

GUIDE TO ARBITRATION PLACES (GAP)

MOROCCO

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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| 4. Rights of representation                  | ● |
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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

While arbitration is not a widely employed method for settling domestic disputes in Morocco, there have been recent efforts to establish a new and comprehensive legal framework for arbitration.

On 14 June 2022, law n° 95-17 on arbitration and conventional mediation (hereinafter the “**Arbitration Law**”) entered into force.<sup>1</sup> The Arbitration Law distinguishes between domestic and international arbitration. The Arbitration Law was intended to reform Moroccan arbitration law and promote Morocco’s attractiveness to foreign investors. Its ambition is to make Morocco a regional hub for international arbitration. As of November 2024, there is still no official French translation of the Arbitration Law.<sup>2</sup>

All arbitration proceedings with a seat in Morocco commenced after the entry into force of the Arbitration Law are governed by it, unless otherwise agreed by the parties. However, the provisions concerning arbitration in the Moroccan Code of Civil Procedure govern (i) arbitration proceedings pending prior to the entry into force of the Arbitration Law and (ii) arbitration proceedings based on arbitration agreements concluded prior to the entry into force of the Arbitration Law.<sup>3</sup>

The emergence of a number of local arbitration centres such as the Casablanca International Mediation and Arbitration Centre is also likely to make Morocco, and in particular its economic capital, Casablanca, an attractive place for arbitration.

Key places of arbitration in the jurisdiction?	Casablanca.
Civil law / Common law environment? (if mixed or other, specify)	Civil law.
Confidentiality of arbitrations?	The Arbitration Law does not expressly provide for the confidentiality of arbitrations. However, the Arbitration Law provides that arbitrators are bound by professional secrecy, <sup>4</sup> and that the arbitrators’ deliberations are secret. <sup>5</sup>
Requirement to retain (local) counsel?	There is no legal requirement to retain local counsel, or for a party to be represented by counsel. <sup>6</sup>
Ability to present party employee witness testimony?	In both domestic and international arbitration, the Arbitration Law provides that the arbitral tribunal shall carry out all investigations, including the hearing of witnesses or any person it deems useful to be heard. <sup>7</sup> Since the provision is drafted in broad terms, it also covers the possibility for party employee witnesses to be heard.

<sup>1</sup> Article 105 Law n° 95-17 promulgated in Dahir 1-22-34 of 24 May 2022. The Arbitration Law entered in force the day following its publication in the Official Bulletin.

<sup>2</sup> An informal translation in French is available at [here](#).

<sup>3</sup> Article 103 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>4</sup> Article 31 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>5</sup> Article 50 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>6</sup> A. Brahma, *Arbitration in Africa: A Practitioner's guide*, Kluwer Law International, Second edition, 2021, p. 462.

<sup>7</sup> Article 41 of the Law n° 95-17 on arbitration and conventional mediation.

Ability to hold meetings and/or hearings outside of the seat and/or remotely?	<p>The arbitral tribunal may, unless otherwise agreed by the parties, hold meetings or hearings at any place it deems appropriate, including at a different venue from the seat.<sup>8</sup></p> <p>The Arbitration Law expressly provides that if the arbitrators are unable to convene at a specific location, the arbitral tribunal may, if necessary and subject to the parties' agreement, meet remotely using modern telecommunications technology.<sup>9</sup></p>
Availability of interest as a remedy?	Parties are entitled to claim interest as it is not prohibited by Moroccan law. <sup>10</sup>
Ability to claim for reasonable costs incurred in the arbitration?	<p>For domestic arbitration, and international arbitration, unless the parties agree to apply other sets of rules, the Arbitration Law provides that the arbitral award shall fix the arbitrators' fees and the arbitration expenses and allocate them among the parties.<sup>11</sup></p> <p>The Arbitration Law does not specify how to allocate the costs of the arbitration, but the Code of Civil Procedure sets out a general principle that court costs in litigation before the state courts are borne by the unsuccessful party or parties.<sup>12</sup> Arbitral tribunals with a seat in Morocco are likely to apply this principle.</p>
Contingency fee arrangements and third-party funding?	The Arbitration Law does not prohibit contingency fee arrangements or third-party funding. However, Article 44 of the Dahir, implementing law n° 1-93-162 dated 10 September 1993 relating to the legal profession, prohibits Moroccan lawyers from fixing fees in advance based on the result to be achieved.
Party to the New York Convention?	Yes - Morocco ratified the New York Convention in Dahir No. 1-59-266 of 19 February 1960.
Party to the ICSID Convention?	Yes - Morocco ratified the ICSID Convention with Royal Decree No. 564-65 of 31 October 1966.
Compatibility with the Delos Rules?	No particular concerns.
Default time-limitation period for civil actions (including contractual)?	With some exceptions, <sup>13</sup> all actions arising from an obligation are time-barred after fifteen years. <sup>14</sup>
Other key points to note?	<p>The main amendments of the Arbitration Law are:</p> <p>The distinction made between domestic and international arbitration;<sup>15</sup></p>

<sup>8</sup> Article 33 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>9</sup> Article 33 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>10</sup> W. Ben Hamida, *L'incidence des intérêts moratoires sur l'exécution des sentences arbitrales dans les pays arabes*, Revue de l'arbitrage, Comité Français de l'Arbitrage, Volume 2012, Issue 3, 2012, pp. 543-544.

<sup>11</sup> Article 52 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>12</sup> Article 124 of the Moroccan Code of Civil Procedure.

<sup>13</sup> For instance, five years for commercial actions pursuant to Article 5 of the Moroccan Commercial Code

<sup>14</sup> Article 387 of the Moroccan Code of Obligations.

<sup>15</sup> Article 72 of the Law n° 95-17 on arbitration and conventional mediation.

	<p>The introduction of the use of information and telecommunications technology at various steps of the arbitration procedure;</p> <p>The possibility for public companies and public entities to enter into an arbitration agreement without any further conditions;<sup>16</sup></p> <p>If one of the arbitrators is unable or unwilling to sign the award, it still has the same effect as if it had been signed by each of the arbitrators;<sup>17</sup></p> <p>The possible appeal of the decision on the fees within 15 days of its issuance before the President of the Competent Court.<sup>18</sup></p>
World Bank Enforcing Contracts: <i>Doing Business</i> score for 2020, if available?	63.7 (according to data collected up to May 2019). <sup>19</sup>
World Justice Project, Rule of Law Index: <i>Civil Justice</i> score for 2024, if available?	In 2024, Morocco was ranked 78 <sup>th</sup> out of 142 countries, with a score of 0.50. <sup>20</sup>

<sup>16</sup> Article 17 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>17</sup> Article 50 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>18</sup> Article 52 of the Law n° 95-17 on arbitration and conventional mediation. Pursuant **to** Article 1 of the Arbitration Law, the Competent Court **is referred to** as “the court having jurisdiction to decide the dispute if it **is** not subject to an arbitration agreement between the parties”.

<sup>19</sup> See World Bank Group, *Doing Business 2020, Economy Profile: Morocco, 2020*, pp. 4 and 51 (<https://www.doingbusiness.org/content/dam/doingBusiness/country/m/morocco/MAR.pdf>).

<sup>20</sup> See World Justice Project, *Civil Justice, Ranking 2024* (<https://worldjusticeproject.org/rule-of-law-index/global/2024/Morocco/Civil%20Justice/>).

## ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	The main sources of arbitration are the Dahir No. 1-59-266 of 19 February 1960 relating to the ratification of the New York Convention and the Arbitration Law.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	The Arbitration Law is inspired by the principles set out in the 2006 amended version of the UNCITRAL Model Law, with the exception of the provisions relating to interim measures.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	No. Arbitration matters are handled by the courts of common jurisdiction.
Availability of <i>ex parte</i> pre-arbitration interim measures?	The existence of an arbitration agreement does not prevent the parties, either before initiating the arbitration or during the arbitration proceedings, from obtaining interim or conservatory measures from the <i>juge des référés</i> (the interim relief judge). <sup>21</sup> Such interim measures may be obtained <i>ex parte</i> in case of urgency. <sup>22</sup>
Courts' attitude towards the competence-competence principle?	Article 18 of the Arbitration Law provides that where a dispute submitted to an arbitral tribunal under an arbitration agreement is brought before a court, the court shall declare the claim inadmissible until the end of the arbitration proceedings or the annulment of the arbitration, even if the arbitral tribunal has not yet been seized. <sup>23</sup>  Moroccan courts have always recognized the competence-competence principle, <sup>24</sup> and refer the parties to arbitration, unless, after carrying out an in-depth examination of the arbitration agreement in accordance with article II-3 of the New York Convention, the courts find that the arbitration agreement is null and void. <sup>25</sup>
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	The Arbitration Law does not make specific provision addressing this possibility. There would not appear to be any bar to such a practice.
Additional grounds for annulment of awards beyond the New York	The grounds for annulment of an award rendered in an international arbitration are similar (but not identical) to those outlined in the New York Convention. They include the following:

<sup>21</sup> Article 19 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>22</sup> Article 151 of the Moroccan Code of Civil Procedure. Pursuant to Article 1 of the Arbitration Law, the Competent Court is referred to as "*the court having jurisdiction to decide the dispute if it is not subject to an arbitration agreement between the parties*".

<sup>23</sup> Article 18 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>24</sup> K. Zaher, *Le nouveau droit marocain de l'arbitrage interne et international*, Revue de l'Arbitrage, Comité Français de l'Arbitrage, Volume 2009, Issue I, 2009, para. 17, citing Supreme Court, n° 7968, 30/12/1998 and Supreme Court, n° 240, 13/12/2002; N. Najjar, *Arbitrage dans les pays arabes et commerce international*, LDGJ, éd. Lextenso, 2016, para. 959, citing Casablanca Court of Appeal, 13/11/1984.

<sup>25</sup> K. Zaher, *Le nouveau droit marocain de l'arbitrage interne et international*, Revue de l'Arbitrage, Comité Français de l'Arbitrage, Volume 2009, Issue I, 2009, para. 79; N. Najjar, *Arbitrage dans les pays arabes et commerce international*, LGDJ, Lextenso éditions, 2016, para. 985, p. 506.

Convention criteria for recognition and enforcement?	(i) the arbitral tribunal rendered an award in the absence of an arbitration agreement or based on an invalid arbitration agreement, or after the termination of the arbitral proceedings, (ii) the arbitral tribunal was improperly constituted or the sole arbitrator was improperly appointed, (iii) the arbitral tribunal has ruled without complying with its mandate, (iv) the rights of defense were not respected, or (v) the award is contrary to domestic or international public policy. <sup>26</sup> In contrast, the grounds for annulment of an award rendered in a domestic arbitration are broader. <sup>27</sup> For instance, they include the possibility of annulment of the award in cases of: (i) non-compliance with certain formal requirements for the award, as set out in the Arbitration Law, or (ii) failure to comply with the procedure or the substantive law agreed between the parties. <sup>28</sup>
Do annulment proceedings typically suspend enforcement proceedings?	Yes, unless (in the case of international arbitration) the award provides that it is provisionally enforceable, in which case the judge has discretion as to whether to suspend or not enforcement proceedings. <sup>29</sup>
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	There is no specific provision in the Arbitration Law addressing the recognition and enforcement of foreign awards annulled at the seat of the arbitration. However, the Rabat Commercial Court has held that recognition and enforcement of an award must be refused if a party demonstrates that the award has not yet become binding on the parties or has been annulled or suspended by a competent authority of the country in which the award was rendered. <sup>30</sup>
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?	We are not aware of any authority on this issue. This is unlikely to affect the recognition or enforceability of the award, although a fact-specific enquiry would be needed particularly to ensure that the conduct of the proceeding was in accordance with due process.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	Assets belonging to public bodies or relating to the performance of a public service (in French " <i>service public</i> ") are unseizable. <sup>31</sup> Reasons must always be given for an award in a dispute to which a person governed by public law is a party. <sup>32</sup>
Is the validity of blockchain-based evidence recognized?	We are not aware of any authority on this issue.

<sup>26</sup> Article 80 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>27</sup> Article 62 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>28</sup> Article 62 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>29</sup> For international arbitration, see Article 84 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>30</sup> Rabat Commercial Court, n° 507, file n° 136/3/2013, 22/04/2013.

<sup>31</sup> Article 9 of the 2020 Finance Law (promulgated by Dahir no. 1-19-125 dated 13 December 2019, Official Bulletin no. 6838 bis dated 14 December 2019).

<sup>32</sup> Article 51 of the Law n° 95-17 on arbitration and conventional mediation.

Where an arbitration agreement and/or award is recorded on a blockchain, is it recognized as valid?	We are not aware of any authority on this issue.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	We are not aware of any authority on this issue.
Other key points to note?	ϕ

## JURISDICTION DETAILED ANALYSIS

The Arbitration Law was amended in 2022 by law n° 95-17 promulgated by Dahir n° 12243 dated 24 May 2022, published in *Bulletin Officiel* n° 7099 of 13 June 2022. It entered into force on 14 June 2022.

The government presents the new law as being “*adapted to the economic changes in our country and to the developments of a financial center in Casablanca*”. Its ambition is to promote Morocco as regional hub for international arbitration.

The Arbitration Law distinguishes between domestic and international arbitration.

Under this Law, an arbitration is qualified as international if (i) it involves interests of international trade; and (ii) at least one of the parties is domiciled or based abroad.<sup>33</sup>

The first Chapter of the Law contains general provisions applicable to both domestic and international arbitration. The second Chapter governs domestic arbitration while the third Chapter is dedicated to international arbitration. In this regard, where an international arbitration is subject to the Arbitration Law, the second Chapter containing the provisions governing domestic arbitration apply unless the parties have agreed to apply other sets of rules and subject to the specific articles provided for in the Chapter dedicated to international arbitration.<sup>34</sup>

As indicated above, the provisions concerning arbitration in the Moroccan Code of Civil Procedure continue to apply to (i) arbitration proceedings pending prior to the entry into force of the Arbitration Law and (ii) arbitration proceedings based on arbitration agreements concluded prior to the entry into force of the Arbitration Law.<sup>35</sup>

### 1. The legal framework of the jurisdiction

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

Morocco has not adopted the UNCITRAL Model Law, although the Arbitration Law is inspired by the 2006 amended version of the Model Law. The Arbitration Law has incorporated most of the UNCITRAL Model Law principles, including those added by the 2006 amendment, and in particular the provisions relating to the international nature of an arbitration and electronic communications, with the exception of the provisions relating to interim measures. The Arbitration Law is also inspired by the French arbitration law currently in force.

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

The Law n° 08-05 of 30 November 2007, which repealed and replaced Chapter VII of Title V of the Code of Civil Procedure, was replaced by Dahir n° 12243 of May 24, 2022, which promulgated the law n°95-17 relating to arbitration and conventional mediation. The Arbitration Law is not included in the Moroccan Code of Civil Procedure. It is a separate code governing arbitration and mediation.

### 2. The arbitration agreement

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

The Arbitration Law does not include specific provisions regarding the law governing the arbitration agreement.

<sup>33</sup> Article 72 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>34</sup> Article 75 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>35</sup> Article 103 of the Law n° 95-17 on arbitration and conventional mediation.

The Arbitration Law provides that the parties can freely choose the law governing the merits of their dispute.<sup>36</sup> In the absence of a choice by the parties of the applicable law, the arbitral tribunal decides the dispute in accordance with the rule of law it deems appropriate. In any event, the arbitral tribunal will take into account the terms of the contract and any relevant practices or customs.<sup>37</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?**

We are not aware of any authority on this issue.

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

Yes, in domestic and international arbitration, the Arbitration Law expressly provides that the arbitration agreement is considered to be a separate agreement, independent from the other terms of the contract.<sup>38</sup> Therefore, the annulment, invalidity, lapse, termination and cessation of the contract or the cessation of its effect for any reason has no impact on the validity of the arbitration agreement included in the contract.<sup>39</sup>

This principle was followed by the Supreme Court, which considered that *"the nullity of the initial contract has no effect on the validity of the arbitration agreement"*.<sup>40</sup>

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

In domestic and international arbitration, an arbitration agreement may take the form of an arbitration contract ("*compromis*") or an arbitration clause.<sup>41</sup>

The arbitration agreement must be stipulated in writing, by virtue of an authenticated deed or a private contract, or minutes drawn before the chosen arbitral tribunal, or by any other means agreed by the parties. It is deemed to be in writing if:

- (i) it is contained in a document signed by the parties or in an exchange of letters, telegrams or any other means of written telecommunication or electronic communication drawn up in accordance with the legal texts in force;
- (ii) it is contained in an exchange of pleadings in which the existence of an arbitration agreement is alleged by one party and not contested by the other party;
- (iii) it is contained in a model contract, international convention or any other document which is clearly incorporated into a written contract between the parties; or
- (iv) the parties to court proceedings agree to an arbitration and the court therefore decides to submit the dispute to arbitration.<sup>42</sup>

To be valid, the arbitration contract must specify the subject matter of the dispute and include all information relating to the identification of the parties, including their addresses, places of origin and e-mail addresses. The arbitration contract is null and void if it provides for the appointment of the arbitral tribunal but one of

<sup>36</sup> For domestic arbitration, see Article 45 of the Law n° 95-17 on arbitration and conventional mediation; for international arbitration, see Article 75 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>37</sup> For domestic arbitration, see Article 45 of the Law n° 95-17 on arbitration and conventional mediation; for international arbitration, see Article 75 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>38</sup> Article 8 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>39</sup> Article 8 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>40</sup> Supreme Court, n° 385/3, 11/11/2015.

<sup>41</sup> Articles 2, 4, 5 and 6 of the Law n° 95-17 on arbitration and conventional mediation. See also Supreme Court, n° 211/1, 26/04/2018.

<sup>42</sup> Articles 3 and 4 of the Law n° 95-17 on arbitration and conventional mediation.

the appointed arbitrators declines, or is unable to perform the assigned task, unless the parties agree to replace that arbitrator.<sup>43</sup>

As for the arbitration agreement, it must be stipulated in writing in the main agreement or in a document unequivocally referred to therein in order to be valid.<sup>44</sup>

## **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?**

Moroccan legislation does not expressly provide for the possibility of third parties being bound by an arbitration agreement.

However, in the context of international arbitration, some court decisions, following the approach and the criteria adopted by the French doctrine, have held that a third party who has not signed an arbitration agreement but who has played an effective role in the conclusion, performance or termination of the contract containing it, may be bound by the arbitration agreement.<sup>45</sup>

In 2015, the Casablanca Commercial Court of Appeal approved the extension of the arbitration agreement to a third party who was not a signatory party but was involved in the negotiation and the performance of the agreement containing such arbitration agreement.<sup>46</sup> It must be noted that such decision was revoked by the Supreme Court on 3 October 2022 on the ground that the Casablanca Court of Appeal did not carefully verify that the criteria justifying the extension of that arbitration agreement to a third party had been satisfied in such case.<sup>47</sup>

To the best of our knowledge, Moroccan Courts have not yet recognized this possibility in domestic arbitration.

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

Moroccan law provides for some restrictions, in particular regarding the status and capacity of persons.<sup>48</sup>

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

Moroccan law provides that disputes concerning the status and capacity of persons, and those involving personal, non-commercial rights, such as inheritance, marriage or divorce, cannot be submitted to arbitration.<sup>49</sup> However, disputes between spouses regarding the management, investment or distribution of marital property may be arbitrated, provided that the arbitration agreement is contained in a document independent from the marriage contract.<sup>50</sup>

In addition, disputes concerning the validity of patents, the implementation of tax legislation, the dissolution of companies and the alleged illegality of companies' articles of association are not arbitrable.

<sup>43</sup> Article 5 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>44</sup> Article 7 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>45</sup> See for example, Casablanca Commercial Court of Appeal, n° 4049/2014, 22/07/2014 Casablanca Commercial Court of Appeal, n° 220, n° 2669/8224/2013, 15/01/2015 ; Supreme Court, n° 300, Ynna holding v. Fives FCB, 03/10/ 2022.

<sup>46</sup> Casablanca Commercial Court of Appeal, n° 220, n° 2669/8224/2013, 15/01/2015.

<sup>47</sup> Supreme Court, n° 615/1, 03/10/2022.

<sup>48</sup> Article 15 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>49</sup> Article 15 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>50</sup> Article 49 of the Moroccan Family Code.

The arbitrability of a dispute is also subject to the general principle that parties to a contract may not derogate, by agreement, from the rules relating to public policy and morality.<sup>51</sup>

In employment law, the Labour Code provides that collective labour disputes ("*conflits collectifs de travail*") may be submitted to arbitration. Articles 567 to 585 of the Labour Code regulate the arbitration procedure.

As regards individual labour disputes ("*conflits individuels de travail*"), the legislator has not explicitly addressed its arbitrability. However, Supreme Court case law has confirmed that such disputes may be submitted to arbitration.<sup>52</sup>

There are no restrictions relating to anti-trust law.

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

Disputes involving unilateral acts of the Moroccan State, territorial authorities, or any other entities having public authority prerogatives are not subject to arbitration.<sup>53</sup> Nevertheless, financial disputes involving these entities (with the exception of tax-related disputes) may be referred to arbitration after the dispute has arisen.<sup>54</sup>

These disputes can be subjected to an arbitration agreement, provided they comply with the provisions relating to control or mandate set out in the applicable legislation or regulations for the respective contracts. However, failure to comply with such special requirements has no effect on the validity of the arbitration agreement.<sup>55</sup>

The Arbitration Law grants public companies and all other public entities the possibility to enter into an arbitration agreement without the need for prior approval from their board of directors. Indeed, State-owned companies governed by commercial company law, public institutions and all public entities can now enter into arbitration agreements without any further conditions.<sup>56</sup>

## 3. Intervention of domestic courts

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

When a dispute submitted to an arbitral tribunal pursuant to an arbitration agreement is brought before a court, the court must declare the claim inadmissible until the arbitration proceedings have ended or the arbitration agreement is annulled.<sup>57</sup>

If the arbitral tribunal has not been seized, the court must also declare the claim inadmissible.<sup>58</sup> In order to do so, Moroccan courts usually carry out an in-depth examination of the arbitration agreement in accordance with article II-3 of the New York Convention,<sup>59</sup> which states that "[t]he court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is

<sup>51</sup> Article 62 of the Moroccan Code of Obligations, cited in Article 14 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>52</sup> See for example, Supreme Court, n° 496/5/1/2015, 23/02/2016.

<sup>53</sup> Article 16 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>54</sup> Article 16 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>55</sup> Article 16 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>56</sup> Article 17 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>57</sup> Article 18 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>58</sup> Article 18 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>59</sup> N. Najjar, *Arbitrage dans les pays arabes et commerce international*, LGDJ, Lextenso éditions, 2016, para. 985, p. 506; K. Zaher, *Le nouveau droit marocain de l'arbitrage interne et international*, Revue de l'Arbitrage, Comité Français de l'Arbitrage, Volume 2009, Issue I, 2009, para. 79.

*null and void, inoperative or incapable of being performed*".<sup>60</sup> If it finds that the arbitration agreement is null and void, it will not refer the parties to arbitration.<sup>61</sup>

The court cannot declare the action inadmissible on its own. Indeed, in either case, the defendant must make the request before any decision on the merits.<sup>62</sup>

The Competent Court shall decide on the objection of inadmissibility in a separate and preliminary decision. This decision can only be appealed at the same time as an application against the decision on the merits.<sup>63</sup>

It should be noted that pursuant to Article 1 of the Arbitration Law, the "**Competent Court**" is referred to as *"the court having jurisdiction to decide the dispute if it is not subject to an arbitration agreement between the parties"*.<sup>64</sup>

The Rabat Court of Appeal has stated that when a claim is made to a court in breach of an arbitration agreement and none of the parties relies on the arbitration agreement, the parties are deemed to have waived their right to arbitrate.<sup>65</sup>

### **3.1.1 If the place of the arbitration is inside of the jurisdiction?**

As above.

### **3.1.2 If the place of the arbitration is outside of the jurisdiction?**

As above.

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

The Arbitration Law does not address this issue and there is no case law either on this point.

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

Moroccan courts do not have a tradition of granting anti-suit or anti-arbitration injunctions or orders. The courts may grant interim measures in support of an arbitration seated outside of the jurisdiction but they are unlikely to grant anti-suit injunctions.<sup>66</sup>

# **4. The conduct of proceedings**

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

Both options are possible. The parties may be self-represented or assisted by any person of their choice.<sup>67</sup>

<sup>60</sup> Article II-3 of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958.

<sup>61</sup> K. Zaher, *Le nouveau droit marocain de l'arbitrage interne et international*, Revue de l'Arbitrage, Comité Français de l'Arbitrage, Volume 2009, Issue I, 2009, para. 79.

<sup>62</sup> Article 18 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>63</sup> Article 18 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>64</sup> Article 1 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>65</sup> Rabat Court of Appeal, 3<sup>rd</sup> Chamber, 25/2/1932.

<sup>66</sup> Article 19 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>67</sup> See Article 41 of the Law n° 95-17 on arbitration and conventional mediation, applicable to domestic arbitrations and to international arbitration unless the parties have agreed to apply other sets of rules.

#### 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?**

In domestic arbitration and in international arbitration unless the parties have agreed to apply other sets of rules, arbitrators who have accepted their appointment must declare, in writing, at the time of acceptance, any circumstances likely to give rise to doubts as to their impartiality or independence.<sup>68</sup> This principle had already been applied by the Casablanca Commercial Court of Appeal which held that an arbitrator must declare in writing any circumstance that would be likely to undermine their neutrality or impartiality.<sup>69</sup>

In domestic arbitration and in international arbitration unless the parties have agreed to apply other sets of rules, arbitrators may be challenged if there are circumstances that raise justifiable doubts as to their independence or impartiality or if they have been convicted of one of the offenses listed in Article 11 of the Arbitration Law by a final and binding decision.<sup>70</sup>

The Arbitration Law set out 9 grounds to challenge an arbitrator for his/her lack of independence and impartiality:

- (i) The arbitrator has been convicted of one of the offenses listed in Article 11 of the Arbitration Law by a final and binding decision;
- (ii) The arbitrator or his/her spouse or his/her ascendants or descendants have a direct or indirect personal interest in the dispute;
- (iii) There is a parenthood or in-law relationship between the arbitrator or his/her spouse and one of the parties up to the fourth degree or between the arbitrator and the counsel of one of the parties;
- (iv) There is an ongoing case or when there has been a case concluded in less than two years between one of the parties and the arbitrator or his/her spouse or his/her ascendants or descendants or between the arbitrator and the counsel of one of the parties;
- (v) There is a subordination tie between the arbitrator or his/her spouse or his/her ascendants or descendants or between the arbitrator and the counsel of one of the parties;
- (vi) There is apparent friendship or enmity between the arbitrator and one of the parties or their counsel;
- (vii) The arbitrator is a creditor or debtor of one of the parties or of their counsel;
- (viii) The arbitrator has previously pleaded, appeared or testified as a witness in the dispute submitted to the arbitral tribunal;
- (ix) The arbitrator has acted as a legal representative of one of the parties or their counsel.<sup>71</sup>

The following are not considered as grounds for challenge: (i) current professional relationships between the arbitrator and the representative of one of the parties of the dispute; (ii) current relations between members of the arbitral tribunal, and; (iii) disputes arising between the arbitrator and one of the parties in a concluded arbitration.<sup>72</sup>

<sup>68</sup> Article 30 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>69</sup> Casablanca Commercial Court of Appeal, n° 4032, file n° 2014/8230/5628, 14/7/2015.

<sup>70</sup> Article 24 of the Law n° 95-17 on arbitration and conventional mediation. Article 11 of the Arbitration Law lists the following offenses: (i) acts contrary to honor, probity of good morals; or of a (ii) disciplinary sanction which has led to the dismissal from an official position; or (iii) one of the pecuniary sanctions provided for in Section VII of Book 5 of the Commercial Code (Law n° 15-95); or (iv) having been the subject of a commercial disqualification or deprivation of the exercise of a civil right.

<sup>71</sup> Article 24 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>72</sup> Article 24 of the Law n° 95-17 on arbitration and conventional mediation.

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

In domestic *ad hoc* arbitration, if the arbitral tribunal has not been appointed in advance and the process of selection of the arbitrators has not been determined, or, if the parties have not agreed thereon, the following procedures apply:

- When the arbitral tribunal is composed of a single arbitrator, the arbitrator shall be appointed by the President of the Competent Court if requested by one of the parties;
- 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 presiding arbitrator. Where one of the parties fails to appoint an arbitrator within 15 days of receipt of a request to that effect from the other party, the President of the Competent Court shall make the appointment at the request of either of the parties. If the two appointed arbitrators fail to agree on the appointment of the third arbitrator within fifteen days of the appointment of the last of them, the President of the Competent Court shall proceed with such appointment at the request of one of the parties or of one of the arbitrators, or both of them, by an order that is subject to no appeal;
- In cases involving several claimants or several defendants, where the members of one of the parties have not agreed to appoint an arbitrator within 15 days following receipt of a request to do so from the other party, the President of the Competent Court shall appoint the arbitrator at the request of one of the parties; and
- The President of the Competent Court shall ensure that the appointed arbitrator meets any requirements imposed by the law and/or the parties. The decision is binding and cannot be appealed.<sup>73</sup>

In international arbitration, if difficulties arise in the constitution of the arbitral tribunal and unless the parties agree otherwise, either party ("*la partie la plus diligente*") may refer the matter to:

- the President of the Commercial Court of First Instance corresponding to the seat of the arbitration if it takes place in the Kingdom of Morocco;
- the President of the Commercial Court of First Instance of Casablanca, if the arbitration takes place abroad and if the parties have agreed on the application of the Arbitration Law.<sup>74</sup>

The Arbitration Law does not specify the criteria to be taken into consideration to be applied by the court in such cases.

Conversely, it should be noted that if an arbitration is not intended to be enforced in Morocco, or if it is seated abroad and the parties have not agreed to the application of Moroccan procedural law, it is doubtful whether Moroccan courts have the power to assist with the constitution of the arbitral tribunal.

#### 4.4 Do courts have the power to issue interim measures in connection with arbitrations?

Pursuant to article 19 of the Arbitration Law, in domestic and international arbitration, the arbitration agreement shall not preclude a party from requesting, either before or during the arbitration proceedings, that the interim relief judge ("*juge des référés*") take any provisional or conservatory measures in accordance with the provisions of the Code of Civil Procedure. The parties may withdraw from the said measures in accordance with the same provisions.<sup>75</sup> This implies that the courts do retain the power to grant and oversee such interim measures in connection with the arbitration proceedings. In a recent case, the Casablanca

<sup>73</sup> Article 23 of the Law n° 95-17 on arbitration and conventional mediation. In institutional arbitration, the rules of the institution shall apply.

<sup>74</sup> Article 74 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>75</sup> Article 19 of the Law n° 95-17 on arbitration and conventional mediation.

Commercial Court of Appeal has considered that requests to suspend arbitral proceedings do not constitute an interim measure in accordance with article 19 of the Arbitration Law.<sup>76</sup>

#### **4.4.1 If so, are they willing to consider ex parte requests?**

Moroccan courts will consider an *ex parte* request in cases of urgency.<sup>77</sup>

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

The Arbitration Law expressly provides that the rights of defense must be respected.<sup>78</sup> This principle applies to both domestic and international arbitration.

In domestic arbitration, the arbitral tribunal may conduct the arbitration in the manner that it considers appropriate, in compliance with the Arbitration law, unless the parties agree otherwise in the arbitration agreement.<sup>79</sup> In addition, the Arbitration Law contains provisions regulating the exchange of written submissions, their contents, the consequences of a party's failure to submit documents and the hearing.<sup>80</sup> It also provides that the language of the arbitration will be Arabic unless the parties agree otherwise.<sup>81</sup>

In international arbitration, the Arbitration Law provides that the arbitral procedure, unless defined in the arbitration agreement, will be determined by the arbitral tribunal, whether by reference to a law or rules of arbitration.<sup>82</sup>

The Arbitration Law does not otherwise regulate the conduct of the international arbitration. The parties are free to agree on an applicable procedure in their arbitration agreement, failing which the arbitral tribunal will decide on the procedure to be followed.

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

In domestic arbitration and in international arbitration unless the parties have agreed to apply other sets of rules, arbitrators are bound by professional secrecy in compliance with the provisions of the Criminal Code,<sup>83</sup> and the arbitrators' deliberations are kept secret.<sup>84</sup> However, the Arbitration Law does not contain specific provisions regarding the confidentiality of arbitral proceedings. The parties are therefore free to agree on confidentiality provisions in their agreement or during the course of the arbitration.

#### **4.5.2 Does it regulate the length of arbitration proceedings?**

In domestic arbitration and international arbitration unless the parties have agreed to apply other sets of rules, if the arbitration agreement does not specify a time limit to render the arbitral award, the arbitrators' mandate terminates 6 months after the day on which the last arbitrator accepts his or her appointment.<sup>85</sup>

The Arbitration Law provides that the agreed or statutory time limit may be extended by a same period by virtue of parties' agreement or, in the absence of an agreement, according to the circumstances of each case

<sup>76</sup> Casablanca Commercial Court of Appeal, n° 2353, 16/05/2022.

<sup>77</sup> Article 151 of the Moroccan Code of Civil Procedure.

<sup>78</sup> Article 10 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>79</sup> Article 33 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>80</sup> Articles 35-40 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>81</sup> Article 34 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>82</sup> Article 74 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>83</sup> Article 31 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>84</sup> Article 50 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>85</sup> Article 48 of the Law n° 95-17 on arbitration and conventional mediation.

by a reasoned order subject to no appeal by the President of the Competent Court upon the request of one of the parties or of the arbitral tribunal.<sup>86</sup>

If the award is not rendered within this time limit, any party to the arbitration may request the President of the Competent Court to terminate the arbitration proceedings by an order subject to no appeal as long as the cause of the failure to render the award within this time limit is not attributable to the party making the request. Either party may then refer the dispute to the court which would have jurisdiction in the absence of an arbitration agreement.<sup>87</sup>

The Supreme Court has confirmed that this time limit is not a rule of public order and is therefore only applicable in the absence of an agreement to the contrary between the parties to the arbitration.<sup>88</sup>

The Casablanca Commercial Court of Appeal has held that if the parties have granted the arbitrators an open-ended time to complete the arbitration, they are not entitled to rely on the provisions of the Moroccan Code of Civil Procedure (now the Arbitration Law) which provide for a time limit for the arbitration.<sup>89</sup>

#### **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?**

The arbitral tribunal may meet at any place it considers suitable for the arbitration proceedings, such as for the hearing of the parties, witnesses or experts, for the examination of documents, the inspection of merchandise or goods or the deliberation amongst the members of the arbitral tribunal.<sup>90</sup>

If the arbitrators are unable to convene at a specific location, the arbitral tribunal may, if necessary and subject to the parties' agreement, meet remotely using modern telecommunications technology.<sup>91</sup>

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

In domestic arbitration and in international arbitration unless the parties have agreed to apply other sets of rules, the arbitral tribunal may, at the request of one of the parties, take any interim or conservatory measures it deems necessary within the scope of its mandate.<sup>92</sup> Interim measures cannot be ordered by the arbitral tribunal on its own initiative.

If one of the parties against whom the order has been rendered fails to comply with the measures prescribed, the party in whose favour the order has been rendered may apply to the President of the Competent Court for an enforcement order.<sup>93</sup>

#### **4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence?**

The Arbitration Law does not restrict the ability of the arbitral tribunal to admit or exclude evidence. In domestic arbitration, the arbitral tribunal may order a party to produce evidence on its own motion or at the request of one of the parties.<sup>94</sup>

<sup>86</sup> Article 48 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>87</sup> Article 48 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>88</sup> Supreme Court, Commercial Chamber, 16/2/2005; M. Diyaa Toumlilt et A. Alaa Toumlilt, *Le droit de l'arbitrage au Maroc* Les Editions Maghrébines, 2014, p. 349.

<sup>89</sup> Casablanca Commercial Court of Appeal, 25/4/2006; M. Diyaa Toumlilt et A. Alaa Toumlilt, *Le droit de l'arbitrage au Maroc* Les Editions Maghrébines, 2014, p. 349.

<sup>90</sup> Article 33 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>91</sup> Article 33 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>92</sup> Article 42 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>93</sup> Article 42 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>94</sup> Article 37 of the Law n° 95-17 on arbitration and conventional mediation.

If a party fails to produce the documents and evidence requested without a reasonable explanation, the arbitral tribunal may continue the arbitration and render its award on the basis of the evidence produced during the proceeding.<sup>95</sup>

The Arbitration Law does not expressly deal with this issue in relation to international arbitration. However, the provision relating to domestic arbitration mentioned above may apply to international arbitration unless the parties have agreed to apply other sets of rules in accordance with Article 75 of the Arbitration Law. In addition, in international arbitration, the Arbitration Law grants the tribunal a broad discretion over procedural matters.<sup>96</sup>

#### **4.5.1 For example, are there any restrictions to the presentation of testimony by a party employee?**

The Arbitration Law does not contain any such restrictions. Indeed, the arbitral tribunal may carry any inquiry, in particular by hearing witnesses, appointing experts or by any measure of investigation. It may also hear any person it deems useful to be heard.<sup>97</sup>

Since the provision is drafted in broad terms, it also covers the possibility for party employee witnesses to be heard.

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

In domestic arbitration, the arbitral tribunal may decide either to hold a hearing to enable the parties to plead on the merits of the case and to present their evidence and arguments, or to dispense with a hearing and decide on the basis of written submissions and briefs.<sup>98</sup>

The Arbitration Law does not expressly deal with this issue in relation to international arbitration. However, the provision relating to domestic arbitration mentioned above may apply to international arbitration unless the parties have agreed to apply other sets of rules in accordance with Article 75 of the Arbitration Law. In addition, the Arbitration Law grants the arbitral tribunal a broad discretion over procedural matters.<sup>99</sup>

#### **4.5.3 Does it prescribe principles governing the awarding of interest?**

The Arbitration Law does not prescribe any principle governing the awarding of interest. Parties are entitled to claim interest as it is not prohibited by Moroccan law.<sup>100</sup>

#### **4.5.4 Does it prescribe principles governing the allocation of arbitration costs?**

In domestic arbitration and in international arbitration unless the parties have agreed to apply other sets of rules, the Arbitration Law provides that the arbitral award shall fix the arbitrators' fees, the costs of arbitration and their allocation between the parties. If the parties and the arbitrators do not agree on the amount of the arbitrators' fees, the fees are determined by a separate decision of the arbitral tribunal that can be appealed during 15 days from the date of its receipt before the President of the Competent Court.<sup>101</sup> This decision is not subject to appeal.

<sup>95</sup> Article 40 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>96</sup> Article 74 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>97</sup> Article 41 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>98</sup> Article 39 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>99</sup> Article 74 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>100</sup> W. Ben Hamida, *L'incidence des intérêts moratoires sur l'exécution des sentences arbitrales dans les pays arabes*, Revue de l'arbitrage, Comité Français de l'Arbitrage, Volume 2012, Issue 3, 2012, pp. 543-544.

<sup>101</sup> Article 52 of the Law n° 95-17 on arbitration and conventional mediation.

The general principle set out in the Code of Civil Procedure is that court costs are borne by the unsuccessful party.<sup>102</sup> Arbitral tribunals seating in Morocco are likely to apply this principle.

## **4.6 Liability**

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

Arbitrators do not benefit from immunity from civil liability.

Indeed, in domestic arbitration and in international arbitration unless the parties have agreed to apply other sets of rules, an arbitrator shall not, under penalty of damages, withdraw from his or her office without a legitimate reason after accepting his/her mission.<sup>103</sup>

Furthermore, the party who has been prejudiced by the failure of the arbitral tribunal to reconvene to decide on the correction of a material error or the interpretation of the award may bring an action based on the rules of civil liability against the arbitral tribunal or against the arbitrator responsible for compensation of the loss it has suffered.<sup>104</sup>

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

There are no particular concerns arising from potential criminal liability for any of the participants in arbitration proceedings.

## **5. The award**

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

In domestic arbitration concerning private parties, and in international arbitration unless the parties have agreed to apply other sets of rules, the arbitral award must state the reasons for the decision, unless (i) the parties have agreed otherwise in the arbitration agreement; or (ii) during the proceedings; or (iii) where the law to be applied to the arbitration proceedings does not require the award to be reasoned.<sup>105</sup>

However, an award in a dispute involving a party established under public law must always be reasoned.<sup>106</sup>

### **5.2 Can parties waive the right to seek the annulment of the award?**

In international arbitration, the parties can agree to waive the right to seek the annulment of the award.<sup>107</sup>

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

In domestic arbitration and in international arbitration unless the parties have agreed to apply other sets of rules, the award must be rendered in writing in a paper or electronic document.<sup>108</sup>

In domestic arbitration and in international arbitration unless that parties have agreed to apply other sets or rules, the award must mention the arbitration agreement and include the following information: (i) the date of the award and the place where it was rendered, (ii) the names of the arbitrators, their nationality, their capacity, their elected or real domicile and their e-mail addresses, (iii) the surnames, first names, as well as

<sup>102</sup> Article 124 of the Moroccan Code of Civil Procedure.

<sup>103</sup> Article 30 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>104</sup> Article 56 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>105</sup> Article 51 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>106</sup> Article 51 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>107</sup> Article 82 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>108</sup> Article 51 of the Law n° 95-17 on arbitration and conventional mediation.

the real or elected domicile or residence of the parties and the name of their representatives, (iv) if one of the parties is a legal entity established under private or public law, the award must include its name, type, administrative or registered office, and (v) a statement of the facts, the claims of the parties, the defences and exhibits presented as well as the issues that were decided.<sup>109</sup>

The award must be signed by each of the arbitrators, or, if an arbitrator refuses to sign or is unable to do so for whatever reason, the other arbitrators must record this in the award and state the reasons for the refusal to sign. Nevertheless, the award has the same effect as if it had been signed by each of the arbitrators.<sup>110</sup>

#### **5.4 Is it possible to appeal an award (as opposed to seeking its annulment)**

There is no possibility for a party to appeal an award on the merits or on the basis of errors of law.<sup>111</sup>

An arbitral award can only be challenged by way of an action for annulment before the Competent Court of appeal of the jurisdiction of the place where it was rendered.<sup>112</sup> Such application must be made within a period of 15 days from the date of notification of the arbitral award.<sup>113</sup>

#### **5.5 If yes, what are the grounds for appeal?**

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#### **5.6 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?**

The Arbitration Law distinguishes between domestic arbitration and international arbitration.

In domestic arbitration, enforcement proceedings are brought before the President of the Competent Court within whose jurisdiction the award was rendered, in accordance with the emergency procedure and after the parties have been summoned.<sup>114</sup>

If a public entity established under public law is a party to the arbitration, the application for exequatur falls within the jurisdiction of the President of the Administrative Court of First Instance under whose territorial jurisdiction the award will be enforced, or the President of the Administrative Court of Rabat when the enforcement of the award concerns the entire national territory.<sup>115</sup>

The Competent Court must grant the exequatur in full: (i) if the time limits for filing an application for setting aside the award have been exhausted without such action being taken;<sup>116</sup> and (ii) if the award does not contradict Moroccan rules of public policy.<sup>117</sup>

<sup>109</sup> Article 51 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>110</sup> Article 50 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>111</sup> Article 58 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>112</sup> For domestic arbitration, see Article 61 of the Law n° 95-17 on arbitration and conventional mediation; for international arbitration, see Article 82 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>113</sup> For domestic arbitration, see Article 61 of the Law n° 95-17 on arbitration and conventional mediation; for international arbitration, see Article 83 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>114</sup> Article 67 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>115</sup> Article 68 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>116</sup> In domestic arbitration, the application for setting aside an arbitral award must be made within a period of 15 days from the date of notification of the arbitral award (see Article 61 of the Law n° 95-17 on arbitration and conventional mediation).

<sup>117</sup> Article 70 of the Law n° 95-17 on arbitration and conventional mediation.

Enforcement of a domestic award can be refused by a motivated decision. The order denying the issuance of an exequatur order can be appealed, in accordance with ordinary procedures, within 15 days of its notification,<sup>118</sup> whereas a decision of the judge to grant an exequatur order is subject to no appeal.<sup>119</sup>

The grounds for challenging an order refusing the enforcement of an award are the same as those for setting aside an award, as listed hereinafter:

- The award was rendered in the absence of an arbitration agreement, or in case the arbitration agreement was invalid, or if the award was rendered after the termination of the arbitral proceedings;
- The arbitral tribunal was improperly constituted, the sole arbitrator was improperly appointed or in a manner inconsistent with the arbitration agreement;
- The arbitral tribunal has ruled without complying with the terms of reference conferred upon it, or has ruled on matters outside the scope of the arbitration agreement or has disregarded the limits of the agreement or has declared that it does not have jurisdiction even though it did have jurisdiction (if it is possible to distinguish the parts of the award concerning matters submitted to arbitration from those not submitted to it, the award shall be set aside only in respect of the latter);
- Articles 50, 51 and 52 of the Arbitration Law concerning certain formal requirements for the arbitral award have not been complied with;
- One of the parties has been unable to arrange for its defence because it has not been validly informed of the appointment of an arbitrator, or of the arbitration proceedings or for any other reason relating to the duty to respect the rights of due process;
- The arbitral award is in violation of a rule of public policy; and
- The procedure or the applicable law to the subject matter of the dispute agreed between the parties have not been complied with.<sup>120</sup>

In international arbitration, enforcement proceedings are brought before the President of the Commercial Court of First Instance within whose jurisdiction the arbitral award was rendered, or before the President of the Commercial Court of First Instance of the place of enforcement if the seat of the arbitration is located abroad.<sup>121</sup>

A party applying for enforcement must provide the court with the original of the award and the arbitration agreement (or certified copies). If these documents are not in Arabic, a translation certified by a court-certified translator must be produced.<sup>122</sup>

The exequatur of an arbitral award is granted in full: (i) if the time limit for an application to set aside the award has lapsed;<sup>123</sup> and (ii) if the award is not contrary to domestic or international public policy.<sup>124</sup>

The grounds for challenging an order granting the enforcement of an award are the same as those for setting aside an award, as listed hereinafter:

<sup>118</sup> Article 70 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>119</sup> Article 69 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>120</sup> Article 62 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>121</sup> Article 77 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>122</sup> Article 78 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>123</sup> In international arbitration, the application for setting aside an arbitral award must be made within a period of 15 days from the date of notification of the arbitral award (see Article 83 of the Law n° 95-17 on arbitration and conventional mediation).

<sup>124</sup> Article 79 of the Law n° 95-17 on arbitration and conventional mediation.

- The award was rendered in the absence of an arbitration agreement, or based on an invalid arbitration agreement, or if the award was rendered after the termination of the arbitral proceedings;
- The arbitral tribunal was improperly constituted or the sole arbitrator was improperly appointed;
- The arbitral tribunal has ruled without complying with its mandate;
- The rights of due process were not respected; and
- The recognition or enforcement of the award would be contrary to domestic or international public policy.<sup>125</sup>

The grounds for refusal of enforcement, for setting aside, or reconsideration by the Competent Court must have been invoked for the first time before the arbitral tribunal and prior to the issuance of the arbitral award in order to be validly raised at the annulment or enforcement stages of the proceedings. As such, it is not possible for a party to raise these grounds for the first time before the Competent Court if one of the parties had the possibility to invoke them before the arbitral tribunal and prior to the issuance of the arbitral award.<sup>126</sup>

It should be noted that in domestic arbitration, unless agreed otherwise, if the court annuls the award it will then go on to consider the merits of the case within the limits of the arbitral tribunal's mandate, unless the annulment of the award is based on the absence or the invalidity of the arbitration agreement.<sup>127</sup> This provision does not apply in international arbitration.<sup>128</sup>

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

In domestic arbitration, the right to enforce an award is suspended during the period when an application for annulment may be made.<sup>129</sup>

In international arbitration, the introduction of annulment or appeal proceedings stays the enforcement of an award, unless it is provisionally enforceable.<sup>130</sup> In that case, the Competent Commercial Court of appeal may stay the enforcement by a separate order that is subject to no appeal.<sup>131</sup>

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

The Rabat Commercial Court has held that the recognition and enforcement of an award should be refused if a party provides evidence that the award has not yet become binding or has been annulled or suspended by a competent authority of the country where the award was rendered.<sup>132</sup>

Also, the Casablanca Commercial Court of Appeal granted enforcement of an international arbitral award only after verifying that the award, which had been subject to annulment proceedings, had not in fact been annulled.<sup>133</sup>

<sup>125</sup> Article 80 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>126</sup> Article 18 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>127</sup> Article 63 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>128</sup> Article 85 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>129</sup> Article 62 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>130</sup> Article 84 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>131</sup> Article 84 of the Law n° 95-17 on arbitration and conventional mediation.

<sup>132</sup> Rabat Commercial Court, n° 507, file n° 136/3/2013, 22/04/2013.

<sup>133</sup> Casablanca Commercial Court of Appeal, 26/08/2008.

### 5.9 Are foreign awards readily enforceable in practice?

We do not identify substantial issues regarding the enforcement of arbitration awards.

However, in practice, the proceedings can be lengthy and the requirement to translate the award into Arabic can be burdensome, particularly when the award is technical and/or lengthy.

## 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?

There is no provision in the Arbitration Law relating to contingency or alternative fee arrangements or third-party funding. However, Article 44 of the Dahir implementing law n° 1-93-162 dated on 10 September 1993 relating to the legal profession prohibits Moroccan lawyers from fixing fees in advance based on the result to be achieved.

## 7. Arbitration and technology

### 7.1 Is the validity of blockchain-based evidence recognized?

We are not aware of any authority on this issue.

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

We are not aware of any authority on this issue.

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

We are not aware of any authority on this issue.

### 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?

The Arbitration Law does not address this issue and we are not aware of any authority on this point.

## 8. Compatibility of the Delos Rules with local arbitration law

No particular concerns.

## 9. Further reading

N. Roudane, *The New Moroccan Law on Arbitration: A Commentary*, International Journal of Arab Arbitration, 2022, Volume 14, Issue 2.

A. Brahma, *Arbitration in Africa: A Practitioner's guide*, Kluwer Law International, Second edition, 2021.

O. Sektani, *Arbitrage commercial marocain à la lumière de la jurisprudence*, étude analytique et comparée du système d'arbitrage commercial au Maroc à la lumière de la jurisprudence, n° double 6/5, 2020.

N. Najjar, *Arbitrage dans les pays arabes et commerce international*, LDGJ, éd. Lextenso, 2016.

M. Diyaa Toumlilt and A. Alaa Toumlilt, *Le droit de l'arbitrage au Maroc*, Les Editions Maghrébines, 2014.

W. Ben Hamida, *L'incidence des intérêts moratoires sur l'exécution des sentences arbitrales dans les pays arabes*, Revue de l'arbitrage, Comité Français de l'Arbitrage, Volume 2012, Issue 3, 2012.

K. Zaher, *Le nouveau droit marocain de l'arbitrage interne et international*, Revue de l'Arbitrage, Comité Français de l'Arbitrage, Volume 2009, Issue I, 2009.

## ARBITRATION INFRASTRUCTURE IN THE JURISDICTION

Arbitration has experienced a recent boom in Morocco, due in particular to the restructuring that has taken place in the economic sector.

Several local arbitration centres are likely to make Morocco, and notably its economic capital (Casablanca), an attractive place for arbitration.

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	The leading arbitration institutions in Morocco are the following: <ul style="list-style-type: none"> <li>- Casablanca International Mediation and Arbitration Centre (CIMAC);<sup>134</sup></li> <li>- Centre international de médiation et d'arbitrage de Rabat (CIMAR);<sup>135</sup></li> <li>- Centre de Médiation et d'Arbitrage de Marrakech-Safi (CCIS);<sup>136</sup></li> <li>- Centre de conciliation et d'arbitrage d'Agadir (CCISA);<sup>137</sup> and</li> <li>- The Moroccan Court of Arbitration ("<i>Cour Marocaine d'Arbitrage</i>") in the International Chamber of Commerce of Morocco ("<i>Chambre de Commerce Internationale du Maroc</i>") located in Casablanca.<sup>138</sup></li> </ul>
Main arbitration hearing facilities for in-person hearings?	Arbitration hearings typically take place in local hotels or offices.
Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?	ϕ
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	Local providers are available - enquiries should be made on a case-by-case basis.
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	Local interpreters and translators are available - enquiries should be made on a case-by-case basis.
Other leading arbitral bodies with offices in the jurisdiction?	The <i>Cour Africaine de la Médiation et d'Arbitrage</i> (C.A.M.A.R) has offices in Marrakech. <sup>139</sup>

<sup>134</sup> <http://cimac.ma/>.

<sup>135</sup> <http://www.cimarmaroc.org/>.

<sup>136</sup> <https://www.ccisrms.ma/centre-de-mediation-et-darbitrage>.

<sup>137</sup> <http://www.ccis-agadir.com/>.

<sup>138</sup> [https://www.fondation-droitcontinental.org/fr/wp-content/uploads/2014/01/contenu\\_scientifique.pdf](https://www.fondation-droitcontinental.org/fr/wp-content/uploads/2014/01/contenu_scientifique.pdf).

<sup>139</sup> <http://www.camar.org.ma/>.