

# ALGERIA

## DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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### FOR FURTHER INFORMATION

[GAP TABLE OF CONTENTS](#) | [GAP TRAFFIC LIGHTS FOR ALL JURISDICTIONS](#) | [FULL GAP ONLINE](#)

[GAP COMBINED SUMMARIES FOR IN-HOUSE AND CORPORATE COUNSEL](#)

[GAP COMBINED SUMMARIES FOR ARBITRATION PRACTITIONERS](#)

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### JURISDICTION INDICATIVE TRAFFIC LIGHTS †

1. Law ●
  - a. Framework ●
  - b. Adherence to international treaties ●
  - c. Limited court intervention ●
  - d. Arbitrator immunity from civil liability ●
2. Judiciary ●
3. Legal expertise ●
4. Rights of representation ●
5. Accessibility and safety ●
6. Ethics ●

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

## IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Disputes in Algeria may be resolved through arbitration and litigants are free to choose an arbitral institution and arbitrators at their sole discretion.

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| Key places of arbitration in the jurisdiction                                   | Arbitrations in Algeria are generally in Algiers. In practice, for disputes relating to international contracts, parties often choose Paris or Geneva as the seat.   |
| Civil law / Common law environment?   | Civil law  |
| Confidentiality of arbitrations?  | The confidentiality of arbitration is a fundamental principle guaranteed by Algerian law.  |
| Requirement to retain (local) counsel?  | Algerian arbitration law does not require that parties to an arbitration be represented by external counsel. Parties can be self-represented should they so wish.  |
| Ability to present party employee witness testimony?                            | A party may present witness testimony from employees which, under certain circumstances, is made under oath.   |
| Ability to hold meetings and/or hearings outside of the seat?                   | Parties are free to choose the seat of arbitration as well as the venue for hearings and meetings.   |
| Availability of interest as a remedy?   | Yes.   |
| Ability to claim for reasonable costs incurred for the arbitration?             | It is possible for the winning party to claim the reimbursement of reasonable costs incurred for the arbitration.  |
| Restrictions regarding contingency fee arrangements and/or third-party funding? | Contingency fee arrangements and/or third-party funding are possible under Algerian regulation.  |
| Party to the New York Convention?   | Algeria ratified the New York Convention on 7 February 1989.   |
| Other key points to note  | <ul style="list-style-type: none"> <li>• Matters related to Public Order and/or status and legal capacity of persons cannot be resolved via arbitration nor mediation.</li> <li>• The State and its organs are authorized to have recourse to local and international arbitration only if arbitration is provided for by an international treaty or in a procurement contract.</li> <li>• State-owned companies are authorized to have recourse to international arbitration in their international commercial relationships.</li> </ul> |
| WJP Civil Justice score (2018)  | φ  |

## ARBITRATION PRACTITIONER SUMMARY

Arbitration procedures are governed by the Algerian Civil and Administrative Procedures Code, in which most of the general rules applicable to litigation proceedings are provided. This includes the principle of equal treatment between parties, the right of the parties to a fair trial, due process and an adversarial hearing, along with the adoption of the relevant characteristics of arbitration procedures such as the exclusion of the right to appeal arbitral awards and confidentiality and privacy in arbitration.

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|--|---|
| Date of arbitration law?   | The Algerian Civil and Administrative Procedures Code, which entered into force on 25 February 2008, exclusively regulates arbitration procedures.  |
| UNCITRAL Model Law? If so, any key changes thereto?  | Arbitration procedures are not based on the UNCITRAL Model law.   |
| Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?                          | Algerian courts and judges are not specialised in arbitration-related matters. Arbitration-related matters are usually handled by commercial judges and chairmen of first instance and appellate courts.  |
| Availability of <i>ex parte</i> pre-arbitration interim measures?  | Unless otherwise agreed in the arbitration agreement, a diligent party may have recourse to pre-arbitration interim measures enforceable by Algerian courts.  |
| Courts' attitude towards the competence-competence principle?  | A court cannot claim jurisdiction over the subject-matter of a dispute already pending before an arbitral tribunal or subject to an arbitration pursuant to a valid arbitration agreement.  |
| Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention? | The enforcement of an arbitral award may be rejected if the party resisting enforcement of a foreign arbitral award in Algeria requests from the Algerian court a stay of enforcement until annulment proceedings are complete, or if the award is contrary to the international public order.  |
| Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?                                    | A party resisting enforcement of a foreign arbitral award in Algeria may request from the Algerian court a stay of enforcement until annulment proceedings have been concluded.<br><br>If the award is eventually annulled by the courts of the seat, the party who has obtained the annulment of the award seek to enforce in Algeria the foreign judgment which has annulled the award in order to preclude attempt at enforcing the annulled award, pursuant to article 605 of the CAPC. |
| Other key points to note?  | ∅   |

## JURISDICTION DETAILED ANALYSIS

### 1. Legislative evolution in Algeria in the field of arbitration

The ACPC used to regulate both domestic and international arbitration procedures. However, Law 8812 dated 17 May 2001<sup>1</sup> repealed the provisions governing international arbitration and projected that such provisions be contained in a separate law.

### 2. The legal framework of Algerian jurisdiction: Algerian arbitration law and the UNCITRAL Model law

Arbitration procedures are exclusively and mainly regulated by Law n°08-09 of 25 February 2008, related to civil and administrative procedures, (hereinafter referred to as “Civil and Administrative Procedures Code” or “CAPC”). The CAPC mirrors the principles and approach of civil jurisdictions.<sup>2</sup>

Although Algeria did not adopt the UNCITRAL Model law on International Commercial Arbitration, the CAPC largely reflects the principles of international treaties relating to arbitration that Algeria has ratified, such as the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“ICSID Convention”)<sup>3</sup> and the New York Convention.<sup>4</sup>

Since its entry into force, the CAPC has not been revised.

### 3. The arbitration agreement

#### 3.1 Determination of the governing law

In both local and international arbitration, and as a general rule, the law governing the arbitration agreement is determined by the express intent of the parties as set out in the arbitration agreement itself. If the parties have not expressed any such intent, the law governing the arbitration agreement may be determined to be that governing the dispute, or that chosen by the arbitral tribunal.<sup>5</sup> The chosen governing law must have a connection with the parties or the contract.<sup>6</sup>

#### 3.2 The arbitration agreement and the nullity of the initial contract

Pursuant to article 1008 of the CAPC, the arbitration agreement entered into before a dispute has arisen must be formally included into the principal agreement/contract or in any other document to which the arbitration agreement refers. This inclusion does not, however, render the arbitration agreement dependent on the validity of the underlying contract.<sup>7</sup>

The parties may also decide to submit their dispute to arbitration by entering into an arbitration agreement after the dispute has arisen.

In any event, pursuant to article 1040 of the CAPC, the parties cannot challenge the validity of an arbitration agreement on the ground that the principal contract is void and without effect.

<sup>1</sup> Available at: <http://80.78.70.231/pls/kuv/f?p=201:Ligj:8812:17.05.2001>.

<sup>2</sup> Ali FILALI, Introduction to Law p.165 (2005).

<sup>3</sup> Available at: <https://icsid.worldbank.org/en/Pages/about/Database-of-Member-States.aspx>.

<sup>4</sup> Available at: <http://www.newyorkconvention.org/countries>.

<sup>5</sup> Civil and Administrative Procedures Code. art. 1040.

<sup>6</sup> Articles 1050 of the CAPC and 18 of the Algerian Civil Code.

<sup>7</sup> Allouch Kerboua MEZIANI NAÏMA, *L'Arbitrage Commercial International en Algérie*, p.25-26 (2010).

### 3.3 Formal requirements to have the arbitration agreement enforceable

Pursuant to articles 1008, 1012, and 1040 of the CAPC, an arbitration agreement must be formally entered into in writing or by any other physical or electronic means of communication.<sup>8</sup> In addition, arbitration agreements relating to local arbitrations only must designate the arbitrators or the modalities of their designation.

### 3.4 Third parties to the principal contract

If Algerian law is governing the arbitration agreement, a third party to the principal containing the arbitration agreement cannot be bound by the arbitration agreement. While the contract cannot create obligations vis-à-vis third parties,<sup>9</sup> it can however create rights for their benefit.

### 3.5 Restrictions to arbitrability

Notable restrictions to arbitrability are as follows:

- a. Matters related to public policy and/or status and legal capacity of persons cannot be resolved via arbitration. Parties must turn to the courts having jurisdiction.
- b. The State and its subdivisions can have recourse to arbitration if (i) recourse to arbitration is provided by an international treaty; or (ii) a procurement contract.<sup>10</sup>
- c. State-owned companies can have recourse to international arbitration in their international commercial relationships.

## 4. Intervention of domestic courts

### 4.1 Algerian courts declining jurisdiction

Algerian courts will decline jurisdiction if they are invited to do so by a party and if they are satisfied that: (i) the dispute is already pending before an arbitral tribunal; and/or (ii) a valid arbitration agreement covering that dispute, regardless of the seat of the arbitration, has conferred jurisdiction to an arbitral tribunal.<sup>11</sup>

Algerian courts are very supportive of anti-suit injunctions.

### 4.2 Intervention of Algerian courts in arbitrations seated outside Algeria

Algerian courts do not intervene in the procedural aspects of arbitrations seated outside their jurisdiction.

However, they may intervene in a foreign arbitration if their assistance is required in relation to (i) the gathering of evidence (ii) the validation of procedural acts, or (iii) for any other matter required by the arbitral tribunal.<sup>12</sup> For instance, the arbitral tribunal may seek the assistance of the Algerian judge in case a party does not comply with a provisional measure it ordered.<sup>13</sup>

## 5. The conduct of proceedings

### 5.1 Representation of the parties

Pursuant to article 14 of the CAPC, in commercial and civil matters before Algerian courts, representation by external counsel is not mandatory. Unless otherwise agreed in the arbitration agreement, the same applies to proceedings before an arbitral tribunal. Therefore, parties can be self-represented should they so wish.

<sup>8</sup> Barbara Abd ARRAHMANE, Comments on the Civil and Administrative Procedures Code, p. 551 (2009).

<sup>9</sup> Article 113 of the Algerian Civil Code.

<sup>10</sup> Civil and Administrative Procedures Code, Art. 800, 975 and 1006.

<sup>11</sup> Civil and Administrative Procedures Code, Art. 1045.

<sup>12</sup> Civil and Administrative Procedures Code, Art. 1048.

<sup>13</sup> Civil and Administrative Procedures Code, Art. 1046.

## 5.2 Control of the arbitrators' independency and impartiality

If the arbitration rules applicable to the arbitration do not prescribe the procedure for making a challenge against an arbitrator for an alleged lack of independence and/or impartiality (and, in the case of a foreign arbitration, the issue has not been determined by the courts of the seat), an Algerian judge may rule on it, provided that the dispute is governed by Algerian law. Pursuant to article 1016 of CAPC, the claimant must prove the direct or indirect existence of interests, and/or economic or familial ties with a party to the arbitral proceedings.

## 5.3 Intervention of Algerian courts in the constitution of the arbitral tribunal

Pursuant to articles 1009 and 1041 of CAPC, the courts may intervene in the constitution of the arbitral tribunal to solve issues arising in relation to the constitution of the AT.

In international arbitrations, the said intervention must be triggered through an application filed before (i) the President of the court of the seat (for arbitrations taking place in Algeria), or (ii) the President of the court of Algiers (for arbitrations taking place outside Algeria but seated in Algeria). In the case of local arbitrations, an application must be filed before the President of the court that has jurisdiction over the territory in which the contract was executed.

## 5.4 Algerian courts' power to issue interim measures

The courts have power to grant interim measures in connection with arbitrations, upon the request of the arbitral tribunal and/or of a party authorized by the arbitral tribunal to do so.

With regard to *ex parte* requests, pursuant to article 1048 of the CAPC, a party may request judicial assistance from a competent judge, subject to prior authorisation from the arbitral tribunal. As arbitral tribunals generally have to comply with the adversarial principle, it is rare that such authorisation is granted *ex parte*. In practice, it is therefore difficult to contemplate an *ex parte* request in the framework of article 1048 of the CAPC. It remains, however, to be seen whether the parties may validly insert a clause entitling them to obtain interim measures from Algerian courts on *ex parte* basis in their arbitration agreement.

## 5.5 Control of the arbitrators' conduct

In addition to the duty to be independent and impartial, the arbitrators must possess the qualifications agreed by the parties in the arbitration agreement.<sup>14</sup> We note that the parties are entitled to insert into the arbitration agreement any and all grounds of challenge to the appointment of an arbitrator.

## 5.6 Confidentiality

Pursuant to article 1025 of the CAPC, the deliberations of the arbitrators are confidential. The parties are also allowed to specify the same in the arbitration agreement.<sup>15</sup>

## 5.7 Length of arbitration proceedings

An arbitration agreement is valid even if it does not set a timeframe within which the arbitrators must fulfil their mandate. In such a hypothesis, the arbitrators have to fulfil their mandate within four (4) months from the date of their designation or from the date when the parties notified/submitted the dispute to arbitral tribunal.<sup>16</sup> The four-month deadline may be extended either by the parties in the arbitration agreement (by reference to the applicable arbitration rules) or by the territorially competent tribunal.

<sup>14</sup> Civil and Administrative Procedures Code, Art. 1016.

<sup>15</sup> Civil and Administrative Procedures Code, Art. 1043.

<sup>16</sup> Civil and Administrative Procedures Code, Art. 1018.

## 5.8 Place of arbitrations' hearings and meetings

As the CAPC is silent on provisions relating to the venue where hearings and/or meetings may be held, the parties are free to choose their venue(s).

## 5.9 Arbitrators' power to grant interim measures

Pursuant to article 1046 of the CAPC, arbitrators may grant interim measures, provided that:

- a. the arbitration agreement does not state otherwise; and
- b. the interim measure is requested by one of the parties to the arbitration (*i.e.* the arbitral tribunal cannot issue interim measures on its own motion).

Should the party against which an interim measure has been ordered not comply with the same, the arbitrators may seek the judicial assistance of the Courts of the seat to enforce such measure.<sup>17</sup>

## 5.10 Arbitrators' right to admit and exclude evidence

Pursuant to articles 1020, 1023 and 1047 of the CAPC, the arbitral tribunal decides on its own motion which evidence will be admitted/excluded. Therefore, it may admit and exclude evidence at its sole discretion as long as it does not contradict the applicable arbitration rules or the law of the seat.

A party may present employee witness testimony. If Algerian law governs the arbitration, such testimony is made under oath.

## 5.11 Holding hearings

Pursuant to article 1019 of the CAPC, unless otherwise agreed between the parties, deadlines and forms applicable to court proceedings are also applicable to arbitral proceedings seated in Algeria. Thus, arbitral tribunals hand down their decisions following exchanges of briefs and hearings.

## 5.12 Allocation of arbitration costs

Algerian arbitration law does not deal with the allocation of arbitration costs or the award of interest: this is left to the applicable arbitration rules or to the arbitration agreement or, in the absence of any rule governing this issue, to the discretion of the arbitral tribunal.

## 5.13 Liability

Arbitrators do not benefit from immunity to civil liability under the CAPC.

If forged documents are submitted or if a criminal issue arises during the course of arbitration (domestic arbitration and international arbitrations seated in Algeria), the arbitral tribunal must refer the parties to the competent penal court. The arbitral proceedings are suspended until the penal court rules on the matter.<sup>18</sup>

## 6. The award

### 6.1 Awards must provide reasons

Arbitral awards in both domestic and international arbitral proceedings must provide reasons.<sup>19</sup> It is on the basis of such reasons that the Algerian judge shall decide whether the award should be converted into a court order for enforcement.

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<sup>17</sup> Civil and Administrative Procedures Code, Art. 1048.

<sup>18</sup> Civil and Administrative Procedures Code, Art. 1021.

<sup>19</sup> Civil and Administrative Procedures Code, Art. 1027.

## 6.2 Annulment of awards

Pursuant to article 1031 of the CAPC, arbitral awards rendered in Algeria that rule on the subject matter of the dispute are *res judicata* the moment they are handed down. However, arbitral awards rendered in Algeria in relation to international arbitration may be subject to annulment in compliance with article 1058 of the CAPC. The parties may waive their right to seek annulment of the award.

Applications for annulment must be submitted before the Court of Appeal in the jurisdiction where the award was rendered within a period of one (1) month from the date of notification of the court's order for enforcement.

Local arbitration awards may be subject to an appeal unless agreed otherwise by the parties.

## 6.3 Requirements for the validity of arbitral awards rendered in Algeria

The validity of an award rendered by an arbitral tribunal seated in Algeria is subject, *inter alia*, to the requirements of articles 1025 to 1030 of the CAPC, as follows:

- compliance with the confidentiality of the deliberations;
- approval of the award by the majority of the arbitral tribunal;
- signature by all arbitrators;
- a summary of the parties' submissions and reasons for the award, as well as:
  - (i) the full name of the arbitrator(s);
  - (ii) the date of issuance;
  - (iii) full names and addresses of the parties (whether natural or legal persons); and
  - (iv) full names of the parties' counsel or their representatives, as the case may be.<sup>20</sup>

## 6.4 Procedures of recognition, enforcement and appealing awards

### a. Local arbitral awards rendered inside Algeria

Pursuant to article 1031 of the CAPC, arbitral awards rendered in Algeria that rule on the subject matter of the dispute are *res judicata* as soon as they are handed down.

The local arbitration award is enforced by an order issued by the president of the court of the place where the arbitration tribunal was seated.

A court order refusing enforcement can be appealed within 15 days following its issuance pursuant to article 1035 of the CAPC.

Unless otherwise agreed in the arbitration clause, a domestic arbitral award can be appealed by a party within a period of one (1) month after the issuance of the award. The appeal must be submitted to the Court of Appeal where the arbitral tribunal was seated. The decisions of the Court of Appeal (whether relating to the appeal of the award or to the enforcement order) may be challenged before the Supreme Court.<sup>21</sup>

### b. International arbitral awards rendered inside and/or outside Algeria:

Pursuant to articles 1051, 1056 and 1057 of the CAPC, the party seeking recognition<sup>22</sup> and enforcement of an international arbitral award must submit an application to this effect

<sup>20</sup> It must be highlighted that in the event an arbitrator refuses to sign an arbitral award, the arbitrators signing the award and representing the majority of the arbitral tribunal shall make reference to said refusal in the award. This refusal does not affect the formal validity of the award as it is deemed being signed by the totality of the arbitral tribunal.

<sup>21</sup> Civil and Administrative Procedures Code, Art. 1033 and 1034.

<sup>22</sup> The recognition is granted when a diligent party provides an original copy of the award and the arbitration agreement. The recognition must not be contrary to international public order.

(i) before the President of the court where the international arbitral award was issued (for international arbitrations taking place inside Algeria), or

(ii) before the court where the enforcement is sought (for international arbitrations taking place outside Algeria). The President will declare the award enforceable unless it breaches international public policy.

Decisions rejecting the enforcement or execution of the arbitral award may be subject to appeal.

Decisions on enforcement can be appealed by parties before the competent Court of Appeal within a period of one (1) month starting from the formal notification of the first instance court's decision.

The grounds of appeal are:

- the arbitral tribunal has issued an award after the expiry of the term of the arbitration agreement/clause or issued an award based on an invalid arbitration agreement/clause or without one at all;
- the constitution of the tribunal and appointment of the arbitrators was contrary to the applicable law;
- the arbitrators determined the dispute in a manner contrary to the mandate attributed to them;
- the principle of due process (adversarial principle) was not complied with;
- the arbitrators did not give reasons for the award or gave contradictory reasonings; and/or
- the award is in violation of the international public order.

### **6.5 Suspensive character of award annulment and appeal proceedings**

Pursuant to article 1060 of the CAPC, annulment and appeal proceedings are automatically suspensive of the enforcement of the award.

### **6.6 Enforceability of foreign awards annulled at their seat**

If an award is annulled by the Courts of the seat, enforcement of that annulment should be sought pursuant to article 605 of the CAPC. In practice, this works as follows:

- As the recognition and enforcement of a foreign award is an *ex-parte* procedure, once the recognition and enforcement of the foreign award is granted, it must be notified to the losing party. The losing party has then one month to appeal the decision.
- During the appeal, the losing will bring the annulment decision to the attention of the Algerian Court. If the annulment decision has already been converted into an order of the Courts of Algeria, the Algerian judge will quash the decision granting the *exequatur*. Otherwise, the losing party will rely on the annulment to demonstrate that the award breaches one of the requirements for validity set forth above.

A party resisting enforcement of a foreign arbitral award in Algeria may request from the Algerian court a stay of enforcement until annulment proceedings are complete.

### **6.7 Difficulties with enforceability of foreign awards**

Arbitral awards are readily enforceable provided that the enforcing party fulfils the provisions of the CAPC relating to the recognition and enforcement of arbitral awards.

However, in practice, difficulties may arise in enforcing an international arbitral award rendered outside Algeria due to the lack of expertise of some Algerian Courts in this area. For example, in the case of decision n° 543309<sup>23</sup> of the Algerian Supreme Court (*Cour de cassation*) dated 18 March 2010, an arbitral award was issued by the Refined Sugar Association of London on 27 May 1999 ordering the Respondent to pay to the

<sup>23</sup> *A.S entity (Appellant) vs Miltman Andicogy corporation (Respondent)*.

Appellant the amount of 281 253,94 US dollars. The difficulties that the parties experienced in respect of enforcement related mainly to misinterpretations by the lower courts of the provisions of the CAPC as to which court had jurisdiction to decide upon the enforceability of the foreign award. In the end, it took ten years and a decision of the Supreme Court to determine which court in fact had jurisdiction.

**7. Funding arrangements: contingency, alternative fee arrangements and third-party funding**

Contingency fee arrangements and/or third-party funding are possible under Algerian law.

**8. Future reforms**

At the moment, we are not aware of any potential project of law modifying and amending the CAPC.