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IBA ARBITRATION COMMITTEE

Arbitration Guide

MOROCCO

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

Arbitration is particularly prevalent in large-scale commercial contracts in Morocco. However, recourse to state courts remains the most common method among the majority of economic operators for resolving disputes arising between them. The main advantages of arbitration are, notably, its flexibility, sector-specific expertise, the availability of arbitrators appointed by the parties themselves, and the management and administration of cases, which tend to be increasingly professionalized by arbitral institutions. These elements are often lacking when recourse is made to state jurisdictions, particularly due to the exceedingly high number of cases judges are required to handle, as well as the administrative formalities associated with court officials.

On the other hand, arbitration remains largely unknown to small and medium-sized enterprises and is perceived as an elitist form of justice, inaccessible to parties who may not necessarily have the means to resort to it, given the fee scales implemented by some arbitral institutions.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

Most arbitrations involve domestic disputes that are subject to ad hoc procedures in accordance with Moroccan arbitration law. In the context of institutional arbitration, the arbitration rules of the Moroccan Court of Arbitration of ICC Morocco, which exclusively govern the resolution of domestic disputes, are also considered.

However, large-scale contracts, especially those involving the government or its entities, often incorporate ICC or Casablanca International Mediation and Arbitration Centre (CIMAC) arbitration rules.

(iii) What types of disputes are typically arbitrated?

Disputes arising from contracts related, in particular, to investments, energy, construction, franchise agreements, as well as mergers and acquisitions operations, are very often subject to arbitration proceedings.

(iv) How long do arbitral proceedings usually last in your country?

There is no specific timeframe governing the duration of arbitration proceedings in Morocco as it remains subject to the nature and complexity of the dispute as well as the attitude of all the parties involved in the proceedings. Moreover, recourse to Moroccan courts may have a significant impact on extending the duration, particularly due to the establishment of adversarial procedures at all levels by the new arbitration law 95-17, which came into effect in Morocco on 14 June 2022.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

There is no such restriction.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

The Moroccan arbitration law is principally influenced by the tenets delineated in the 1985 version of the UNCITRAL Model Law. It is currently regulated under Law 95-17, which pertains to arbitration and conventional mediation, as promulgated in the Official Bulletin on 13 June 2022.

Moroccan law has different regimes for domestic and international arbitration.

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

Moroccan arbitration law provides for a distinction between domestic and international arbitration. Law 95-17 only defines international arbitration as arbitration involving the interests of international commerce where at least one of the parties has its domicile or headquarters abroad. Consequently, domestic arbitration is defined as any arbitration that does not meet the aforementioned criterion for international arbitration.

The first set of rules (Articles 20 to 70) deals with domestic arbitration, while the second (Articles 71 to 85) deals with international arbitration. However, certain provisions are applicable in both domestic and international arbitration without prejudice to any specific agreement between the parties.

(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

Morocco is a signatory to the New York Convention entered into force on 7 June 1959, the Washington Convention which came into force on 10 June 1967, the Riyadh Arab Agreement for Judicial Cooperation which came into force on 30 October 1985 and the Arab Convention on Commercial Arbitration which came into force on 25 June 1992.

(iv) 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 under Law 95-17, Article 45 mandates that the arbitral tribunal shall adjudicate disputes based on the legal rules mutually agreed upon by the parties. Should there be no consensus on the applicable legal rules, the tribunal is to apply the objective legal rules it deems most pertinent to the dispute, ensuring adherence to the contract terms, customary practices, and established dealings between the parties. Article 46 allows the tribunal to act as amicable compositeur and decide on the basis of fairness and equity, given explicit agreement from the parties.

For international arbitration, Article 75(3) of Law 95-17 specifies that the arbitration agreement grants the arbitral tribunal the discretion to select the legal rules it finds suitable for resolving the dispute's merits in the absence of the parties' choice. Furthermore, Article 76(1) clarifies that the tribunal may only rule as amicable compositeur if explicitly authorized by the parties' agreement.

III. Arbitration Agreements

- (i) Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

Article 3 of Law 95-17 mandates that an arbitration agreement must be in writing. For arbitration agreements formed post-dispute (*compromis d'arbitrage*), Article 5 requires specifying the dispute's subject to avoid nullity, also recommending inclusion of parties' identification details. Article 7 demands that arbitration clauses, to avoid nullity, must be clearly written within the main contract or a related document.

Unlike in domestic arbitration, international arbitration under Article 73 does not necessitate detailing arbitrator appointment processes in the agreement, allowing flexibility in their designation or the outlining of appointment and replacement procedures.

- (ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?**

Moroccan law establishes the independence of the arbitration clause, with Article 8 of Law 95-17 recognizing it as an agreement separate from other contract clauses. Furthermore, Article 18 mandates courts to dismiss cases that are subject to an arbitration agreement unless the arbitration process is complete or the agreement is annulled. However, Article 5 introduces an exception where an arbitration agreement (*compromis d'arbitrage*) becomes inoperable if an appointed arbitrator declines or fails to perform their designated role, barring a mutually agreed upon replacement by the parties.

- (iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

Multi-tier clauses are common and enforceable in Morocco.

In the presence of a valid mediation agreement, state courts are prohibited from adjudicating the dispute until the exhaustion of this procedure or in case of nullity of the mediation agreement. Article 93 of Law 95-17 provides in this instance that *'the court is prohibited from hearing a dispute that has been subject to a mediation agreement until the completion of this procedure or in case of nullity of the mediation agreement, and must declare the action inadmissible when one of the parties invokes the existence of the mediation agreement, unless it is null'*. In matters of arbitration, it is appropriate to proceed by analogy, and consequently, jurisdictional competence of the arbitral tribunal is precluded and the claim is not admissible at this stage.

- (iv) What are the requirements for a valid multi-party arbitration agreement?**

Parties are free to frame their multi-party arbitration agreement as they wish. Law 95-17 makes no distinction between a multi-party arbitration agreement and a bilateral arbitration agreement.

However, the modalities for constituting the arbitral tribunal in the event of multi-party arbitration are provided for by Article 23 of Law 95-17 that states that *'In the event of multiple parties from the group of claimants or defendants, and if the members of either group fail to appoint their arbitrator within fifteen days following their receipt of the request from the other party for this purpose, the president of the competent jurisdiction shall proceed with the appointment upon request of one of the parties'*.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

Moroccan case law is silent in such a case but as a general rule, as long as both parties have agreed to grant that unilateral right to one of the parties then that right would be enforceable.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

Generally, arbitration agreements are only binding on the parties to the agreement containing the arbitration provision. The Commercial Court of Appeal had, for the first time, in its judgment No. 220, dated 15/01/2015, case No. 2669/8224/2013, endorsed the extension of the arbitration agreement to non-signatory parties based on the theory of corporate groups. The Moroccan Court of Cassation, ruling *en banc*, ultimately endorsed the opposite solution by prohibiting this principle. The reasoning for the Court of Cassation's decision is yet to be disclosed to this day.

(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?

Moroccan courts adopt an approach that prioritizes the parties' intentions. Thus, parties to an arbitration agreement are free to choose the law applicable to their agreement. In the absence of an express choice, courts can interpret the parties' will or apply general principles of private international law to determine the applicable law.

The principle of the autonomy of the arbitration agreement is also recognized, meaning that the validity and interpretation of the arbitration agreement are governed by the law chosen by the parties, or, in the absence of such a choice, by the law of the seat of arbitration.

(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?

Yes, in Morocco, as in many legal systems, courts distinguish between the seat (or legal place) of arbitration and the venue of meetings/hearings. The seat of arbitration is a legal concept that determines the procedural law applicable to the arbitration and the competent jurisdiction for any judicial intervention, such as assistance in constituting the arbitral tribunal or appeals against the arbitral award. The seat is decided by the parties or, failing that, by the arbitration institution or the arbitral tribunal itself, according to applicable rules.

(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?

Yes, the only restrictions on the arbitrability of disputes are set forth in Articles 14 and 15 of Law 95-17, which respectively provide the following: '(...) all capable individuals and legal entities may enter into an arbitration agreement to resolve disputes arising from rights over which they have free disposition, within the limits and according to the forms and procedures provided by this law', and that 'the arbitration agreement cannot concern the settlement of disputes relating to the status and capacity of persons or to personal rights that cannot be the subject of transactions'.

(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?

As stated in section III (ii) above, there is a particular circumstance when an arbitration agreement, (*le compromis d'arbitrage*), becomes inoperable. Indeed, Article 5 of Law 95-17 provides that 'the agreement is void if it designates the arbitral tribunal and one of the appointed arbitrators does not accept the mission entrusted to him, or has not been able to perform it, unless the parties have agreed on his replacement'.

IV. Arbitrability and Jurisdiction

- (i) **Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

Article 14 of Law 95-17 provides that all capable individuals and legal entities are permitted to enter into an arbitration agreement for the resolution of disputes over rights freely disposable within the confines and procedures established by this law. Article 15 clarifies that arbitration agreements cannot address disputes over personal status, capacity, or rights not transactable.

Moreover, arbitrators have the authority to determine their jurisdiction preliminarily, ruling on their jurisdiction's validity or scope under judicial oversight, which can review such determinations or the final award in annulment actions. Article 32 specifically dictates that the arbitral tribunal must decide on its jurisdiction and the arbitration agreement's validity before addressing the dispute's substance, either on its own initiative or upon a party's request, making arbitrability a jurisdictional issue.

- (ii) **What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

Please refer to our earlier response in section III (ii). It is imperative that jurisdictional objections before the court be asserted preliminarily; otherwise, the party shall be deemed to have acquiesced to the court's jurisdiction.

Similarly, if a party engages in the arbitration process without contesting jurisdiction, such conduct constitutes an implicit acceptance of the arbitral tribunal's authority.

- (iii) **Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

Yes, arbitrators can decide on their own jurisdiction according to the principle of *compétence-compétence*. In this regard, please refer to our earlier response in section IV (i).

As for the nature and intrusiveness of the control exercised by courts on the tribunal's jurisdiction, courts may exercise control over the arbitrators' jurisdiction in three circumstances: (i) if the court is seized of the dispute before the constitution of the arbitral tribunal, in which case the court will only assess, *prima facie*, whether the arbitral agreement is manifestly void or inapplicable; (ii) within the context of an appeal against the order issued by the arbitral tribunal ruling on its own jurisdiction prior to any substantive proceedings; and (iii) in the context of setting aside proceedings.

V. Selection of Arbitrators

- (i) **How are arbitrators selected? Do courts play a role?**

Parties are granted the freedom to outline the process for selecting arbitrators, including the ability to have them appointed by an arbitral institution.

In domestic arbitration, Law 95-17 through Articles 20 and 22 mandates that the arbitral tribunal be formed of either a sole arbitrator or an odd number of arbitrators. If the arbitration agreement calls for an even number of arbitrators, an additional one must be appointed.

Article 23, relevant to both domestic and international arbitrations, outlines that if an arbitral tribunal has not been pre-established and the methods and timing for selecting arbitrators remain unset or unagreed upon by the parties, certain procedures must be followed:

1. For a sole arbitrator tribunal, the appointment is made by the president of the competent court upon a party's request;
2. For a tribunal of three arbitrators, each party appoints one, and these two appoint the third. Should a party fail to appoint an arbitrator within 15 days of a request, or if the two arbitrators cannot agree on the third within 15 days of their appointment, the president of the competent court will make the appointment, which cannot be appealed, upon request by any party or arbitrator(s). The tribunal's presidency is assumed by the arbitrator selected by the initial two arbitrators or by the one appointed by the president of the competent court.

Regarding court support for international arbitration, Article 73 specifies that in case of difficulties forming the arbitral tribunal, unless otherwise agreed, the most diligent party may refer to:

1. The President of the Commercial Court for the enforcement of the arbitral award if the arbitration occurs in Morocco;
2. The President of the Commercial Court of Casablanca if the arbitration takes place abroad and Moroccan arbitration law is applicable.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

Article 30 of Law 95-17, applicable to both domestic and international arbitration, mandates that the constitution of the arbitral tribunal is contingent upon the appointed arbitrators accepting their assigned roles. Additionally, an arbitrator must disclose any potential conflicts of interest that could question their impartiality and independence at the time of acceptance.

Article 26 outlines the recusal process. A party must submit their written recusal request to the arbitrator within eight days upon learning of the tribunal's formation or the existence of justifiable circumstances for recusal. Should the arbitrator not withdraw within three days of the request, the party must then present their case to the president of the competent jurisdiction at the arbitration location, or the arbitrator's domicile or residence if the arbitration location has not been specified by the parties. The decision on the recusal request is made by the president of the competent jurisdiction, or their deputy, who, after convening the parties and the concerned arbitrator, issues an unappealable order within ten days.

If an arbitrator is recused, the arbitration process they were involved in is considered to be null including any decision or award made.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

Article 11 of Law 95-17 provides that only a capable individual with the requisite scientific expertise and experience may be appointed as an arbitrator. This individual must not have been convicted of acts undermining honour, integrity, or morality, nor should they have been disciplined with dismissal from an official role or faced financial sanctions under Title Seven of Book Five of Law 15.95 concerning the Commercial Code, or been deprived of the ability to conduct business or any civil rights.

Should the arbitration agreement name a legal entity, this entity is limited to organizing and facilitating the arbitration process, lacking the jurisdiction to resolve the dispute itself, which must be adjudicated by an arbitral tribunal consisting of one or more natural persons.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

Under Article 25 of Law 95-17, an arbitrator aware of a possible conflict of interest is obliged to notify the parties. They can only proceed with their appointment with explicit approval from the parties or if the objection period mentioned in Article 26 passes without challenge. Further, Article 30 mandates that an arbitrator must disclose, in writing upon acceptance of their role, any potential circumstances that could question their impartiality and independence.

The IBA Guidelines on Conflicts of Interest in International Arbitration are not mandatorily adhered to. However, there is no prohibition against using these guidelines should the parties agree to do so.

VI. Interim Measures and Emergency Arbitration

(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

Under Article 43 of Law 95-17, absent a differing agreement from the parties, the arbitral tribunal is empowered to enact any provisional or protective measures it considers necessary, provided these are within its appointed duties. Should the party obliged by the award fail to adhere to it, the beneficiary of the award is entitled to petition the president of the appropriate court for an enforcement decree based on their application.

As far as the taking of evidence is concerned, Article 37 indicates that if evidence is held by one of the parties, the arbitral tribunal has the authority to request its submission, either *suo motu* or upon request by a party.

(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?

Under Article 19 of Law 95-17, relevant to both domestic and international arbitrations, it is specified that an arbitration agreement does not preclude the parties from seeking interim or conservatory relief, either prior to or during the arbitration process, as prescribed by the Code of Civil Procedure. Additionally, the parties retain the right to withdraw such measures in conformity with those same legal guidelines.

(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?

See the response to section VI (ii) above. However, it is important to highlight that Moroccan courts cannot compel a party to disclose evidence they hold.

(iv) Are decisions by emergency arbitrators enforceable in your country?

Law 95-17 does not explicitly address the enforceability of emergency arbitrator decisions. Nevertheless, should these decisions manifest as arbitral awards, they may undergo the exequatur process for enforcement. Article 77 of Law 95-17 outlines that international arbitral awards can be enforced in Morocco unless they conflict with national or international public order. This enforcement falls under the purview of the commercial court's president where the award was issued or at the place of enforcement for foreign-seated arbitrations, provided that all parties concerned are properly summoned.

(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?

Morocco's legal system does not traditionally recognize the concept of anti-suit injunctions as known in common law jurisdictions, where a court or an arbitrator may order a party to refrain from initiating or continuing litigation proceedings in another forum. The Moroccan legal framework, based on civil law principles, does not typically allow arbitrators or courts to issue such injunctions directly preventing parties from pursuing litigation in national courts or other jurisdictions.

(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?

Moroccan courts are not precluded from offering assistance in support of foreign-seated arbitrations, similarly to how they would assist with arbitrations seated in Morocco, as outlined in sections IV (ii), (iii), and (iv) above.

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

The concept of broad discovery, found in common law systems, is not a standard feature of Moroccan arbitration practice. Instead, the process is more focused and limited. While requests for the production of evidence or documents can be made in arbitration, in the absence of specific legal provisions, neither arbitrators nor Moroccan courts have the authority to compel a party to disclose evidence in their possession.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

Without the parties' agreement and in the absence of specific legal provisions, the default scope of disclosure is quite limited.

(iii) Are there special rules for handling electronically stored information?

Moroccan law does not have a specific rule regarding this matter. Arbitral tribunals often consult various existing guidelines, such as the ICDR Guidelines for Arbitrators Concerning Exchanges of Information (AAA, 2008), the CPR Protocol on Disclosure of Documents and Presentation of Witnesses in Commercial Arbitration (2009) and the CIArb Protocol for E-Disclosure in Arbitration (October 2008).

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

Under Article 54 of Law 95-17, publishing the arbitral award or any parts thereof requires the parties' consent. Nonetheless, the parties' submissions or the award might become public if presented in court for legal proceedings.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal’s power to protect trade secrets and confidential information?

There are no specific legal provisions in this regard. However, Moroccan law does not impose any limitations on the arbitral tribunal’s authority to safeguard trade secrets and confidential information.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

No. On the other hand, correspondence exchanged between members of the Bar is subject to privilege.

IX. Evidence and Hearings

(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

While parties and arbitral tribunals are free to adopt the IBA Rules on the Taking of Evidence either as a standard or for inspiration, Moroccan law does not specifically mandate their use.

(ii) Are there any limits to arbitral tribunals’ discretion to govern the hearings?

Arbitral tribunals enjoy full authority in the conduct of the arbitration procedure, constrained only by the principles of due process, which are integral to Morocco’s public policy. Article 74 of Law 95-17 clarifies that if the arbitration agreement omits details on procedures and formalities, the arbitral tribunal has the responsibility to define them, either on its own initiative or by referencing relevant laws or arbitration regulations. Furthermore, Article 75 of Law 95-17 underscores the obligation to uphold due process and ensure equal treatment for all parties involved in arbitration under all circumstances.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

In Morocco, international arbitration practices align with global standards, incorporating methods like witness statements and cross-examination. The arbitrators’ decision to allow direct questioning of witnesses hinges on the parties’ consensus and the arbitrators’ legal backgrounds, as Moroccan law does not offer explicit instructions on this issue.

Article 33 of Law 95-17 specifies that the arbitral tribunal has the authority to set the arbitration procedure it considers suitable, within the law’s framework, without the obligation to adhere to judiciary-established rules, unless stipulated differently by the arbitration agreement.

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

Judicial proceedings face specific restrictions regarding witness testimonies. Nonetheless, within both domestic and international arbitration, arbitrators and parties have the liberty to diverge from court-prescribed rules, as permitted under Article 33 of Law 95-17.

(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative, director or employee) and the testimony of unrelated witnesses?

See answer to section IX (iv) above.

(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?

There are no specific formal requirements for the independence and impartiality of expert witnesses nor for the presentation of expert testimony under Moroccan law. However, due process and fairness in arbitration shall be observed in all circumstances.

(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?

An arbitral tribunal in Morocco has the discretion to appoint experts beyond those nominated by the parties, based on the unique circumstances of each case. Although Moroccan courts keep expert lists, there is no mandate for arbitrators in Morocco to adhere to these lists for expert appointments.

(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?

Moroccan law does not specifically address this matter. In practice, hot-tubbing is often utilized in international arbitration proceedings for the examination of experts on identified technical issues.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

Moroccan law does not specify rules or requirements for the use of arbitral secretaries. Similar to practices in other jurisdictions, arbitral secretaries can be utilized for administrative tasks in complex cases. Arbitral institutions like the ICC may offer guidance to arbitral tribunals regarding this practice.

(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?

Ethical considerations for lawyers practicing in Morocco are outlined in Law 28.08, which organizes the legal profession, along with the internal regulations of the bars.

For arbitrators, the requirements related to independence, impartiality and professional secrecy are embedded in Articles 25, 30 and 31 of Law 95-17.

(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?

No.

(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?

Article 33 of Law 95-17 provides that if not all arbitrators are present, the arbitral tribunal is permitted, when appropriate and with the consent of the parties, to conduct its meetings remotely using modern technologies.

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

Article 51 of Law 95-17, relevant to both domestic and international arbitration, mandates that the arbitral award be documented on either paper or electronic format. It is required to reference the arbitration agreement and contain:

- 1 Date and location of the award's issuance;
- 2 Names, nationalities, professions, actual or selected domiciles, addresses, and email addresses of the arbitrators responsible for the award;
- 3 Full names and addresses (actual, residential or selected) of the parties and their representatives;
- 4 For parties that are legal entities, public or private, the award must list their legal name and status and administrative or corporate headquarters as appropriate; and
- 5 A brief overview of the case facts, parties' claims, arguments presented, evidence submitted and issues resolved.

The reasoning behind the arbitral award is required unless the parties have agreed otherwise in their arbitration agreement or during the arbitration proceedings, or if the applicable legal framework for the arbitration process does not necessitate a reasoned award.

Arbitral awards that involve a public law entity must always provide reasoning.

As for permissible relief that may be granted, Moroccan law does not specify limitations. However, the substantive rules applicable to a case may restrict the permitted relief in certain situations.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

Arbitrators may award interest only. The arbitrators' ability to grant punitive or exemplary damages is not directly addressed in Moroccan arbitration law. Moreover, it remains uncertain whether an award that includes punitive or exemplary damages would be viewed as opposing international public policy during proceedings to set aside the award.

(iii) Are interim or partial awards enforceable?

In Morocco, interim or partial awards are enforceable, as long as they meet the requirements for recognition and enforcement applicable to any award.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Dissenting opinions are not bound by specific requirements regarding their form or content; nevertheless, arbitrators are advised to craft these opinions with care to maintain the arbitral tribunal's deliberative confidentiality.

Article 50 of Law 95-17 provides that should there be varying opinions, the perspective of the presiding arbitrator shall dominate, with the provision for dissenting views to be documented in a separate record.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

Article 47 of Law 95-17 states that in the event of a settlement agreement between the parties during arbitral proceedings, the tribunal will formally conclude the proceedings by documenting the agreement through an arbitral award, ensuring the settlement terms are established. This award carries the same legal weight as any other arbitral award made based on the merits of the case.

Furthermore, the arbitral tribunal will close the proceedings if it finds that continuing the arbitration has become unnecessary or unfeasible for any other reason.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

Article 55 of Law 95-17 establishes that the arbitral award definitively settles the dispute presented to the arbitral tribunal. Nonetheless, the tribunal may undertake the correction of any factual or computational errors in the award, or its interpretation, subsequent to notifying the parties, within a 30-day period following the award's issuance.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

Moroccan law does not specify rules regarding the allocation of costs, leaving this issue to the arbitral tribunal's discretion, albeit within the framework of any agreement between the parties.

(ii) What are the elements of costs that are typically awarded?

The costs commonly awarded include the fees and expenses of the arbitral tribunal, the administrative expenses of the arbitral institution, the costs of experts and witnesses and any other expenses incurred in relation to the arbitration proceedings.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

Yes, according to Article 52 of Law 95-17, if the parties and the arbitrators do not agree on the setting of the arbitrators' fees, said fees are determined by an independent decision of the arbitral tribunal.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

The arbitral tribunal possesses full discretion in dividing costs between the parties. The usual practice is for each party to cover its own costs. When costs are apportioned, they are typically distributed based on each party's relative success in their claims.

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

Article 52 states that the decision on the setting of fees can be appealed within 15 days from its receipt, to the president of the competent jurisdiction, whose order cannot be further appealed.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

International awards issued in Morocco can be contested either through an action to set aside the award (Article 82 of Law 95-17) or by appealing the order that declares the award enforceable (Article 80 of Law 95-17).

Challenges shall be made before the court of appeal of the place where the award was made.

As to foreign awards, Article 80 of Law 95-17 provides for the possibility of a challenge against the order granting it recognition.

As far as awards made in Morocco are concerned, Article 83 of Law 95-17 states that the action to set aside is brought before the competent Commercial Court of Appeal within whose jurisdiction the award was issued. This appeal is admissible from the time the award is pronounced or within 15 days of its *notification*.

As far as foreign awards are concerned, Article 81 provides that the appeal shall be brought before the competent Commercial Court of Appeal within a 15-day period from the *notification* of the order.

The grounds for both a setting aside action and appeal are as follows:

- 1 The arbitral award was issued in the absence of an arbitration agreement, or if the arbitration agreement is null, or if the award is rendered after the expiration of the arbitration deadline;
- 2 The arbitral tribunal was irregularly composed or the sole arbitrator was irregularly appointed;
- 3 The arbitral tribunal ruled without adhering to the mandate conferred upon it;
- 4 Failure to observe due process; or
- 5 Recognition or execution of the award is contrary to national or international public order.

Article 84 of Law 95-17 provides that challenge proceedings stay enforcement proceedings unless the arbitral award carries provisional enforcement. In this regard, the regulations governing the provisional enforcement of judgments also apply to arbitral awards.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

Article 82 of Law 95-17 makes it possible for the parties to agree to waive the right to set aside an award made in Morocco.

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

Both domestic and international arbitration awards cannot be appealed.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

There is no procedure for remand under Moroccan law.

(v) Is there a specialist arbitration court in your jurisdiction?

No.

(vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (iura novit arbiter)? Could this be a basis to set aside the award?

Based on Article 75 of Law 95-17, Moroccan courts recognize the principle of iura novit arbiter to a certain extent, allowing arbitrators to amend or replace the law wrongly invoked by the parties or to apply the law not invoked by the parties. The article specifies that the arbitration agreement allows the arbitral tribunal the freedom to determine the rules of law applicable to the merits of the dispute. If the parties do not specify the applicable rules of law, the tribunal has the discretion to apply the laws it deems appropriate, always within the framework of respecting the contract's provisions and considering the relevant usages and customs of international trade.

However, the use of the iura novit arbiter principle as a basis for setting aside an arbitral award would depend on whether the tribunal's application of law significantly deviates from the parties' expectations or the arbitration agreement's stipulations. If the tribunal's decision to apply a certain law or legal principle results in a manifest disregard for the agreement or leads to an unjust or unforeseeable outcome, parties might challenge the award on grounds of exceeding the tribunal's mandate or violating procedural fairness, potentially leading to the setting aside of the award. Nonetheless, the application of this principle in itself, in line with Article 75, is not a direct ground for annulment unless it results in a violation of due process.

XIII. Arbitrator Liability

(i) Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?

No.

(ii) Does this immunity, if any, extend to criminal liability?

No.

XIV. Recognition and Enforcement of Awards

(i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?

The regime for the recognition and enforcement of international awards is provided in Articles 77 and 78 of Law 95-17.

Article 77 provides that '*international arbitral awards are recognized and granted exequatur in Morocco unless they are contrary to national or international public order. This is carried out by the president of the commercial court within whose jurisdiction the awards were issued, or by the president of the commercial court at the place of enforcement if the arbitration seat is located abroad, following the summoning of the parties*'.

Article 78 provides that *'the existence of an arbitral award is established by producing the original and the arbitration agreement or certified copies of these documents along with a translation into Arabic, performed by a court-approved translator, when they are drafted in a foreign language'*.

As to the grounds for opposing enforcement and their effects on staying enforcement, please refer to section XII (i).

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

Upon obtaining the exequatur, it becomes necessary to initiate enforcement proceedings, which may involve attaching the debtor's assets. In this situation, the debtor has the right to contest the enforcement actions under the conditions set forth by the Code of Civil Procedure.

(iii) Are conservatory measures available pending enforcement of the award?

Enforcing the award can involve attachment and judicial seizure measures. Additionally, conservatory measures may be available on a provisional basis in the event of a stay of the enforcement proceedings.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Moroccan courts generally exhibit a favourable attitude towards the enforcement of both domestic and international arbitral awards, reflecting Morocco's pro-arbitration stance and its commitment to international arbitration norms.

Regarding the enforcement of foreign arbitral awards that have been set aside by the courts at the place of arbitration, Moroccan courts' approach aligns with the principles of the New York Convention. Article V(1)(e) of the New York Convention provides that recognition and enforcement of an award may be refused if the award has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made. Therefore, Moroccan courts would consider the specific circumstances and the principles under the New York Convention when deciding on the enforcement of foreign awards that have been annulled in their country of origin.

However, Moroccan courts have some discretion in this matter and may consider broader interests, such as international public policy considerations, before refusing enforcement of an annulled foreign award. The courts' decision would likely be influenced by the reasons for the annulment and the extent to which those reasons are compatible with Moroccan legal principles and public policy.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

See answer to section XII (i) above.

XV. Sovereign Immunity

(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?

State entities are not immune to enforcement in Morocco. However, certain assets are protected from enforcement under the doctrine of sovereign immunity, especially those related to diplomatic missions, military assets and other property held for sovereign purposes. Assets that are central to the state's sovereign activities or public services are typically immune from seizure.

(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?

State entities typically adopt a policy of resisting enforcement through all available legal methods and remedies, and will proceed with payment only after all efforts to avoid enforcement have been exhausted.

(iii) Are there any requirements for arbitrations involving sovereign entities?

Article 61 of Law 95-17 provides that the award involving a public law entity as one of the parties must always be reasoned.

Article 68 provides that jurisdiction over the application for exequatur of the arbitral award, when the dispute involves a public law entity, belongs to the president of the administrative court of first instance within whose jurisdiction the award will be enforced, or to the president of the Administrative Court of Rabat when the arbitral award concerns the entire national territory.

XVI. Investment Treaty Arbitration

(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?

Morocco signed the ICSID Convention on 11 October 1965, and ratified it on 11 May 1967, with the convention coming into force for Morocco on 10 June 1967, affirming its commitment to this key international framework for investment disputes.

Morocco is currently a signatory to approximately 19 multilateral investment treaties.

(ii) Has your country entered into bilateral investment treaties with other countries?

Morocco is a signatory to 85 bilateral investment treaties, 59 of which are currently in force.

(iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?

No.

XVII. Resources

(i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?

The arbitration reform conducted in June 2022 means that the primary reference is still Law 95-17, pending the release of a treaty or updated work that incorporates the aspects of this reform. However, practitioners might find the following resources relevant to some extent:

Resources in French about arbitration in Morocco:

- KAIROUANI, *Maroc et droit international des investissements étrangers*, Legitech, 2024, 144 pages.
- M. TOUMLILT & A. TOUMLILT, *Le droit de l'arbitrage au Maroc*, Les Editions Maghrébines, 2014, 632 pages.
- BOULEGHLIMAT W., *L'arbitrage commercial international dans les pays arabes et les principes d'UNIDROIT relatifs aux contrats du commerce international*, Thèse, Paris II, 2014.
- K. ZAHER, *Le nouveau droit marocain de l'arbitrage interne et international*, RMDE, n° 3, 2010, p. 73.
- N.NAJJAR, *L'arbitrage dans les pays arabes face aux exigences du commerce international*, LGDJ, 2004, 640 pages.

Resources in Arabic about arbitration in Morocco:

- وعيرشتلا يف ةءارق– برغملاب يلودلا و يلخادلا يراجتلا ميكتحتلا ،راكوزأ رمع 2015، لولأا ةعبطلا ،ةديجل حاجنلا ةعبطم ،ءاضقلا
- قسارد ،ةيندملا و ةيرادلإ ةيراجتلا داوملا يف ميكتحتلا ،حاوللا لاهنو ةجنوب يفطصم قافال راد ،نراقمل نيناولقلا و يبرغمل نوناقلل اقفو ةيرظنلا و ةيلمعلا تالكشإل مهأ 2015، لولأا ةعبطلا ،ةيبرغمل
- وعيرشتلا يف ةءارق ،برغملاب ميكتحتلل يلمعلا ليلدلا ،يلمعلا نسح و راكوزأ رمع 2012، لولأا ةعبطلا ،ةديجل حاجنلا ةعبطم ،ءاضقلا و
- يبرغمل نوناقلا يف قسارد ،ميكتحتلا لىع ءاضقلا ءتباقر ،يصوصلا يولعلا دبع 2012، لولأا ةعبطلا ،نراقملا و
- يبرغمل نوناقلا يف قسارد يمميكتحتلا مكحلا يف نالطبلا بنعطلا ،فلعلا وبأ دمحا 2011، قافال راد ،نراقملا و
- نراقملا و ديدجلا يبرغمل نوناقلا ءوض لىع يلودلا ميكتحتلا ،يكاضز ميحرلا دبع 2010 ربنون لولأا ةعبطلا ،طابرا – عيزوتلا و رشنلا و ءعبطلل مالسل راد ءعبطم

(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?

Numerous events focused on arbitration are regularly held, such as:

- Casablanca Arbitration Days, hosted by the Casablanca International Arbitration and Mediation Center (CIMAC);
- The annual arbitration events organized by ICC Morocco;
- Events hosted by MIZAN arbitration center;
- Events and workshops by ICC YAAF; and
- Moroccan Very Young Arbitration Practitioners (MVYAP) events and workshops.

XVIII. Trends and Developments

(i) Do you think that arbitration has become a real alternative to court proceedings in your country?

Arbitration is considered to be the normal method of solving international business disputes.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

Since the enactment of Law 08-05 which formally introduced conventional mediation for the first time in 2007, it has gained momentum in various aspects. As a result:

- Law 31-08 (18 February 2011) on consumer protection mandates mediation for consumer credit contracts;
- Law 04-12 (17 July 2012) on agricultural aggregation requires mediation under Law 08-05, along with measures for when a mediator is not specified in the mediation clause, depending on the project's nature;
- Law 86-12 (24 December 2014), amended by Law 46-18 (6 March 2020), on public-private partnership contracts, advocates for alternative dispute resolution methods and necessitates the prior appointment of a mediator;
- Law 103-12 (24 December 2014) concerning credit institutions and similar entities obliges these institutions to participate in a banking mediation scheme for disputes with clients; and
- Decree No. 2-14-394 of 6 Chaabane 1437 (13 May 2016), endorsing the general administrative clauses for work contracts, prescribes the use of mediation.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

The adoption of the Law 95-17 related to arbitration and conventional mediation in June 2022 is a major and the latest development for the law on arbitration in Morocco.

(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?

No.

(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?

No.

(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?

No.