

Morocco

Azzedine Kettani

Kettani Law Firm

Laws and institutions

1 Multilateral conventions relating to arbitration

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Morocco is a contracting state to the New York Convention, which entered into force on 7 June 1959. According to the Moroccan law ratifying the Convention, no reservations or declarations were made. However, Morocco applies the New York Convention only to the recognition and enforcement of awards made in the territory of another contracting state.

Morocco is also a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which was ratified by a royal decree dated 31 October 1966.

2 Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

Several bilateral investment treaties (BITs) to which Morocco is a party include provisions for arbitration as a means of settling bilateral investment disputes.

The BITs that Morocco is a party to and that are currently in force are with: Argentina, Austria, Bahrain, Belgium and Luxembourg, Bulgaria, China, Czech Republic, Dominican Republic, Egypt, El Salvador, Finland, France, Gabon, Germany, Greece, Hungary, India, Indonesia, Iran, Italy, Jordan, Korea, Kuwait, Lebanon, Lybia, Malaysia, Mauritania, Netherlands, Oman, Poland, Portugal, Qatar, Romania, Spain, Sudan, Sweden, Switzerland, Syria, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom and United States.

Morocco is also party to BITs with the following countries, but these BITs are not yet in force: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Croatia, Denmark, Equatorial Guinea, Gambia, Guinea, Iraq, Pakistan, Senegal, Serbia, Slovakia, Vietnam and Yemen.

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The main sources of law are Dahir No. 1-59-266 of 19 February 1960 relating to the ratification of the Convention adopted by the Economic and Social Council of the United Nations (the New York Convention), and articles 306 to 327 of the Moroccan Code of Civil Procedure, Law No. 1-74-447 of 28 September 1947, as completed and modified by Law No. 08-05 of 30 November 2007 (the Civil Procedure Code).

The Civil Procedure Code governs both foreign and domestic arbitration proceedings and enforcement of awards. According to the said Code, arbitration is considered as 'international' if it relates to international trade and provided that at least one of the parties resides abroad.

Arbitration is also considered international if:

- the parties have their place of business in different states;

- the place of arbitration is in a state other than the parties' place of business;
- a substantial part of the obligations resulting from the commercial relationship must be performed outside the state in which the parties have their place of business;
- the place with which the subject matter of the dispute is most closely connected is outside the state in which the parties have their place of business; or
- the parties expressly agree that the subject of the arbitration agreement has connections with multiple countries.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

The provisions of the Moroccan Code on Civil Procedure relating to arbitration are loosely based on, and are generally in conformity with, the UNCITRAL Model Law.

However, there are some differences, for example, regarding the restrictions on who can act as an arbitrator and the grounds for challenging an arbitrator, the deadlines for appointing and challenging arbitrators and the grounds for annulling the arbitration award and corresponding delays.

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

The arbitral tribunal is generally free to determine the procedural rules applicable in an arbitration proceeding and is not bound by formal rules of court procedure, unless the parties decide otherwise in the arbitration agreement. In the case of 'ad hoc arbitration', the tribunal is responsible for organising the proceedings and determining the procedures to follow, unless the parties have agreed otherwise. With 'institutional arbitration', the institution organises the proceedings and ensures they are carried out in accordance with its internal rules.

Nevertheless, certain provisions are mandatory. For example, the rules relating to the parties' right of defence must be respected in all cases, and each party must be given an equal opportunity to present its arguments. Furthermore, the limitations on who can act as an arbitrator are universal and the number of arbitrators designated by the parties must be an odd number.

Moroccan law also contains basic provisions that require parties to submit written memorials within the deadlines determined by the tribunal or agreed upon by the parties, and the submissions must contain certain information specified by law (for example, name, address, explanation of facts or issues in dispute).

6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

In domestic arbitration, the arbitral tribunal decides the case in accordance with the law agreed upon by the parties. In the absence of such agreement, the tribunal applies the law that it considers to be the closest and

most relevant to the dispute. In all cases, the tribunal takes into consideration the terms of the contract, the usages and customs of trade, and what is habitually customary between the parties. If the parties have expressly authorised the arbitral tribunal to decide as amiable compositeur, the tribunal is not obliged to apply rules of law and shall decide according to principles of justice and equity.

In international arbitration, the arbitration agreement freely determines the applicable law which the tribunal must apply to the merits of the case. Failing any designation by the parties, the arbitral tribunal decides the case in accordance with the laws which it considers to be most appropriate. In all cases, the arbitral tribunal shall take into consideration the terms of the contract as well as the relevant usages and customs of trade. The tribunal decides as amiable compositeur only if the parties to an international arbitration have authorised it.

7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

One of the key institutions is the Moroccan Court of Arbitration within the International Chamber of Commerce of Morocco:

Casablanca Technopark
Route de Nouaceur, RDC
Bureaus No. 163, 140 and 141
Casablanca - MAROC
www.iccmaroc.ma

According to the internal rules of the Moroccan Court of Arbitration, if the parties have failed to determine the number of arbitrators and the court has decided that there will be three arbitrators, then the court may designate an arbitrator should one of the parties fail to do so. Any court-appointed arbitrator must be included on a list of approved arbitrators established by the ICC-Morocco board.

The ICC Moroccan Court of Arbitration fixes the arbitration fees, including administrative fees and arbitrators' fees, which are calculated on the basis of the amount of the dispute, as well as fees for Court-appointed experts. Appendix II of the internal rules provides the detailed fee structure.

Other notable arbitration institutions in the country include the Euro-Mediterranean Center for Mediation and Arbitration:

Euro-Mediterranean Center for Mediation and Arbitration
CGEM, 23 Boulevard Mhamed Abdou
Palmier 20340
Casablanca
http://cema.org.ma

Moroccan Center on Mediation and Arbitration in Rabat
Chamber of Commerce and Industry
1 rue Ghandi
Rabat 10000
www.cimar.org.ma

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

Moroccan law specifically prohibits arbitration agreements that concern the status and capacity of persons, or those relating to personal, non-commercial rights.

Furthermore, disputes involving unilateral acts of the state, local governments, or other entities that are endowed with public power are not arbitrable. Nevertheless, pecuniary challenges resulting from the aforementioned may be subject to arbitration, except for those relating to public fiscal laws.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

An arbitration agreement must be in writing, either in an official deed or in a private agreement, or in minutes drawn up before the tribunal.

An arbitration agreement is deemed to be written when it is recorded in a document signed by the parties, in an exchange of letters or in telecommunications that attest to the existence of the arbitration agreement.

An arbitration agreement is also deemed to be established in writing when it is recorded in an exchange of arguments in a claim or reply to a claim, in which the existence of an agreement is alleged by one party and is not contested by the other.

Any reference in a written contract to the provisions of a model contract, to an international convention, or to another document containing an arbitration clause is deemed to be a written arbitration agreement when the reference clearly stipulates that the clause is an integral part of the contract.

In the case of arbitration agreements relating to existing disputes, the agreement must indicate the subject of the dispute and must designate the arbitral tribunal or provide for the modalities for its designation. Otherwise, the agreement is null. If an arbitrator designated by the agreement does not accept the task conferred upon him or her, the agreement is also void.

In the case of arbitration clauses relating to future disputes, the written clause must be in the main contract or in a document referred to in the contract. Furthermore, the clause must either designate the arbitrators or provide for the modalities of their designation. Otherwise, the arbitration clause is void.

Appendix II of the internal rules of the ICC Moroccan Court of Arbitration provide a recommended arbitration clause for the purpose of agreement on arbitration.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

Under Moroccan law, an arbitration clause is considered to be an agreement that is independent from the other clauses of the contract. Therefore, the nullity, termination or cessation of the underlying contract does not affect the arbitration clause when the clause itself is valid.

The arbitration agreement is not enforceable if the subject matter is not arbitrable (see question 8). Moreover, general principles of contract law may render an arbitration agreement void and unenforceable, for example, in the case of impossibility or voluntary termination by both parties.

In addition, if a party refers a dispute to court despite the existence of an arbitration agreement, and the other party does not object, the latter party waives its right to pursue arbitration.

11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

Arbitration awards rendered in Morocco are generally not enforceable against third parties. There are exceptions, for example, in the case of assignment, succession, and agency where the agent accepts to be bound by the arbitration agreement.

12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

A third party whose rights are prejudiced by an award may oppose the award if he or she was not called before the tribunal. Third parties may also be requested to provide evidence in arbitration proceedings, for example, as witnesses or experts.

13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

The 'group of companies' doctrine is not automatically recognised by courts and arbitral tribunals in the context of arbitration, but the parties

can agree to include necessary references to their respective groups of companies in their arbitration agreement.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

There are no special provisions relating to multiparty arbitration agreements under Moroccan law and general rules on arbitration apply in such cases.

The internal rules for the ICC Moroccan Court of Arbitration provide that, in the case of multiparty arbitration proceedings, the claimants or respondents must jointly appoint the same arbitrator. In the absence of joint appointment, the arbitrators are named by the said court.

Constitution of arbitral tribunal

15 Eligibility of arbitrators

Are there any restrictions as to who may act as an arbitrator?

Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

The role of arbitrator may be entrusted to a physical person with full capacity who is not subject to a conviction for actions contrary to principles of honour, integrity or good morals or that deprive him or her of the capacity to exercise commerce or his or her civil rights.

If the arbitration agreement appoints a legal person (as opposed to a natural person), that person only has the power to organise the proceedings and ensure they are carried out properly.

Active judges cannot act as arbitrators as they are prohibited from exercising any other activity.

Persons who act as arbitrators on a habitual basis or by profession must make a declaration to the court of appeals, which, after examining the declaration, will include them on its list of arbitrators.

The appointment of an arbitrator may be challenged by the parties on various grounds outlined in the law (see question 17).

Moroccan law does not prohibit the parties from stipulating specific contractual requirements for arbitrators on nationality, religion or gender as long as such specific requirement is lawful and enforceable under Moroccan law (for example, it does not violate Moroccan public order).

16 Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

Parties are free to determine the means of selecting arbitrators and the number of arbitrators, either in the arbitration agreement or by reference to the rules of an arbitration institution.

According to the Civil Procedure Code, in the absence of the parties' agreement on the number of arbitrators, the tribunal comprises three arbitrators. The number of arbitrators must be an odd number; otherwise the arbitration is null.

If the tribunal has not been designated in advance and the method and date for the selection of arbitrators have not been fixed, then the law provides for the following procedures. A sole arbitrator is appointed by the president of the court upon request of one of the parties. In the case of three arbitrators, each party appoints one arbitrator, and the two selected arbitrators agree on the third. If a party does not select an arbitrator, or the two arbitrators cannot agree on the third, then the president of the court makes the appointment upon the request of one of the parties.

In the case of institutional arbitration, the procedure and the number of arbitrators are those provided for by the selected arbitration institution.

The internal rules of the ICC Moroccan Court of Arbitration provide that unless the parties agree otherwise, the court decides whether there will be one or three arbitrators depending on the nature and value of the dispute. If it appears that the nomination of three arbitrators is justified, the parties are invited to each appoint one arbitrator of its choice. If one of the parties fails to appoint an arbitrator, then the Moroccan Court of Arbitration shall proceed with the appointment. The president of the arbitral tribunal is also named by the said court, unless the parties have agreed upon another procedure. Any arbitrator named by the Moroccan Court of Arbitration must be taken from a list of approved arbitrators established by the court's board of directors.

17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

A party may challenge an arbitrator if:

- the arbitrator has been convicted for actions contrary to honour, integrity or good morals;
- the arbitrator or the arbitrator's spouse, ancestors or descendants have a personal interest in the dispute;
- the arbitrator or the arbitrator's spouse is related to a party, up to the degree of first cousin;
- there is a proceeding between a party and the arbitrator or the arbitrator's spouse, or their ancestors or descendants;
- the arbitrator is a creditor or debtor of a party;
- the arbitrator has previously pleaded or deposed as a witness in respect of the dispute;
- the arbitrator has previously acted as counsel for a party;
- there is a relationship of subordination between the arbitrator or the arbitrator's spouse, ascendants or descendants and one of the parties or the arbitrator's spouse, ascendants or descendants; or
- there is a well-known friendship or enmity between the arbitrator and one of the parties.

A written request challenging an arbitrator is presented to the president of the court within eight days from the time the applicant learns of the constitution of the arbitral tribunal or the circumstances justifying the challenge. If the arbitrator does not resign voluntarily, then the court makes a decision on the request within 10 days. When an arbitrator is removed, the arbitration proceeding in which the arbitrator participated is considered to be null, including the award. In addition, an arbitrator may be revoked by the unanimous consent of the parties.

When the arbitrator is prevented from exercising his or her duties, or when the arbitrator does not begin his or her duties or ceases to exercise his or her duties resulting in an unjustified delay in the arbitration procedure, without the arbitrator resigning or the parties agreeing to revoke his or her position, then the president of the court may, upon the parties' request, terminate the arbitrator's duties.

When an arbitrator's duties end for whatever reason, a replacement is appointed according to the same procedures used for nominating the original arbitrator.

In addition, neither ICC Morocco nor the Moroccan Arbitration Law makes reference to the IBA Guidelines.

18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration and expenses of arbitrators.

There is no contractual relationship between the parties and the arbitrators. At the time of accepting the task entrusted to him or her, an arbitrator must make a written declaration identifying any circumstances that may raise doubts as to his or her impartiality or independence as an arbitrator cannot accept any instructions from the party nominating him or her (or from any third person) in connection with the proceedings.

Arbitrators are required to carry out their duties to completion. They may not step down without a legitimate reason and a prior notice mentioning those reasons; failure to do so may result in liability for damages.

An arbitrator is bound by professional privilege under penal law. The arbitrators are entitled to remuneration, and the arbitration award fixes the arbitrators' fees, the costs of arbitration and the means of allocating such fees and costs between the parties.

19 Immunity of arbitrators from liability

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

In accordance with article 327-6 al. 4 of the Civil Procedure Code, each arbitrator shall carry out his or her appointment until it is completed.

Consequently, under pain of being sued for damages, arbitrators may not exclude themselves without a lawful cause notified in advance in writing.

Furthermore, and pursuant to article 326 of the Civil Procedure Code, arbitrators are committed to maintaining professional secrecy in accordance with the provisions of the Criminal law.

Jurisdiction and competence of arbitral tribunal

20 Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

If a court procedure is initiated despite the existence of an arbitration agreement, then, upon the defendant's request, the court must declare the case inadmissible until the arbitration procedure is completed or until the arbitration agreement is annulled. If the case is not yet referred to an arbitral tribunal, the court must also declare the case to be inadmissible if the defendant so requests, unless the arbitration agreement is manifestly null. The defendant must make the aforementioned requests prior to the court deciding on the merits of the case. In the event the court rejects the jurisdictional objection by the defendant and issues a decision on the admissibility of the case, the defendant may challenge such a decision at each level of appeal provided by law. Appeals must usually be presented within 30 days.

Nevertheless, when a case is referred to court under such circumstances, arbitration proceedings may be initiated and an award may be issued while waiting for the court to render its decision.

21 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

Prior to examining the merits of a case, the arbitral tribunal may, either on its own initiative or upon the request of one of the parties, decide on the validity or the limits of its jurisdiction or the validity of the arbitration agreement. This decision is made by way of an order that is subject to appeal only on those grounds available in appealing the award on the merits.

Arbitral proceedings

22 Place and language of arbitration

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

If the parties fail to identify the place of arbitration, the arbitral tribunal chooses the location, taking into account the circumstances of the case and the parties' residence. However, this does not prevent the arbitral tribunal from meeting in any place it considers convenient to hear parties, witnesses or experts, to consult documentation, to investigate goods, or to hold deliberations between the arbitrators.

The language of arbitration is Arabic, unless the parties agree otherwise or the arbitral tribunal selects another language.

The internal rules of the ICC Moroccan Court of Arbitration require that the language of arbitration be incorporated into the Terms of Reference of the arbitration.

23 Commencement of arbitration

How are arbitral proceedings initiated?

In the absence of an agreement by the parties on the procedure for initiating arbitral proceedings (whether in the contract or by reference to the rules of an arbitration institution), the procedure is as follows. In the case of one arbitrator, the party seeking arbitration makes a request to the president of the court who appoints the arbitrator. In the case of three arbitrators, the party seeking arbitration appoints an arbitrator and notifies the other party of the arbitration and of its arbitrator. The other party must then appoint its arbitrator, and the two arbitrators agree to appoint a third arbitrator. If a party fails to appoint an arbitrator, or the two arbitrators fail

to agree on a third arbitrator, then the parties can request the president of the court to make the necessary appointment.

The internal rules of the ICC Moroccan Court of Arbitration provide that the request for arbitration submitted to the secretariat of the court must contain the names and addresses of the parties, the nature of the dispute, a brief summary of the claimant's arguments, and mention of the arbitration agreement. The request must include an advance payment according to the court's schedule of fees. The secretariat then sends the request and annexed documents to the defendant, who has 15 days to respond, and a copy of that response is sent to the claimant.

24 Hearing

Is a hearing required and what rules apply?

Under the Civil Procedure Code, the arbitral tribunal determines the rules regulating the arbitration proceedings, subject to the dispositions of the Civil Procedure Code, unless the parties choose otherwise. As a general rule, the parties benefit from an equal opportunity to present their cases and their arguments. Furthermore, the tribunal may make investigations by hearing witnesses or any other person it deems necessary, by appointing experts, or by other means.

Unless the parties agree otherwise, the tribunal holds hearings to allow the parties to present their cases and evidence or, alternatively, may limit itself to written submissions and documents. The parties must be advised of the dates of any hearings or meetings at least five days in advance, and all hearings are recorded in written minutes that are delivered to the parties. As a mandatory rule of Moroccan law, oath must be sworn upon commencement of a hearing session.

The internal rules of the Moroccan Court of Arbitration of ICC-Morocco do not specifically require that a hearing take place.

25 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

Under the Civil Procedure Code, the arbitral tribunal may proceed with any investigations by hearing witnesses, appointing experts or taking any other similar measures. If a party has relevant evidence, the tribunal may demand that such evidence be produced. The tribunal may also hold a hearing for any persons whom it considers useful to hear.

26 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

Moroccan law provides for various instances in which the court may intervene in arbitration proceedings.

For example, courts may be involved in naming arbitrators in certain situations, deciding to remove an arbitrator whose appointment is challenged, or terminating the duties of an arbitrator who is no longer able to perform his or her functions.

Parties to an arbitration agreement may have recourse to the courts in order to obtain interim or conservatory measures, before or during arbitration proceedings. If the arbitral tribunal has issued an interim or conservatory measure and the party against which the award has been rendered does not execute it, then the prevailing party may seek an execution order from the court.

If an arbitration award is not rendered within the fixed deadlines, then either party may request the president of the court to terminate the arbitration proceedings by issuing an order.

Furthermore, court intervention is also required for enforcing arbitration awards.

27 Confidentiality

Is confidentiality ensured?

As a general rule, an arbitrator is bound by professional privilege under penal law, and deliberations of the arbitrators are confidential.

An arbitration award, or excerpts of the award, cannot be published without the authorisation of the parties to the arbitration.

With regards to enforcement proceedings, all documents filed with the court may be viewed by the parties and their lawyers. A third party

may only view such documentation if permitted by the court. Judgments on enforcement and recognition are not published by the courts. However, private publications and reviews exist and, in general, parties' names are not disclosed.

Interim measures and sanctioning powers

28 Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

An arbitration agreement does not prevent parties from having recourse to the courts to obtain interim or conservatory measures, before or during the course of arbitration proceedings. For example, the court may take urgent measures to appoint an expert when there is a risk that the evidence may disappear or be destroyed. The court may also order conservatory seizures and other similar interim measures necessary to protect the parties' interests.

At the same time, the arbitral tribunal may itself take interim or conservatory measures (see question 30).

29 Interim measures by an emergency arbitrator

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

The concept of emergency arbitrator as such does not exist under Moroccan law but parties can request local courts to impose extraordinary interim measures based on relevant provisions of the Civil Procedure Code, either before or during the arbitration process. The same rules apply for the parties' withdrawal from such extraordinary interim measures.

The internal rules of the Moroccan Court of Arbitration provide that the parties can require that a legal authority carries out temporary measures or academics, without being regarded as having given up or having contravened the convention on arbitration. Nevertheless, the arbitration tribunal must be informed of any of such measures.

30 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

Unless the parties agree otherwise, the arbitral tribunal may, at the request of one of the parties, take any interim or conservatory measures that it deems necessary within the limits of its mission. The tribunal may, for example, appoint an expert to evaluate damages or issue an injunction against a party.

The tribunal does not order security for costs.

31 Sanctioning powers of the arbitral tribunal

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration?

The arbitration tribunal may use its statutory procedural powers to order procedural measures against such 'guerrilla tactics' in arbitration. If such tactics cannot be regulated by means of the tribunal's procedural powers, criminal and/or administrative procedures can be initiated at Moroccan authorities by anyone adversely affected by these 'guerrilla tactics'.

The internal rules of the ICC Moroccan Court of Arbitration do not confer to the tribunal any specific powers to use against 'guerrilla tactics' either. Please note however, that any measurement instruction rendered by the court suspends, usually for a maximum of 60 days, the time of arbitration.

Awards

32 Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

The arbitral award is decided by majority vote, and is generally signed by each arbitrator.

However, if the minority refuses to sign, the other arbitrators must mention this in the award and indicate the reasons for such refusal. Such an award has the same effect as if it were signed by all the arbitrators.

33 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

An arbitral award is generally signed by each of the arbitrators. However, if the minority refuses to sign the award, the other arbitrators must mention this and indicate the reasons for such refusal. Nevertheless, in this case the award has the same effect as if it were signed by all the arbitrators.

34 Form and content requirements

What form and content requirements exist for an award?

The award must be in writing, contain a summary of facts, claims and arguments of the parties, exhibits, issues in dispute settled by the award and a decision on these issues.

Generally, the award must provide reasons for the decision, unless the parties have decided otherwise in the arbitration agreement or the applicable law does not require providing reasons.

The award must also mention:

- the name, nationality, title, and address of the arbitrators; the date of the award;
- the place in which it was rendered;
- the parties' names and addresses; and
- the names of the parties' legal representatives.

Furthermore, the award must fix the costs, arbitrators' fees, and the method by which these costs are allocated between the parties.

35 Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

If the arbitration agreement does not fix a deadline for the arbitral tribunal to render its award, the arbitrators' remit ends six months from the day the last arbitrator accepted the remit. The arbitration tribunal sets the proposed final date of the award once it has finished its investigations in the merits of the case. The deadline for rendering the award may be extended, either by the agreement of the parties or by a decision of the president of the court upon request of one of the parties. If the award is not rendered within this deadline, then either party may request the court to terminate the arbitration proceedings by issuing an order to this effect. Any of the parties can then initiate court proceedings at the competent public tribunal.

The internal rules of the ICC Moroccan Court of Arbitration provide that the arbitration tribunal must deliver its sentence in maximum six months from the filing of the case.

36 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

An award is considered to be a final judgment (ie, the same dispute cannot be retried) from the time that it is rendered by the tribunal.

The time limits for the tribunal to rectify the award on its own initiative run from the date on which the award was pronounced. However, if the parties seek the rectification or interpretation of the award, or the rendering of a complementary award regarding a claim the tribunal failed to decide upon, then the time limit runs from the date on which the parties were notified of the award.

An annulment may be sought any time after the award was pronounced, although the deadline for seeking the annulment runs from the date on which the award was notified.

37 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

In the case of ad hoc arbitration, an order on jurisdiction or the validity of the arbitration agreement may be rendered if the tribunal chooses to render such a decision on its own initiative or at the request of one of the parties. There is also a possibility of an interpretative or corrective award after the final award has been rendered, as well as a complementary award on any part of the claim that the tribunal failed to decide upon.

In the case of institutional arbitration, the types of awards possible depend on the relevant institutional rules. The internal rules of the ICC Moroccan Court of Arbitration allow arbitrators to issue partial awards regarding parts of the claim that they consider are able to be resolved.

38 Termination of proceedings

By what other means than an award can proceedings be terminated?

If the parties agree to amicably resolve the dispute during the course of arbitration proceedings, then the tribunal ends those proceedings. Upon the parties' request, the arbitral tribunal notes the end of the proceedings in an award rendered by way of agreement of the parties. This award has the same effect as any other arbitral award rendered on the merits of the case.

The tribunal may also order the close of the arbitration procedure when the continuation of the proceedings is, for any other reason, superfluous or impossible.

The arbitration proceedings may be terminated in other cases, for example, where the tribunal fails to render a decision within the defined timelines.

39 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

The arbitral award fixes the arbitrators' fees and arbitration costs, as well as their allocation between the parties. If the parties and the arbitrators do not come to an agreement on the fixing of arbitrators' fees, they are fixed by an independent decision of the arbitral tribunal.

40 Interest

May interest be awarded for principal claims and for costs and at what rate?

Yes, interest may be awarded at the contractual rate, if any, or otherwise at the legal rate fixed by the Central Bank.

Proceedings subsequent to issuance of award

41 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

Within 30 days after an award has been pronounced, the arbitral tribunal may on its own initiative rectify any material calculation errors or typographical errors contained in the award.

Within 30 days of the notification of the award, the arbitral tribunal may, at the request of one of the parties: rectify any material calculation errors or typographical errors; interpret a specific part of the award; or render a complementary award regarding a claim that the tribunal failed to decide upon. The request is notified to the other party, which has 15 days to respond. The tribunal must render its decision within 30 days in the case of corrective or interpretation awards, and within 60 days in the case of complementary awards.

42 Challenge of awards

How and on what grounds can awards be challenged and set aside?

An arbitration award generally cannot be appealed by the parties, although it may be annulled on certain grounds defined by the law, for example:

- the award was rendered in the absence of an arbitration agreement, based on a null agreement, or after the deadline for arbitration had passed;
- the tribunal was irregularly constituted or the agreement of the parties was not respected;
- the tribunal did not abide by the mission to which it was entrusted, decided on issues falling outside the scope of arbitration, or was mistaken about the limits of the arbitration agreement;
- certain requirements related to the award were not followed, for example, regarding the inclusion of the arbitrator's name and the signing of the award;
- one of the parties was unable to present its defence, for example, because it was not informed about the arbitration procedures;
- the arbitral award violated public policy; or
- the procedural formalities agreed upon by the parties were not respected or the applicable law agreed upon by the parties was not applied.

Notwithstanding any stipulation to the contrary, an arbitration award is subject to annulment from the time it was pronounced until 15 days after its notification. The court of appeals hearing the annulment case may also order an annulment on its own initiative if the award violates Moroccan public policy or if the subject of the dispute is not arbitrable.

If the court of appeals annuls the award, it rules on the merits of the case within the limits of the arbitral tribunal's mission, unless the annulment is granted because of the absence or nullity of an arbitration agreement.

43 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

The award may be annulled by the court of appeals on the grounds outlined in question 41. The decisions of the court of appeals may be reviewed by the Supreme Court on limited grounds, such as lack of jurisdiction, a court acting ultra vires or violation of a local law. The procedure before the court of appeals lasts about six to eight months, and the costs include court fees (about US\$50 for an annulment, for example). The procedure before the Supreme Court lasts on average about 12 to 15 months and costs approximately US\$100.

44 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

The enforcement of a domestic award requires an enforcement order from the president of the court where the award was rendered. The original award, a copy of the arbitration agreement and a translation in Arabic, if necessary, is submitted by one of the arbitrators or by one of the parties to the court clerk within seven days of the award being pronounced. The order that grants enforcement is not subject to appeal, while the order that refuses enforcement, for which the tribunal must provide reasons, is subject to appeal.

Foreign arbitration awards are recognised in Morocco if they are properly established and if such recognition is not contrary to Moroccan or international public policy. Under the same conditions, a foreign award is declared to be recognised and executory in Morocco by the president of the commercial court of the place of execution.

An order that refuses to recognise or enforce a foreign award is subject to appeal, while an order that decides to recognise or enforce the foreign award may be appealed on a limited number of grounds (eg, the arbitral tribunal was irregularly constituted or the recognition or enforcement is contrary to public policy).

Update and trends

Arbitration in Morocco is often considered a safe and efficient way to solve international investors' trade and investment disputes as local court proceedings often take longer and allow for less flexibility in terms of language or timing of the procedure. The legal reform implemented in 2007 provides solid legal grounds for arbitration proceedings conducted in Morocco because both the scope of arbitrable cases and the enforcement of arbitration awards have been widened, and a number of technical changes have been effectuated. In the light of such a solid framework, there are no imminent changes expected to occur regarding domestic arbitration laws or rules of domestic institutions.

Owing to the large number of FTAs and BITs with arbitration provisions entered into by the kingdom of Morocco, investment disputes relating to Morocco are relatively frequent and provide for important pieces of ICSID case law. The most emblematic case has probably been that of *Salini*, which gave rise to what is now known as the '*Salini* test' defining the means of how the jurisdiction of the ICSID Tribunal depends upon the existence of an investment within the meaning of the BIT concerned, as well as that of the Washington Convention. However, we are currently not aware of any case pending at ICSID with the involvement of the kingdom of Morocco.

45 Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Although Moroccan law does not address this point directly, foreign awards that have been set aside by the courts at the place of arbitration will generally not be enforced in Moroccan courts.

46 Cost of enforcement

What costs are incurred in enforcing awards?

The enforcement of awards is subject to the payment of fixed fees to the relevant court.

Other

47 Judicial system influence

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

There is no US-style discovery in Morocco, and the legal system is more in line with the French system. Indeed, a Moroccan judge can ask either

party to produce further documentation or other evidence the judge deems is necessary to decide the case.

48 Professional or ethical rules applicable to counsel

Are specific professional or ethical rules applicable to counsel in international arbitration in your country? Does best practice in your country reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?

Ethical rules are applicable, of course, and the main ones are independence and integrity but there are no specific rules published for international arbitrators.

IBA Guidelines as not applicable to Morocco.

49 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

Visas are required for certain nationals. In the case of work for a limited duration, work permits are generally not required. If foreign attorneys want to establish themselves in Morocco, they are subject to the Moroccan regulations on the legal profession. In addition, VAT applies for arbitrators and counsel.

Kettani Law Firm

Azzedine Kettani

k@kettlaw.com

8, rue Lahcen el Basri
Casablanca
Morocco

Tel: +212 522 438 900
Fax: +212 522 205 925
www.kettlaw.com