not subject to any recourse.

The arbitral award is signed by each of the arbitrators and, in general, on each page (but this not mandatory).

And in the event of a plurality of arbitrators, if the minority refuses to sign the award, the other arbitrators shall make a note thereof, stating the reasons for the refusal to sign, and the award shall have the same effect as if it had been signed by each of the arbitrators.

The arbitral tribunal delivers a copy of the award to each of the parties within seven days of its pronouncement. The award must be filed at the Commerce Court. It must be translated into Arabic by a sworn translator, if issued in another language.

9.2 What powers (if any) do arbitral tribunals have to clarify, correct or amend an arbitral award?

Article 55 of Law no. 95-17 provides that the award shall relieve the arbitral tribunal of the dispute.

However, it is possible to correct any clerical or computational error in the award after the parties have been summoned to appear, i.e.:

a) *Ex officio* by the arbitral tribunal, within 30 days after the arbitral award has been made.
b) At the request of one of the parties, within 15 days from the date of notification of the arbitral award.

The parties may also submit a request for an explanation of the arbitral award under the same conditions as provided above.

The arbitral tribunal may, at the request of one of the parties, make a supplementary award within 60 days from the date of notification of the arbitral award concerning a grievance on which it had been omitted to rule on.

The minutes of the award shall be deposited with a copy of the arbitration agreement at the registry of the competent court, by the arbitral tribunal, one of the arbitrators or by the most diligent party within 15 days following its issuance.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in your jurisdiction?

An award rendered in Morocco in international arbitration matters can be appealed in the following cases, unless the parties agree otherwise:

1. If the arbitral award was made in the absence of an arbitration agreement or if the arbitration agreement is null and void, and if the award was made after the expiry of the arbitration period.
2. If the arbitral tribunal was improperly constituted or the sole arbitrator improperly appointed.
3. If the arbitral tribunal has ruled without complying with the mission entrusted to it.
4. If the rights of defence have not been respected.
5. If the recognition or enforcement is contrary to national or international public policy.

Such appeal shall be brought before the competent commercial court of appeal in whose jurisdiction the arbitral award was made.

It must be noted that the order granting the *exequatur* of the arbitral award is not subject to appeal.

10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

No, Article 61 of Law no. 95-17 provides that: "Notwithstanding any stipulation to the contrary, arbitral awards may be appealed against in the ordinary way before the competent Court of Appeal in whose jurisdiction they were made. This appeal shall be admissible as soon as the award is made, or within fifteen (15) days of its notification."

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

No, they cannot.

10.4 What is the procedure for appealing an arbitral award in your jurisdiction?

Pursuant to Article 69 of Law no. 95-17, the appeal to set aside arbitral awards is considered *de facto* an appeal against the *exequatur* order, and this leads to the president of the competent court being deprived of jurisdiction in cases where he has not yet issued his *exequatur* order.

The principle to be remembered is that the order granting the *exequatur* is not subject to appeal. This principle is recalled by Article 69 of Law no. 95-17, which expressly provides that "the order granting the *exequatur* is not subject to appeal". On the other hand, only decisions refusing the *exequatur* can be challenged in court in the cases provided for by law.

Article 70 of Law no. 95-17 provides that: "Reasons must be given for the order refusing to grant the *exequatur*. This order may be appealed, in the ordinary way, within fifteen (15) days of its notification. In this case, and at the request of the parties, the competent Court of Appeal shall hear the arguments that the parties could have put forward against the arbitration award by way of an action for annulment, unless the time limit for the action for annulment has elapsed without the latter having been exercised. The competent court of appeal shall decide on this appeal in accordance with the urgent procedure after summoning the parties."

The time limit for lodging an appeal for annulment as well as an appeal lodged within the time limit shall suspend the enforcement of the award.

In the same way, pursuant to Article 82 of Law no. 95-17, an international arbitration award rendered in Morocco may be

subject to an action for annulment, in the cases provided for by law, unless the parties agree otherwise.

The order granting the *exequatur* of this arbitral award is not subject to appeal. Again, only decisions refusing the *exequatur* can be challenged in court.

Pursuant to Article 80 of Law no. 95-17, in international arbitration, "an appeal against the recognition or enforcement order may only be lodged in the following cases:

1- If the arbitral award was made in the absence of an arbitration agreement or if the arbitration agreement is null and void, and if the award was made after the expiry of the arbitration period;
2- If the arbitral tribunal was improperly constituted or the sole arbitrator improperly appointed;
3- If the arbitral tribunal has ruled without complying with the mission entrusted to it;
4- If the rights of defence have not been respected;
5- If the recognition or enforcement is contrary to national or international public policy".

The appeal is brought before the competent commercial court of appeal within 15 days of the date of notification of the order.

The competent commercial court of appeal shall rule according to the emergency procedure, after summoning the parties.

It must be noted that an appeal lodged within the time limit shall suspend the enforcement of the arbitration award, unless the award is provisionally enforceable. The competent commercial court of appeal may stay the enforcement by an independent decision not subject to appeal. The rules on provisional enforcement of court decisions shall apply to arbitral awards.

Furthermore, the competent commercial court of appeal cannot rule on the merits of the dispute if it decides to annul the international arbitration award.

11 Enforcement of an Award

11.1 Has your jurisdiction signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Yes, Morocco has signed and ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Morocco has not made any reservations to the New York Convention. The relevant national legislation is Law no. 95-17.

11.2 Has your jurisdiction signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

Morocco has not signed or ratified any regional conventions concerning specifically the recognition and enforcement of arbitral awards. Provisions relating to the same are in bilateral treaties.

11.3 What is the approach of the national courts in your jurisdiction towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

In Morocco, the approach of the courts to the recognition and enforcement of arbitral awards is generally favourable and in line with the New York Convention.

Article 77 of Law no. 95-17 provides that: "Unless they are contrary to national or international public policy, international arbitration awards shall be recognised and enforceable in Morocco by the President of the Court of First Instance of Commerce within whose jurisdiction they were made, or by the President of the Court of First Instance of Commerce of the place of enforcement if the seat of the arbitration is located abroad, after summoning the parties."

A party willing to enforce a foreign award or an international arbitration award in Morocco must fulfil the conditions as defined under Article 78 of Law no. 95-17.

The party must provide the court with the original or certified copies of the arbitral award and arbitration agreement and their translation into Arabic, carried out by a translator approved by the courts, when they are written in a foreign language.

11.4 What is the effect of an arbitration award in terms of *res judicata* in your jurisdiction? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

Arbitral awards have the authority of *res judicata* upon their issuance (Article 53 of Law no. 95-17).

However, they can only be enforced after obtaining an *exequatur* order from the president of the competent court.

Notwithstanding any stipulation to the contrary, arbitral awards may be appealed against in the ordinary way before the competent court of appeal in whose jurisdiction they were made.

This appeal shall be admissible as soon as the award is made or within 15 days of its notification.

It must be noted that arbitral awards, even if accompanied by the decision of the *exequatur*, are not enforceable against third parties, who may lodge third-party proceedings under the conditions provided for by the Code of Civil Procedure before the competent court that would have heard the case if there had been no arbitration agreement.

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

If the matter is not subject to arbitration or the award is contrary to public policy under Moroccan law, the standard for refusing enforcement on public policy grounds is very high.

12 Confidentiality

12.1 Are arbitral proceedings sited in your jurisdiction confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

Yes, arbitral proceedings sited in Morocco are confidential. Hearings or meetings are not public. The deliberations of the arbitrators are secret (Article 50 of Law no. 95-17). Arbitrators are bound by professional secrecy under penalty of application of all of the provisions set out in the criminal law (Article 31 of Law no. 95-17). Publication of the arbitral award or extracts therefrom can only be made with the permission of the parties to the arbitration (Article 54 of Law no. 95-17). The law that governs the confidentiality of the arbitral proceedings is Law no. 95-17.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

Nothing in the law prevents this.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

In domestic arbitration, the law provides for a minimum amount of compensation in the context of an abusive appeal to set aside the arbitration award. Indeed, Article 64 of Law no. 95-17 provides that: "If the competent court of appeal rejects the application for annulment or declares it inadmissible, and in general if it does not respond favourably to the application, it must order the enforcement of the arbitral award *ex officio*. Its judgment is final.

If the court of appeal with jurisdiction in the cases provided for in the first paragraph has found that the appeal is abusive, the court shall order the appellant to pay compensation for the damage suffered to the respondent, which may not be less than 25% of the value of the amount awarded in the arbitration award."

There are no specific provisions in relation to international arbitration. However, Article 75 of Law no. 95-17 provides that where the arbitration is subject to Moroccan law, the provisions of that law shall apply without prejudice to any special agreement between the parties, and with reservation to the special provisions of the chapter on international arbitration.

It can be concluded that if the arbitration is subject to Moroccan law, the same 25% threshold mentioned above may be applied.

13.2 What, if any, interest is available, and how is the rate of interest determined?

Law no. 95-17 does not provide for the method of computation of interest. The courts apply an interest rate of 6%.

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

The arbitral award shall fix the fees of the arbitrators, the costs of the arbitration and the manner in which they are to be apportioned between the parties.

If the parties and the arbitrators do not agree on the determination of the arbitrators' fees, such fees shall be determined by an independent decision of the arbitral tribunal.

The independent decision on the determination of the arbitrators' fees shall be notified by the arbitral tribunal by all available means of notification.

The decision fixing the fees may be appealed within 15 days of its receipt to the president of the competent court, who shall issue a non-appealable order.

Concerning the parties, Law no. 95-17 does not provide for specific provisions regarding the recovery of a party's fees before the arbitral tribunal. The allocation of costs will therefore be determined by the arbitration rules chosen by the parties.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

Yes, Article 127 of the general tax code (*code general des impôts* in French) provides for registration tax. It applies to: "Court decisions, judicial and extrajudicial documents issued by court clerks, as well as arbitration awards which, by their nature or because of their content, are subject to proportional registration duty."

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of your jurisdiction? Are contingency fees legal under the law of your jurisdiction? Are there any "professional" funders active in the market, either for litigation or arbitration?

To the best of our knowledge, there are no restrictions on third-party funding under Moroccan law.

Lawyers involved in the case may not fund claims as this may result in a conflict of interests.

Contingency fees are illegal pursuant to Article 43 of Law no. 28-08, which provides that: "A lawyer is prohibited in all cases from: 1) fixing in advance with his client the fees due for any case in relation to the result to be achieved; 2) acquiring by assignment of litigious rights or taking any interest whatsoever in the cases in which he pleads. Any agreement violating these provisions is null and void."

To the best of our knowledge, no professional funders are active in the Moroccan market.

14 Investor-State Arbitrations

14.1 Has your jurisdiction signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?

Yes, it has.

14.2 How many Bilateral Investment Treaties ("BITs") or other multi-party investment treaties (such as the Energy Charter Treaty) is your jurisdiction party to?

Morocco is party to 85 bilateral investment treaties and 19 multilateral investment treaties.

14.3 Does your jurisdiction have any noteworthy language that it uses in its investment treaties (for example, in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

Yes, some old treaties use the "most favoured nation" concept.

14.4 What is the approach of the national courts in your jurisdiction towards the defence of state immunity regarding jurisdiction and execution?

The enforcement of an arbitral award can only take place once the court grants the *exequatur* order. State immunity is not taken into consideration at that stage. However, the State's assets cannot be attached or seized, i.e., forced execution is not possible.

15 General

15.1 Are there noteworthy trends or current issues affecting the use of arbitration in your jurisdiction (such as pending or proposed legislation)? Are there any trends regarding the types of dispute commonly being referred to arbitration?

There are no noteworthy trends or current issues affecting the use of arbitration in Morocco such as pending or proposed legislation.

The last law on arbitration and conventional mediation was published on 13 June 2022. In Morocco, the types of disputes most often submitted to arbitration are those related to commercial affairs and investments.

15.2 What, if any, recent steps have institutions in your jurisdiction taken to address current issues in arbitration (such as time and costs)?

Yes, Morocco has put in place measures to address the problems of arbitration, particularly with regard to time and costs.

Arbitration time limits: Article 48 of Law no. 95-17 provides that if the arbitration agreement does not specify a period of time by which the arbitral tribunal shall have rendered its award, the arbitrators' term of office shall end six months after the last arbitrator accepts his office.

The conventional or legal time limit may be extended by the same period by agreement of the parties. In case of disagreement, the said period shall be extended for the same period, depending on the circumstances of each case, by a reasoned and non-appealable order issued by the president of the competent court, after summoning the parties, at the request of one of them or at the request of the arbitral tribunal.

If the arbitral award is not made within the time limit referred to in the above paragraph, any party to the arbitration may request the president of the competent court to issue a non-appealable order putting an end to the arbitration proceedings, unless the party at the origin of this request is the cause of the failure to make the award. Either party may then bring the matter before the court that originally had jurisdiction over the dispute.

Costs of the arbitration: Article 52 of Law no. 95-17 provides that the arbitral award shall fix the fees of the arbitrators, the costs of the arbitration and the manner in which they are to be apportioned between the parties.

If the parties and the arbitrators do not agree on the determination of the arbitrators' fees, such fees shall be determined by an independent decision of the arbitral tribunal.

The independent decision on the determination of the arbitrators' fees shall be notified by the arbitral tribunal by all available means of notification.

The decision fixing the fees may be appealed within 15 days of its receipt to the president of the competent court, who shall issue a non-appealable order.

15.3 What is the approach of the national courts in your jurisdiction towards the conduct of remote or virtual arbitration hearings as an effective substitute to in-person arbitration hearings? How (if at all) has that approach evolved since the onset of the COVID-19 pandemic?

Yes, Article 33 of Law no. 95-17 provides that if it is impossible for all of the arbitrators to be present, the arbitral tribunal can, after agreement of the parties, hold a remote meeting based on modern communication technologies. Article 35 of the same law provides for the possibility for the parties to the dispute to file their application and reply respectively by electronic means. Article 51 provides for the possibility of making arbitral awards in electronic form.

Professor Azzedine Kettani has been practising international and domestic arbitration over the last 45 years as sole arbitrator, chair or counsel. He is: a former member of the ICSID panel of arbitrators (2011–2017); a former member of the panel of arbitrators of Dubai International Arbitration Centre; a member of the panel of arbitrators of Stockholm Arbitration Institute; a member of the panel of arbitrators of the China International Economic and Trade Arbitration Commission (CIETAC); a member of the panel of arbitrators of the Permanent Court of Arbitration; a member of the advisory board of the Bahrain Chamber for Disputes Resolution; a member of the users council of Singapore International Arbitration Centre (SIAC); a member of LCIA; a member of the ICC Court of Arbitration, Paris (since June 2018); a member of ICC Court of Arbitration, Morocco; a member of the Court of Casablanca International Mediation & Arbitration Centre (CIMAC); and a member of the IBA.
He has been teaching international arbitration and supervising academic studies on the same topic, and has been appointed by the Moroccan Government as a member of the special committee for the reform of arbitration rules under the Moroccan Code on Civil Proceedings.

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