

GUIDE TO ARBITRATION PLACES (GAP)

ALGERIA

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS <sup>‡</sup>

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	●
Evolution of above compared to previous year		⊞
7.	Tech friendliness	●
8.	Compatibility with the Delos Rules	●

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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 any and all responsibility.

## 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.

Key places of arbitration in the jurisdiction?	Arbitrations in Algeria are generally seated in the country's capital, Algiers. In practice, for disputes arising out of international contracts, parties often choose Paris or Geneva as the seat.
Civil law / Common law environment? (if mixed or other, specify)	Civil law.
Confidentiality of arbitrations?	Confidentiality of arbitration is a fundamental principle accepted by scholars and practitioners. However, the law governing arbitration guarantees the confidentiality of the deliberations of the arbitrators only. The law is silent as to the rest of the proceedings. This issue can be determined by the arbitral tribunal, the arbitral agreement/clause or by the applicable procedural rules.
Requirement to retain (local) counsel?	The 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 and/or remotely?	Parties are free to choose the seat of arbitration as well as the venue for hearings and meetings.
Availability of interest as a remedy?	Algerian arbitration law does not deal with the allocation of arbitration costs or the award of interest. A winning party may claim them, subject to applicable arbitration rules, law applicable to the subject matter and provisions of the contract or arbitration agreement.
Ability to claim for reasonable costs incurred for the arbitration?	There are no express provisions in the arbitration law on allocation of costs. It is possible for the winning party to claim the reimbursement of reasonable costs incurred for the arbitration, subject to applicable arbitration rules, law applicable to the subject matter and provisions of the contract or arbitration agreement.
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, with the reciprocity and commercial reservations.
Party to the ICSID Convention?	Yes.

Compatibility with the Delos Rules?	The Delos Rules don't contradict the Algerian Civil and Administrative Procedures rules related to arbitration.
Default time-limitation period for civil actions (including contractual)?	15 years.
Other key points to note?	<ul style="list-style-type: none"> <li>• Matters related to Public Order and/or status and legal capacity of individuals cannot be resolved via arbitration nor mediation.</li> <li>• The State and its organs are authorised 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 authorised to have recourse to international arbitration in their international commercial relationships.</li> </ul>
World Bank, Enforcing Contracts: <i>Doing Business</i> score for 2020, if available?	54.8
World Justice Project, Rule of Law Index: <i>Civil Justice</i> score for 2024, if available?	0.56

## ARBITRATION PRACTITIONER SUMMARY

Arbitration procedures are governed by Law No. 08-09 of 25 February 2008, related to civil and administrative procedures (hereinafter referred to as “**Civil and Administrative Procedures Code**” or “**CAPC**”), which provides for most of the general rules applicable to litigation proceedings. This includes the principle of equal treatment between parties, the right of the parties to a fair trial, due process and an adversarial hearing.

Date of arbitration law?	The CAPC, which regulates arbitration proceedings, was published on 25 February 2008 and entered into force on 25 February 2009.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	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 seek 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.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	The CAPC is silent as to this matter; however, at the time of the <i>exequatur</i> both the ruling on jurisdiction and subsequent award must be presented to the local court together for their review.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	<p>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.</p> <p>If the award is eventually annulled by the courts of the seat, the party who has obtained the annulment of the award must 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.</p>
Do annulment proceedings typically suspend enforcement proceedings?	Yes, in accordance with Article 1060 of the CAPC, the annulment proceedings suspend the enforcement proceedings. Suspension of proceeding is not automatic and must be requested by the party resisting enforcement of the award in Algeria.
Courts’ attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	Typically, the Algerian courts will reject the recognition and enforcement of the award which has been annulled by the court of the seat.

If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	No, as long as compliant with the chosen arbitral rules and international public order.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	There are no particular key points to note except that the <i>exequatur</i> must be sought before the Administrative Tribunal (for Ministries and State administrative subdivisions).
Is the validity of blockchain-based evidence recognised?	<p>Pursuant to Article 323 of the Algerian Civil Code, both hard-copy and electronic evidence are accepted as evidence, as long as (i) the parties are duly identified and (ii) it is conserved and established in a way guarantying its integrity.</p> <p>Although Algerian courts have not yet ruled on this point, the above 2 conditions may be used to assess the validity of blockchain-based evidence.</p>
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognized as valid?	<p>In addition to Article 323 of the Algerian Civil Code mentioned above, pursuant to Article 1040 of the CAPC, "[a]s <i>per the form, under sanction of nullity, the arbitration agreement must be established in written, or by any other means of communication allowing to prove its existence in written</i>".</p> <p>Therefore, the Algerian judge may accept the arbitration agreement recorded on blockchain, if the latter considers that the blockchain record is sufficient to prove the existence of the arbitration agreement in writing.</p>
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	Yes, the court may consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement, if the latter fulfils the above conditions. However, this assertion has not yet been tested in Algeria. In addition, enforcement cannot be automatic through blockchain assets since the award needs to obtain the <i>exequatur</i> in Algeria.
Other key points to note?	∅

## JURISDICTION DETAILED ANALYSIS

### 1. The legal framework of the jurisdiction

The CAPC governs both domestic and international arbitration procedures.

#### 1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version?

##### 1.1.1 If no, what form does the arbitration law take?

Arbitration procedures are 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>1</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>2</sup> and the New York Convention.

#### 1.2 When was the arbitration law last revised?

Arbitration procedures are regulated by the CAPC, which mirrors the principles and approach of civil jurisdictions.

### 2. The arbitration agreement

#### 2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

In both domestic 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>3</sup> The chosen governing law must have a connection with the parties or the contract.<sup>4</sup>

#### 2.2 In the absence of an express designation of a ‘seat’ in the arbitration agreement, how do the courts deal with references therein to a ‘venue’ or ‘place’ of arbitration?

The CAPC does not contain provision related to the seat of arbitration proceedings and Algerian courts have not had the opportunity to rule on the issue so far.

However, in practice, the arbitration tribunal or the Parties designate the seat of the tribunal thereafter as per the applicable arbitration rules.

#### 2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

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>5</sup>

<sup>1</sup> Ali FILALI, Introduction to Law p.165 (2005).

<sup>2</sup> Available at: <https://icsid.worldbank.org/en/Pages/about/Database-of-Member-States.aspx>.

<sup>3</sup> Civil and Administrative Procedures Code. Article. 1040.

<sup>4</sup> Articles 1040 of the CAPC and 18 of the Algerian Civil Code.

<sup>5</sup> Allouch Kerboua MEZIANI NAIMA, *L'Arbitrage Commercial International en Algérie*, p.25-26 (2010).

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

The arbitration agreement is independent from the contract in which it is set forth, (*autonomous* agreement). Indeed, 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.

## **2.4 What are the formal requirements (if any) for an enforceable arbitration agreement?**

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>6</sup> In addition, arbitration agreements relating to domestic arbitrations only must designate the arbitrators or the modalities of their designation.

## **2.5 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?**

If Algerian law is governing the arbitration agreement, a third party to the contract containing the arbitration agreement cannot be bound by the arbitration agreement, because contracts cannot create obligations *vis-à-vis* third parties<sup>7</sup>. They can, however, create rights for their benefit but third parties are not bound by the arbitration agreement.

## **2.6 Are there restrictions to arbitrability?**

Notable restrictions to arbitrability are:

- a. Matters related to public policy and/or status and legal capacity of individuals cannot be resolved via arbitration. Parties must turn to national courts.
- b. The State and its subdivisions can have recourse to arbitration if recourse to arbitration is provided (i) by an international treaty; or (ii) a procurement contract.<sup>8</sup>
- c. State-owned companies can have recourse to international arbitration in their international commercial relationships.

### **2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law etc.)?**

Such restrictions are applicable to all domains.

### **2.6.2 Do these restrictions relate to specific persons (i.e., State entities, consumers etc.)?**

There are restrictions for the State and state-owned entities, but some restrictions also apply to individuals.

## **3. Intervention of domestic courts**

### **3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?**

Yes, the diligent party may request from the courts to stay the litigation in the event there is a valid arbitration agreement covering the dispute, irrespective of whether the seat of the arbitration is within or outside of the jurisdiction.

<sup>6</sup> Barbara Abd ARRAHMANE, Comments on the Civil and Administrative Procedures Code, p. 551 (2009).

<sup>7</sup> Article 113 of the Algerian Civil Code.

<sup>8</sup> Civil and Administrative Procedures Code, Article 800, 975 and 1006.

### **3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?**

Algerian courts will decline jurisdiction or stay the proceeding if they are invited to do so by a party or *ex officio*, and if they are satisfied that: (i) proceedings are already pending before an arbitral tribunal; and/or (ii) a valid arbitration agreement covering that dispute, regardless of the seat of the arbitration, confers jurisdiction to an arbitral tribunal.<sup>9</sup>

Algerian courts are very supportive of anti-suit injunctions issued by Algerian courts or arbitral tribunals seated in Algeria.

### **3.3 On what ground(s) can the court intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)**

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>10</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>11</sup>

## **4. The conduct of proceedings**

### **4.1 Can parties retain foreign counsel or be self-represented?**

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.

### **4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of a gravity such as to justify this outcome?**

The CAPC does not define the criteria to be used by the courts to control arbitrators' independence and impartiality.

If the arbitration rules applicable to the arbitration do not prescribe the procedure for challenging 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. However, in practice, such control not being well defined is not strict and depends mostly on the arguments and proof presented by either party. Pursuant to Article 18 of the Algerian Civil Code, the claimant must prove the direct or indirect existence of interests, and/or economic or familial ties with a party to the arbitral proceedings. Therefore, failure to disclose by itself is not sufficient, one must establish the elements proving the existence of an interest or ties with the parties to challenge the arbitrators' independence and impartiality.

### **4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?**

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 arbitral tribunal.

<sup>9</sup> Civil and Administrative Procedures Code, Article 1045.

<sup>10</sup> Civil and Administrative Procedures Code, Article 1048.

<sup>11</sup> Civil and Administrative Procedures Code, Article 1046.



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.

#### **4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?**

The courts have power to grant interim measures in connection with arbitrations, upon the request of the arbitral tribunal and/or of a party authorised 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 an *ex parte* basis in their arbitration agreement.

#### **4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?**

The law does not regulate the conduct of the arbitration.

However, 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>12</sup> The parties are entitled to insert into the arbitration agreement any and all grounds of challenge to the appointment of an arbitrator.

##### **4.5.1 Does it provide for the confidentiality of arbitration proceedings?**

Confidentiality of arbitration is a fundamental principle that is accepted by scholars and practitioners. However, the CAPC guarantees the confidentiality the deliberations of the arbitrators only.<sup>13</sup> The law is silent as to the rest of the proceedings. This issue can be determined by the arbitral tribunal, the arbitral agreement/clause or by the applicable procedural rules.

##### **4.5.2 Does it regulate the 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>14</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.

##### **4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?**

No, the parties are free to choose their venue(s). The CAPC is silent on the possibility that hearings and/or meetings be held remotely. In practice such possibility is provided under the arbitration agreement or the applicable arbitration rules.

<sup>12</sup> Civil and Administrative Procedures Code, Article 1016.

<sup>13</sup> Civil and Administrative Procedures Code, Article 1025.

<sup>14</sup> Civil and Administrative Procedures Code, Article 1018.

#### **4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?**

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).

If the party against which an interim measure has been ordered not comply with it, the arbitrators may seek the judicial assistance of the courts of the seat to enforce such measure.<sup>15</sup>

#### **4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?**

Pursuant to Articles 1020, 1023 and 1047 of the CAPC, the arbitral tribunal decides at its sole discretion which evidence will be admitted/excluded, subject to applicable arbitration rules or the law of the seat.

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

#### **4.5.6 Does it make it mandatory to hold a hearing?**

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, for the domestic arbitration hearings are mandatory. As per the international commercial arbitration, the arbitration agreement regulates, directly or by reference to applicable arbitration rules, the procedure to be followed in the arbitral proceedings.

#### **4.5.7 Does it prescribe principles governing the awarding of interest? Does it prescribe principles governing the allocation of arbitration costs?**

It is possible for the winning party to claim the reimbursement of reasonable costs incurred for the arbitration.

Indeed, 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.

### **4.6 Liability**

#### **4.6.1 Do arbitrators benefit from immunity from civil liability?**

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

#### **4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?**

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>16</sup>

<sup>15</sup> Civil and Administrative Procedures Code, Article 1048.

<sup>16</sup> Civil and Administrative Procedures Code, Article 1021.

The CAPC provide for any specific criminal liability for arbitrators. However, in the event the arbitrators will commit any criminal offence, the latter will be punished in accordance with the Criminal Code (for example; false declaration, corruption, etc.)

## 5. The award

### 5.1 Can parties waive the requirement for an award to provide reasons?

Arbitral awards in both domestic and international arbitral proceedings must provide their reasons.<sup>17</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.

### 5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

The parties may waive their right to seek annulment of international awards.

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.

### 5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

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>18</sup>

### 5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

No, for international arbitral awards. Yes, for domestic arbitral awards unless otherwise agreed in the arbitration clause.

Domestic arbitral awards can be appealed by a party within a period of one (1) month from the issuance of the award. The appeal must be submitted to the Court of Appeal of the place where the arbitral tribunal was seated. The appeal is introduced by filing a judicial appeal introductory brief with the registry of the Court of Appeal. The filing must be done by a lawyer, since the representation of the parties by a lawyer is mandatory before Algerian Courts. The appeal introductory brief must be justified, i.e. it must contain the grounds on which the appeal is based, both substantive and by referring to the relevant Articles of the applicable law.

<sup>17</sup> Civil and Administrative Procedures Code, Article 1027.

<sup>18</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.

The grounds for the appeal are based either on the failure to correctly apply Algerian law, or the wrong interpretation or analysis of the facts (similarly to the appeal of a judgment rendered by a lower court). The Court of Appeal's judges will review the tribunal's application of Algerian law to the facts.

The Civil and Administrative Procedures Code does not address the consequences of the acceptance or the rejection of the appeal. In practice, if the appeal is rejected for absence of ground, the effect is that the arbitral award is granted the executive formula. If, however, the Court upholds the appeal, the Court will cancel the arbitral award and its decision (and the findings contained in it) will replace the arbitral award.

Finally, the Court of Appeal's decision may be subject to an appeal before the Supreme Court (*cassation*).<sup>19</sup> Such appeal will not suspend the execution of the Court of Appeal's decision.

## **5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?**

### **5.5.1 Local arbitral awards rendered inside Algeria**

Pursuant to Article 1031 of the CAPC, arbitral awards rendered in Algeria are *res judicata* as soon as they are handed down. Local arbitration awards are 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.

As stated above a domestic award may also be appealed.

### **5.5.2 International arbitral awards rendered inside and/or outside Algeria:**

Pursuant to Articles 1051, 1056 and 1057 of the CAPC, the party seeking recognition<sup>20</sup> and enforcement of an international arbitral award must submit an application to this effect:

- (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 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 for appeal are:

- the arbitral tribunal has issued the award after the expiry of the term of the arbitration agreement/clause or issued the 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.

<sup>19</sup> Civil and Administrative Procedures Code, Articles 1033 and 1034.

<sup>20</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.

## **5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?**

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

## **5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?**

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 period, the losing party will bring the foreign 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.

## **5.8 Are foreign awards readily enforceable in practice?**

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 when enforcing international arbitral awards rendered outside Algeria due to the lack of expertise of some Algerian courts in this area. In decision No. 543309 of the Algerian Supreme Court (equivalent of the French *Cour de cassation*) dated 18 March 2010, it took ten years for the Supreme Court to determine which court had jurisdiction to rule on the enforceability of a foreign award.

## **6. Funding arrangements**

### **6.1 Are there laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?**

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

## **7. Arbitration and technology**

### **7.1 Is the validity of blockchain-based evidence recognised?**

Pursuant to Article 323 of the Algerian Civil Code, both hard-copy and electronic documents are accepted as evidence as long as (i) the parties are duly identified and (ii) it is conserved and established in a way that guarantees its integrity.

Although Algerian courts have not ruled on this point, the validity of blockchain-based evidence may be recognised, in the event it fulfils the above two conditions.

## **7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?**

Yes, pursuant to Article 323 of the Algerian Civil Code (described above) and Article 1040 of the CAPC, “[a]s per the form, under sanction of nullity, the arbitration agreement must be established in written, or by any other mean of communication allowing to prove its existence in written”.

Therefore, the Algerian judge may accept the arbitration agreement recorded on blockchain, if the latter considers that the blockchain record is sufficient to prove the existence of the arbitration agreement in writing.

## **7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?**

Yes, the court may consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement, if the latter fulfils the above conditions. However, this assertion has not yet been tested in Algeria. In addition, enforcement cannot be automatic through blockchain assets since the award needs to obtain the *exequatur* in Algeria.

## **7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?**

Yes, a court will consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement.

Indeed, the Law 15-04 dated 1 February 2015 setting forth the general rules related to electronic signature and certification provides that an electronic signature cannot be deprived of its legal effectiveness and cannot be denied as proof in court, on the sole grounds:

- i. it is in electronic form; or
- ii. it is not based on a qualified electronic certificate; or
- iii. it is not created by a secure creation device electronic signature.

Finally, please note that electronic certificates issued by electronic certification service provider in a foreign country have the same value as those issued by an electronics certification service provider established in Algeria, provided that this foreign service provider acts according to a mutual recognition agreement executed with the Algerian authority in charge of electronic signatures and certifications.

## **8. Is there likely to be any significant reform of the arbitration law in the near future?**

No, we are not aware of any significant reform of the arbitration law in the near future.

## **9. Compatibility of the Delos Rules with local arbitration law**

The Delos Rules do not contradict the Algerian Civil and Administrative Procedures rules in relation to arbitration (CAPC), be it in terms of the arbitration proceedings, arbitral agreement or arbitral award.

## **10. Further reading**

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## ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	ϕ
Main arbitration hearing facilities for in-person hearings?	ϕ
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	ϕ
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	ϕ
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	ϕ
Other leading arbitral bodies with offices in the jurisdiction?	The Conciliation, Mediation and Arbitration Centre of the Industrial and Commercial Algerian Chamber.