

IBA ARBITRATION COMMITTEE

Recognition and Enforcement of Arbitral Awards Subcommittee

COUNTRY REPORT ON LOCAL REQUIREMENTS FOR THE EXTENSION OF AN ARBITRATION CLAUSE TO, AND ENFORCEMENT OF AN ARBITRAL AWARD AGAINST, A NON-SIGNATORY

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In completing this survey, we ask the respondents to consider the question of non-signatories in a broad manner. That is, please consider situations where (i) a party applies to a court to compel arbitration against a non-signatory, (ii) the arbitral tribunal extended the arbitration clause to a non-signatory, and the non-signatory, or another party to the arbitration, seeks to resist enforcement, or to set aside the award, on the basis that the arbitration clause should not have been extended to the non-signatory, and (iii) where the award creditor attempts to enforce the award against a non-signatory that was not a party to the arbitral proceedings and the award.

ALGERIA			
I. General		(Yes/No /NA)	Comments, if any.
I.1	Must international arbitration agreements be in writing under the law of the country for which you are reporting?	Yes	Articles 1008, 1012 and 1040 of the Civil and Administrative Procedure Code (hereinafter “CAPC”) provide that to be valid, the arbitration agreement must be in writing, or in commercial international arbitration, made by any other physical or electronic means of communication that shows written proof of its existence.
I.2	Please describe the basic requirements for a valid international arbitration agreement in the country for which you are		Pursuant to Articles 1008 and 1040 of the CAPC, an arbitration agreement must be concluded in writing. Moreover, Article 1040 of the CAPC provides that the international arbitration agreement must meet the conditions laid down either by the law chosen by the parties, or by the law

	<p>reporting and cite the relevant legislative, regulatory, or jurisprudential basis for these requirements.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>governing the subject matter of the dispute, or by the law the arbitrator considers appropriate. The provision does not establish a hierarchy among these legal sources, granting the arbitrator complete discretion (see M. Issad, <i>La nouvelle loi algérienne relative à l'arbitrage international</i>, Revue de l'arbitrage, volume 2008, issue n°3, p. 422). Finally, it must be noted that in domestic arbitration, the arbitration agreement must designate the arbitrators or specify the modalities of their designation (Article 1008 of the CAPC).</p>
<p>I.3</p>	<p>In the country for which you are reporting, do courts/arbitral tribunals generally decide the issue of the scope rationae personae of the arbitration clause (or, in other words, the issue of who are the parties to the arbitration agreement, including the issue of extending the arbitration agreement to a non-signatory) on the basis of a specific applicable law or on the sole basis of a factual analysis of the case without reference to an applicable law?</p>		<p>Pursuant to the principle of “compétence-compétence” set out in Article 1044 of the CAPC, the arbitral tribunal is primarily entrusted with determining whether the parties have agreed to arbitrate, particularly taking into account their role or behavior during the conclusion and performance of the contract. It must be noted that under Article 60 of the Algerian Civil Code, consent to a contract (and therefore to an arbitration agreement) can be demonstrated by unequivocal conduct that leaves no doubt as to the author’s true intent (see A. Bencheneb, <i>Règlement des litiges et arbitrage commercial international</i>, Gaïa Editions 2018, paras. 107-128).</p>

I.3a	<p>If courts/arbitral tribunals generally decide the issue on the basis of a specific applicable law, what law do they apply to decide the issue?</p> <p>[For example, the applicable law could be:</p> <ul style="list-style-type: none"> • The law of the seat of arbitration. • The governing law of the contract. • The law of the place where the award might ultimately be sought to be enforced. • Transnational norms/international law. • The law reached at through a conflict of laws analysis.] <p>[Please provide your response in the comments column, provide any citation to relevant legislation or jurisprudence, and limit your response to one paragraph.]</p>	NA	
I.3b	<p>Does the legislation of your jurisdiction contain any directive in this respect?</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	
I.4	<p>Is the question of whether parties agree to arbitrate ultimately decided by arbitrators as opposed to courts in the country for which you are reporting? Please cite the relevant legislative, regulatory, or jurisprudential basis for your answer.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>Pursuant to the principle of “compétence-compétence” set out in Article 1044 of the CAPC, the arbitral tribunal is primarily entrusted with determining whether the parties have agreed to arbitrate. Pursuant to Article 1045 of the CAPC, national courts regularly decline their jurisdiction in case of ongoing arbitral proceedings or if one party invokes a valid arbitration agreement (see for instance, Court of Constantine, Administrative Chamber, case of October 1, 1984 and Court of Oran, Administrative Chamber, case of January 6, 1990 both cited in M. Trari Tani, <i>Droit algérien de l’arbitrage commercial international</i>, 1st edition, Berti éditions, 2007, p. 60). However, should this question arise within the context of annulment proceedings (Article 1058 of the CAPC) or to challenge the recognition or enforcement of an arbitral award in Algeria</p>

			(Article 1056 of the CAPC), it will ultimately be for the Algerian courts to adjudicate on this matter.
I.5	<p>Is there anything in the <u>legislation</u> of the country for which you are reporting that (i) could preclude the extension of an arbitration clause to non-signatories, or (ii) could permit the extension of an arbitration clause to non-signatories?</p> <p>[Note that the answer to this question is designed to provide the reader with a quick yes or no answer, plus to flag the key legal criteria. The series of questions in Section II provide the reader with a more detailed discussion of relevant legal theories, jurisprudence, and examples.]</p>	Yes	
I.5a	<p>If your answer to question <u>I.5</u> is yes, please cite and describe the applicable rules contained in any relevant legislation or regulations.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>Algerian law contains two provisions that could be relied upon to permit or exclude the extension of an arbitration agreement to a non-signatory. Under Article 60 of the Algerian Civil Code, consent to a contract (and therefore to an arbitration agreement) can be demonstrated by unequivocal conduct that leaves no doubt as to the author's true intent (see A. Bencheneb, <i>Règlement des litiges et arbitrage commercial international</i>, Gaïa Editions 2018, paras. 107-128). However, in the absence of any such conduct, the arbitration agreement should not be extended to third parties. Indeed, Article 113 of the Algerian Civil Code provides that the contract may create rights for their benefit but does not bind third parties and cannot establish obligations towards them.</p>
I.6	<p>Is there anything in the <u>jurisprudence</u> of the country for which you are reporting that (i) could preclude the extension of an arbitration clause to non-signatories, or (ii) could permit the extension of an arbitration clause to non-signatories?</p> <p>[Note that the answer to this question is designed to provide the reader with a quick yes or no answer, plus to flag the key legal criteria. The series of questions in Section II provide the</p>		<p>To the best of our knowledge, there is no published case law on the extension of arbitration agreement to non-signatories.</p> <p>However, Article 60 of the Algerian Civil Code is frequently invoked before national courts on issues pertaining to the parties' consent to a contract.</p> <p>In practice, it is also often invoked before arbitral tribunals ruling under Algerian law.</p>

	reader with a more detailed discussion of the relevant legal theories, jurisprudence, and examples.]		
I.6a	If your answer to question <u>I.6</u> is yes, please cite and describe the applicable tests or rules applied by the courts of the country for which you are reporting. [Please provide your response in the comments column and limit it to one paragraph.]		
II. Specific Legal Theories Concerning Non-Signatories		(Yes/No /NA)	Additional comments, if any.
II.1	Can the assignment or assumption of a contract containing an international arbitration agreement commit the non-signatory assignee to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?	Yes	

II.1.a	<p>If your answer to question <u>II.1</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>Under Articles 239 to 257 of the Algerian Civil Code, the assignment of contracts results in a complete transfer of rights and obligations from the assignor to the assignee (see A. Bencheneb, <i>Le droit algérien des contrats, données fondamentales</i>, 2ème édition, para. 269, p. 196). Despite its autonomy, the arbitration agreement transfers along with other contractual provisions from the assignor to the assignee and is accordingly binding on the assignee. There is no need for separate express consent for the assignment of the arbitration clause to take effect (see H. Farida, <i>L’influence de l’accueil de la sentence arbitrale par le juge algérien sur l’efficacité de l’arbitrage commercial international</i>, Thèse pour le Doctorat en Droit, Université Mouloud Mammeri de Tizi-Ouzou, Faculté de Droit et Sciences Politiques, 20 juin 2012, pp. 91-94. See also A. Bencheneb, <i>Règlement des litiges et arbitrage commercial international</i>, Gaïa Editions 2018, para. 129 -133).</p>
II.1.b	<p>If your answer to question <u>II.1</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. 	NA	
II.2	<p>Can incorporation by reference (i.e., where a contract incorporates an arbitration clause contained in a separate document) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	Yes	
II.2.a	<p>If your answer to question <u>II.2</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. 		<p>Article 1008 of the CAPC establishes that an arbitration agreement can be stipulated in a document to which the contract refers. However, there is no specific provision as to the extension of an arbitration agreement to a non-signatory on the basis of incorporation by reference. In such a case, Articles 60 and 113 of the Algerian Civil Code could apply (see question 1.5a).</p>

	<ul style="list-style-type: none"> • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		
II.2.b	<p>If your answer to question <u>II.2</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	
II.3	<p>Can an arbitration clause commit a non-signatory third-party beneficiary of a contract to international arbitration in the country in which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	No	
II.3.a	<p>If your answer to question <u>II.3</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. 		

	[Please provide your response in the comments column and limit it to one paragraph.]		
II.3.b	<p>If your answer to question <u>II.3</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		To the best of our knowledge, there is no published case law on this issue. However, pursuant to Article 113 of the Algerian Civil Code, a contract may create rights for a third party’s benefit but cannot create obligations towards it. One can assume that an arbitration clause could not commit a non-signatory third party beneficiary of a contract.
II.4	Can a theory of agency (i.e., where an agreement containing an arbitration clause has been entered into by a person who expressly or impliedly did so as a representative of a non-signatory) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?	Yes	
II.4.a	<p>If your answer to question <u>II.4</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		There is no specific provision under Algerian law, nor (to the best of our knowledge) any specific case law on the use of the theory of agency to commit a non-signatory party to international arbitration. Yet, Article 74 of the Algerian Civil Code states that a contract concluded by the agent - within the limits of his powers - on behalf of the principal, shall give rise to rights and obligations directly in favor of and against the principal. However, Article 75 of the Algerian Civil Code stipulates that where, at the time of conclusion of the contract, the contracting party has not made himself known as the representative, the contract is only effective in favor of or against the principal if the party with whom the representative contracted must have necessarily known of the representative relationship or if it was indifferent to the third party dealing with one or the other. In practice, these provisions could be used to commit a non-signatory party to international arbitration.

II.4.b	<p>If your answer to question <u>II.4</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	
II.5	<p>Can a theory of estoppel, good faith, or abuse of right (i.e., where a party benefitting from, and acting in accordance with, a contract containing an arbitration clause is estopped from claiming that it is not bound by certain provisions of the contract) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	Yes	
II.5.a	<p>If your answer to question <u>II.5</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>Articles 107 and 124 bis of the Algerian Civil Code recognize the theory of good faith and the prohibition of abusive rights and could, in practice, be used to commit a non-signatory party to international arbitration depending on the facts of the case. However, to our knowledge, there is no published case law on this specific issue.</p>
II.5.b	<p>If your answer to question <u>II.5</u> is no, please:</p>	NA	

	<ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		
II.6	<p>Can “implied consent” (i.e., where a party’s active participation in the negotiation, execution, performance and/or termination of a contract containing an arbitration clause provides evidence for its intent to consent to arbitration) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	Yes	
II.6.a	<p>If your answer to question <u>II.6</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>To the best of our knowledge, there is no published specific case law in which “implied consent” was used to commit a non-signatory party to international arbitration. However, as stated in section I.5a, under Article 60 of the Algerian Civil Code, consent to a contract can be demonstrated by unequivocal conduct that leaves no doubt as to the author’s true intent (A. Bencheneb, <i>Règlement des litiges et arbitrage commercial international</i>, Gaïa Editions 2018, para. 107-128). This provision could be relied upon to support the extension of an arbitration agreement to non-signatories.</p>
II.6.b	<p>If your answer to question <u>II.6</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. 	NA	

	<ul style="list-style-type: none"> Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		
II.7	<p>Can piercing the corporate veil or the alter ego doctrine (i.e., where, typically due to misuse or abuse of rights or fraud, the separate legal form of a non-signatory that uses its dominating authority over a signatory is disregarded so that both are treated as a single entity) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	No	
II.7.a	<p>If your answer to question <u>II.7</u> is yes, please:</p> <ul style="list-style-type: none"> Cite and describe the applicable rules contained in any relevant legislation or regulations. Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	
II.7.b	<p>If your answer to question <u>II.7</u> is no, please:</p> <ul style="list-style-type: none"> Cite and describe the applicable rules contained in any relevant legislation or regulations. 		To the best of our knowledge, there is no published case law in which piercing the corporate veil or the alter ego doctrine have been used to commit a non-signatory party to international arbitration.

	<ul style="list-style-type: none"> Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		
II.8	In the country for which you are reporting, are there any other legal theories that can be used to commit a non-signatory to international arbitration?	No	
II.8.a	<p>If your answer to question <u>II.8</u> is yes, please:</p> <ul style="list-style-type: none"> Cite and describe the applicable rules contained in any relevant legislation or regulations. Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	
III. Enforcement of an Arbitral Award against a Non-Signatory		(Yes/No/NA)	Additional comments, if any.
III.1	Have there been court cases in the country for which you are reporting where a party has objected to the enforcement of an award, on the basis that the arbitral tribunal extended the arbitration clause to one or more non-signatories?	No	To the best of our knowledge, there is no published case law on this matter.
III.1.a	If your answer to III.1 is <u>yes</u> , please explain which provision(s) of the New York Convention, or any other bilateral or multilateral	NA	

	<p>convention on the enforcement of arbitral awards, was (were) relied upon as the basis for the application/objection.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		
III.1.b	<p>If your answer to III.1 is <u>yes</u>, please explain whether set-aside/enforcement was finally granted or refused, and the court's reasons for reaching this result.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	
III.2	<p>Have there been court cases in the country for which you are reporting in which the enforcement of an award was requested against a non-signatory third party (a company/individual/state that was a non-signatory to the arbitration agreement and not a party to the arbitral proceedings/award)?</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	No	To the best of our knowledge, there is no published case law on this matter.
III.2a	<p>If the answer to III.2 is <u>yes</u>, please explain on what legal basis the enforcement was requested.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	
III.2b	<p>If the answer to III.2 is <u>yes</u>, please explain whether the enforcement was finally granted/refused and the court's reasons for reaching this result.</p>	NA	

	[Please provide your response in the comments column and limit it to one paragraph.]		
IV. Miscellaneous		(Yes/No /NA)	Additional comments, if any.
IV.1	<p>Is there anything else that a party considering the issue of the extension of an arbitration clause to a non-signatory should take into account with respect to the country for which you are reporting?</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	No	
IV.2	<p>Is there anything else that a party considering trying to enforce a foreign arbitral award against a non-signatory should take into account with respect to the country for which you are reporting?</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	Yes	To the best of our knowledge there is no published case law on this matter. Therefore, there is some uncertainty as to the possibility to obtain the recognition and enforcement of a foreign arbitral award that would have extended the arbitration agreement to a non-signatory.