

Arbitration Code <sup>(\*)</sup>

## **Chapter One. Common provisions**

### Article 1

Arbitration is a private procedure for the settlement of certain categories of disputes by an arbitral tribunal; the parties confer the mandate of deciding for them on the arbitral tribunal by means of an arbitration agreement.

### Article 2

The arbitration agreement is an undertaking by the parties to settle by arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause or a submission.

### Article 3

The arbitration clause is the undertaking of the parties to a contract to submit the disputes which may arise from the contract to arbitration.

### Article 4

The submission is the undertaking by which the parties to a dispute which has already arisen submit the dispute to an arbitral tribunal.

A submission to arbitration may be concluded even while a law suit is pending before the court.

### Article 5

It is meant by:

- a) "Arbitration rules", any text which establishes a determined procedure to be followed regarding arbitration.
- b) "Arbitral tribunal", the sole arbitrator or a group of arbitrators.
- c) "The court", the panel or the organ of the judicial organization.

### Article 6

The arbitration agreement can only be established in writing, either by an authenticated instrument or by private deed, or by a record of a court session or a record drawn up before the chosen arbitral tribunal.

The arbitration agreement is considered to be established in writing when it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or all other means of communication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

### Article 7

No arbitration is permitted in:

- 1) matters affecting public policy;
- 2) disputes relating to nationality;
- 3) disputes relating to personal status, with the exception of questions arising therefrom concerning pecuniary obligations;
- 4) matters where no arbitration is permitted;
- 5) disputes concerning the State, State administrative agencies and local authorities, with the exception of disputes arising in international relations of an economic, commercial or financial nature which are governed by Chapter Three of this Code.

#### Article 8

The parties to an arbitration agreement must have the capacity to dispose over their rights.

#### Article 9

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

#### Article 10

The arbitrator must be a natural person, of age, competent and in full enjoyment of his civil rights. He must be independent and impartial in respect of the parties.

If the arbitration agreement has designated a legal person, its mandate will be limited to nominating the arbitral tribunal.

A judge or a public servant may be an arbitrator on the two conditions that he does not fall short in his principal functions and that he obtains the permission of the competent authorities, before carrying out any task of the arbitration.

The public servant shall, moreover, take care that his mandate does not affect the interests of the Administration.

#### Article 11

The proof of the acceptance by an arbitrator of his mandate shall be established in writing, by the signature of the submission or the making of a deed which indicates the commencement of his mandate.

After his acceptance, he may not withdraw without good reason, on penalty of being liable for damages.

#### Article 12

Requests for the removal or the challenge of an arbitrator made after the closing of the pleadings (*plaidoiries*) are not admissible.

#### Article 13

Arbitration may be *ad hoc* or institutional.

In the case of *ad hoc* arbitration, the arbitral tribunal shall take charge of the organization by determining the procedure to be followed, unless the parties have agreed otherwise or choose an established set of arbitration rules.

In the case of an arbitration carried out under the auspices of an arbitral institution, the institution shall take charge of organizing the arbitration according to its rules.

In all cases the fundamental principles of civil and commercial procedure are to be respected and particularly the rules regarding the right to defence.

#### Article 14

The arbitrators shall apply the law to the merits unless the parties have agreed in the arbitration agreement that they shall act as *amiables compositeurs*. In this case, they are not required to apply the rules of law and shall decide according to equity.

## Article 15

1. If, during the arbitral procedure, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings.

If the parties request and the arbitral tribunal does not object, the arbitral tribunal shall record the settlement in the form of an arbitral award on agreed terms.

2. An award on agreed terms shall be made in accordance with the provisions of Article 30 and Article 75 of this Code, and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

## Chapter Two. Domestic arbitration

### Article 16

Subject to the provisions of Article 7 of the present Code, an existing dispute may be submitted to arbitration. An arbitration clause may also be concluded for all disputes that may arise, and which relate to obligations and transactions whether civil or commercial, as well as to disputes among associates in respect of their company.

### Article 17

The submission agreement (*compromis*) shall expressly or implicitly state the subject of the dispute and the names of the arbitrators, otherwise it is null and void.

### Article 18

In case of plurality of the arbitrators, their number must be odd.

If the number of appointed arbitrators is even, the composition of the arbitral tribunal shall be completed by the appointment of an arbitrator, acting as a chairman, chosen to that effect either:

- with the agreement of the parties; or
- by the appointed arbitrators.

In case the parties or the arbitrators fail to agree, and at the request of either party, the President of the court of first instance in the jurisdiction in which the seat of the arbitration is located shall, following a summary procedure not subject to any recourse, appoint the arbitrator, bearing in mind the required qualifications of the latter and the circumstances that guarantee his independence and impartiality.

In case particular arbitration rules are specified, the arbitral tribunal appointing procedure shall be the procedure provided for by those rules.

### Article 19

If an action pending before an arbitral tribunal in accordance with an arbitration agreement is brought before a court, the court shall, at the request of one of the parties, declare its lack of jurisdiction.

If an action has not yet been brought before an arbitral tribunal, the court shall also declare that it lacks jurisdiction unless it finds that the arbitration agreement is manifestly null. In these two cases, the court may not automatically invoke its lack of jurisdiction. The judge ruling on urgent matters may take any measure within the scope of his competence, provided that the arbitral tribunal had not engaged in proceedings.

The court of first instance, in the jurisdiction in which the arbitration is seated, may grant a leave of enforcement to any provisional or preliminary decision taken by the arbitral tribunal.

### Article 20

The arbitral tribunal shall be dissolved following the death, prevention, refusal, resignation, removal or challenge of the arbitrator or one of the arbitrators. It shall also be dissolved when the arbitration deadline expires.

However, the parties can agree to continue the arbitral procedure by removing the obstacles mentioned in the paragraph above.

#### Article 21

If an arbitrator becomes de jure or de facto unable to perform his functions within 30 days, his mandate shall be terminated. If he does not withdraw from his office, he may be removed.

The removal may only be upheld with the unanimous consent of all parties. If the parties fail to agree, it is the court of competent jurisdiction, and at the request of the contending party, that renders a decision on the challenge. The court's decision is subject to no recourse. In case the arbitration agreement does not mention it, the court of competent jurisdiction is the court of first instance of the place of the seat of arbitration.

The matter must be adjudicated as soon as possible, and in any case no later than three months from the date of the request for removal.

In case an arbitral institution is entrusted with a request for removal, it is examined in conformity with the rules of that institution.

#### Article 22

When a person is approached in connection with his possible appointment as arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties, unless he had already done so. That person shall allow time for the parties to reply and shall inform said parties that he shall neither accept his duty nor pursue it without their express consent.

An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed on by the parties. A party may not challenge an arbitrator that it has appointed, or in whose appointment it has participated, except for reasons of which it becomes aware after the appointment has been made.

An arbitrator may be challenged for the same reasons as a judge.

The request for challenge is submitted to the court of first instance in the jurisdiction in which the seat of arbitration is located. The said court will rule on it in accordance with the provisions of the Code of Civil and Commercial Procedure.

#### Article 23

The arbitral proceedings shall not be terminated by reason of the death of one of the parties or the dissolution of the corporate entity. The arbitral tribunal will stay the arbitration until the interested parties have been notified that the arbitral procedure will be continued.

During that period, the time allowed to render the award is suspended.

If the said notification is not sent or if the interested party does not appear on its own initiative within a period of six months, then the arbitral proceedings shall be terminated.

#### Article 24

Should there be a deadline for the rendering of the award, this deadline starts running from the day the arbitrator or the last arbitrator accepts his duty.

If no deadline has been set, the award should be rendered as soon as possible, and in any event within a time limit not exceeding six months.

However, the arbitral tribunal may, by decision, extend the arbitration period once or twice if it appears that it was impossible to settle the dispute in the time specified in the above paragraphs. The decision to extend the time specified in the above paragraphs is not subject to any recourse. The deadline may be extended by agreement of the parties or in accordance with the arbitration rules.

#### Article 25

When a request for removal or challenge of an arbitrator is filed, the arbitral procedure shall be suspended until a ruling on the request is made.

#### Article 26

If a plea as to the jurisdiction of the arbitral tribunal over the dispute submitted to it is raised, the arbitral tribunal has jurisdiction to rule on that plea by a decision which is subject to no recourse, except when that recourse is filed together with the recourse against the award on the merits.

If the arbitral tribunal rules that it lacks jurisdiction, its decision shall be reasoned and may be subject to appeal.

#### Article 27

If an interlocutory question not within the scope of the jurisdiction of the arbitral tribunal, but pertaining to the arbitration, is raised, the arbitral tribunal shall stay its decision until the court renders its decision. In any such case, the time allocated to render the award is suspended until the notification of the final judgment on the interlocutory issue raised.

#### Article 28

The arbitral tribunal shall carry out all investigations either by hearing witnesses, commissioning experts or by any other means in order to establish the truth.

Should a party hold an element of evidence, the arbitral tribunal is empowered to issue an injunction measure so that the party supplies the said piece of evidence.

It may also hear any person it deems useful to hear in order to decide the dispute.

Furthermore, it can designate in writing one of its members to accomplish a specific task.

It can request the assistance of a state court to obtain any ruling allowing it to reach the objectives provided in the present article.

#### Article 29

When a dispute is to be tried, the arbitral tribunal shall inform the parties of the proceeding's closing date.

#### Article 30

After deliberation, the arbitral tribunal shall make its award by majority vote. The award shall contain all the indications required by Article 123 of the Code of Civil and Commercial Procedure, subject to the provisions of Article 14 of the Arbitration Code regarding arbitrators deciding as *amiables compositeurs*.

It must in any case be signed by the arbitrators.

If one or more of the arbitrators refuses to sign or is incapable of signing, mention should be made of this in the award.

The award is valid if it is signed by a majority of the arbitrators.

If a majority is lacking, the chairman of the arbitral tribunal shall make mention of this and make the award according to his own opinion. In this case, the signature of the chairman is sufficient.

#### Article 31

The rules on provisional enforcement of judgments as stated in the Code of Civil and Commercial Procedure shall be applicable to the arbitral award.

#### Article 32

The arbitral award shall be rendered in Tunisia.

As soon as it is rendered, the award has *res judicata* between the parties with respect to the dispute that has been decided.

### Article 33

The arbitral award may be spontaneously enforced by the parties or by a mandatory execution by judgment rendered by the President of the court of first instance or the district judge in the jurisdiction of which the award was rendered, each of them within the scope of his jurisdiction. However, if the arbitration pertains to a dispute pending before the Court of Appeals at the time of the conclusion of the arbitration agreement, the President of that court shall have exclusive competence to grant the award a leave of enforcement.

The arbitral tribunal shall deliver a copy of the award to the parties within 15 days from the day it was rendered. The arbitral tribunal shall deposit, within the same period of time, at the clerk of the competent court's office, against a receipt, the original of the award together with the arbitration agreement. The deposit is done at no charge.

The interested party shall notify the award to the other party in accordance with the relevant provisions of the Code of Civil and Commercial Procedure, so as to activate the time limit for lodging any recourse.

If one of the parties requests the enforcement of the arbitral award, the President of the competent jurisdiction shall rule on the request, and if there is no objection adds the order of *exequatur* at the end of the award.

The appeal – when possible – automatically entails recourse against the order of *exequatur* or the relinquishment of the proceeding by the judge of the *exequatur*, within the limits of the recourse.

The original copy of the award shall remain at the clerk of the court's office. An engrossed document or a plain copy is delivered in accordance with the procedure provided by the law in that regard.

If the President of the said court dismisses the request, his decision shall be reasoned, and is subject to appeal.

### Article 34

Within twenty days following the rendering of the arbitral award, the arbitral tribunal may automatically correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature.

### Article 35

Upon the request of one of the parties, made within twenty days from delivering the arbitral award, and after having notified the other party who has fifteen days to submit his conclusions, the arbitral tribunal may, without reopening the pleadings and the debate:

- 1) correct any errors in computation, any clerical or typographical errors or any errors of similar nature;
- 2) interpret any specific part of the award;
- 3) render an additional award regarding a claim which was not decided.

An award rendered in one of the cases above is considered part of the initial award.

### Article 36

In case of a spontaneous enforcement of the initial arbitral award, the parties cannot request that an award for correcting or interpreting or an additional award be rendered.

Should the arbitral award be subject to appeal, the parties cannot request that an award to correct or interpret the award or render an additional award be rendered.

Any request aiming at the correction, interpretation or rendering of an additional award shall suspend the time limit for lodging any recourse against the award as well as for enforcing the award, until that award has been rendered.

### Article 37

The arbitral tribunal shall rule on petitions for correcting, interpreting or rendering an additional award within thirty days from the receipt of the request submitted by the most diligent party no later than twenty days from the notification of the arbitral award.

Should it not be possible for the arbitral tribunal to reconvene, the President of the court in the jurisdiction in which the arbitral award was rendered shall rule on petitions for correcting, interpreting or rendering an additional award within thirty days.

#### Article 38

The arbitral tribunal shall send to the parties a copy of the correcting, interpreting or additional award within fifteen days from the date on which it was rendered. Within the same period of time, the original of that award shall be delivered against receipt to the clerk of the court's office of the competent jurisdiction. This is done free of charge.

The clerk of the court's office keeps the original of the correcting, interpreting or additional award together with the initial award. The clerk shall mention the correcting, interpreting or additional award in the margin of this award.

The ruling on the enforcement of the correcting, interpreting or additional award shall be made simultaneously with the ruling on the initial award.

#### Article 39

Appeal is not possible for:

- 1) any arbitral award rendered by the arbitrators ruling as *amiables compositeurs*;
- 2) any arbitral award, unless expressly agreed in the arbitration agreement.

In that case, the appeal is governed by the rules of the Code of Civil and Commercial Procedure as applicable to any judgment rendered by courts.

If the court confirms the disputed award, it grants it a leave of enforcement.

If the court invalidates the disputed award, it will decide on the merits and render a judicial decision.

#### Article 40

The arbitral award which is subject to appeal cannot be subject to a setting aside request.

#### Article 41

The arbitral award may be subject to third party opposition before the Court of Appeals in the jurisdiction in which the arbitral award was rendered.

#### Article 42

Even if the parties agree otherwise, the setting aside of the final arbitral award may be requested in the following cases:

- 1) If the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement.
- 2) If the award is rendered pursuant to a void arbitration agreement or after the expiry of the time limit for arbitration.
- 3) If the award contains decisions on matters beyond the scope of the statements of claim.
- 4) If the award is rendered in violation of a public policy rule.
- 5) If the arbitral tribunal is not correctly constituted.
- 6) If the fundamental rules of procedure are not respected.

#### Article 43

The application for setting aside shall not suspend the enforcement of the award.

The application for setting aside is set in motion before the Court of Appeals in the jurisdiction in which the award was rendered, in accordance with the provisions of the Code of Civil and Commercial Procedure, within thirty days from the notification of the award. After this time limit, all recourse is proscribed.

The court shall, whenever requested, stay the execution of the award providing that the amount it determines is deposited to guarantee the enforcement of the said award.

#### Article 44

If the competent court admits the recourse, the award or the proceedings shall be annulled in whole or in part, as the case may be.

Upon request of the parties, the court shall rule on the merits. It shall rule *ex aequo et bono* provided that the arbitral tribunal also fulfills the conditions for an *amiable compositeur*.

Should a related case be pending before another jurisdiction, the court may stay the proceedings.

However, and should the recourse be dismissed, the judgment on dismissal shall be considered as leave of enforcement for the said award.

#### Article 45

An arbitral award cannot be appealed before the Court of Cassation.

However, such recourse shall be possible when it concerns a judgment of a court rendered in arbitration matters in accordance with the provisions of the Code of Civil and Commercial Procedure.

#### Article 46

The provisions of the Code of Civil and Commercial Procedure are deemed applicable provided that they do not conflict with the rules of this Chapter, and in matters not anticipated herein.

### **Chapter Three. International Arbitration**

#### **Section I. General Provisions**

##### Article 47

1. The present Chapter applies to international arbitration, subject to international agreements in force in Tunisia.
2. With the exception of Arts. 53, 54, 80, 81 and 82 of this Code, the provisions of this law apply only if the place of arbitration is in the territory of Tunisia, or only if either the parties or the arbitral tribunal have chosen these provisions.

##### Article 48

1. An arbitration is international in one of the following cases:
  - a) If the parties to an arbitration agreement have, at the time of conclusion of that agreement, their places of business in different States.
  - b) If one of the following places is situated outside the State in which the parties have their places of business:
    1. The place of arbitration if determined in, or pursuant to, the arbitration agreement.
    2. Any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected.
  - c) If the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.
  - d) Generally, if the arbitration concerns international trade.
2. The place of business is determined in the following manner:
  - a) If a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement.
  - b) If one of the parties does not have a place of business, reference is to be made to his habitual residence.

##### Article 49

1. Unless otherwise agreed by the parties:



- a) Any written communication is deemed to have been received if it is delivered to the addressee at his place of business, habitual residence or mailing address. If none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it.
- b) The communication is deemed to have been received on the day it is delivered in the way it is provided in the preceding paragraph.

2. The provisions of this article do not apply to judicial notifications.

#### Article 50

A party who knows of the non-compliance with a requirement under the arbitration agreement or derogation from a provision of this Chapter which parties may invoke, and yet proceeds with the arbitration without promptly stating his objection, or without doing so in time if a time limit is provided therefor, shall be deemed to have waived his right to object.

#### Article 51

In matters which are the object of an international arbitration agreement, no court shall intervene except where so provided in the present law.

### **Section II. Arbitration Agreement**

#### Article 52

A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests prior to submitting its first statement on the merits of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

#### Article 53

When an action referred to in the preceding article has been brought before the court or the matter has not yet actually been brought before the arbitral tribunal, the provisions of Article 19, second paragraph, of this law are applicable.

#### Article 54

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, an interim measure of protection from the judge in summary proceedings.

The judge in summary proceedings can – on this request – grant interim measures of protection.

### **Section III. Composition of Arbitral Tribunal**

#### Article 55

1. The parties are free to determine the number of arbitrators. However, the number shall be uneven.
2. Failing such determination, the number of arbitrators shall be three.

#### Article 56

1. No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
2. The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs 4 and 5 of this article.
3. Failing such agreement,

- a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator. If a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the First President of the Court of Appeal of Tunis in summary proceedings.
- b) In an arbitration with a sole arbitrator and if the parties are unable to agree on the arbitrator, he shall be appointed upon request of a party, by the First President of the Court of Appeal of Tunis in summary proceedings.

In appointing an arbitrator the judge shall take into account the qualifications prescribed in paragraph 1 of Article 10 of this Code.

4. If the parties agreed on a procedure to appoint the arbitrators but did not foresee other provisions in their agreement for securing the appointment, any party may request the First President of the Court of Appeal of Tunis to take the necessary measures, in one of the following cases:

- a) If a party fails to act as required under such procedure.
- b) If the parties, or the two arbitrators, are unable to reach an agreement in accordance with such procedure.
- c) If an authority, including an institution, fails to perform any function entrusted to it under such procedure.

5. The decisions on matters entrusted by paragraph 3 or 4 of this article to the First President of the Court of Appeal of Tunis shall not be subject to any appeal.

#### Article 57

1. When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings shall without delay disclose any reasons to the parties unless they have already been informed of them by him.

2. An arbitrator may be challenged only if reasons exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

#### Article 58

1. The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph 3 of this article.

2. Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any reason referred to in Article 57, paragraph 2 of this Code, send a written statement of the reasons for the challenge to the arbitral tribunal.

3. If the challenged arbitrator does not withdraw from his office or the other party does not agree to the challenge, the challenging party may, within forty-five days from the date of the statement mentioned in the preceding paragraph 2, request the Court of Appeal Tunis to examine the challenge request. This decision shall be subject to no appeal. While the decision on such a request is pending, the arbitral proceedings will be suspended.

4. If the arbitral procedure agreed by the parties entrusts the task of the challenge to an arbitration institute, the court shall declare the challenge inadmissible by estoppel.

#### Article 59

1. If an arbitrator becomes de jure or de facto unable to perform his functions or does not fulfill his duty within thirty days, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, one of the parties may ask the President of the Court of Appeal of Tunis to give a judgment in summary proceedings on the dismissal of the arbitrator, which judgment shall be subject to no appeal.

If the arbitrator is appointed in pursuance of rules of an arbitration institute, the examination of the removal shall be in accordance with those rules.

2. If, by application of this article or by application of paragraph 2 of Article 58 of this Code, the arbitrator withdraws from his office or a party accepts the termination of the mandate of the arbitrator, this withdrawal or acceptance does not imply recognition of the validity of any of the grounds mentioned in this article or in paragraph 2 of Article 57 of this Code.

#### Article 60

Where the mandate of an arbitrator terminates under Article 58 or 59 of this Code, or because of his withdrawal from office for any other reason or because of the revocation of the mandate by agreement of the parties, or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

### **Section IV. Jurisdiction of Arbitral Tribunal**

#### Article 61

1. The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause included in a contract shall be treated as an agreement independent of the other terms. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence on the merits. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3. If the arbitral tribunal, by partial award, rules on a plea referred to in paragraph 2 of this article, one of the parties may request, within thirty days after having received notice of that decision, the Court of Appeal of Tunis to give a decision on this point in accordance with the provisions of Article 78 of this Code.

The court shall give its decision as soon as possible, and in any case, within three months after the request was filed.

Recommencement of the procedure will depend on the decision taken by the court.

Pleas introduced after the decision of the arbitral tribunal has been taken on this action shall be examined along with the merits.

#### Article 62

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any interim measure of protection as it may consider necessary.

If the party against whom the order was issued refuses to comply, the arbitral tribunal may seek the assistance of the First President of the Tunis Court of Appeal.

In either case, the arbitral tribunal or the judge may require either party to provide a deposit on the costs necessitated by such measure.

### **Section V. Conduct of Arbitral Proceedings**

#### Article 63

The parties shall be treated with equality and each party shall be given full opportunity of presenting his case.

#### Article 64

1. Subject to the provisions of this Chapter, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

2. Failing such agreement, the arbitral tribunal may, subject to the provisions of this law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determinate the admissibility, relevance, materiality and weight of any evidence.

#### Article 65

Subject to the provisions of Article 47 of this Code, the parties are free to agree on the place of arbitration within or outside the territory of the Republic. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

#### Article 66

Notwithstanding the provisions of the preceding article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members for hearing witnesses, experts or the parties in the case, for inspection of goods or other property, or examining documents.

#### Article 67

1. The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise stipulated in the arbitral agreement, shall apply to any written statement by a party, any pleadings and any award, decision or other communication by the arbitral tribunal.

2. The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

#### Article 68

1. Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and his conclusions. The defendant shall state his defence in respect of these particulars, unless the parties have agreed otherwise as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may make a reference to the documents or other evidence they will submit.

2. Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

#### Article 69

1. Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether or not to hold one or several hearings for the presentation of oral evidence, or whether the proceedings shall be conducted on the basis of documents and other materials. However, the arbitral tribunal may hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

2. The parties shall be given sufficient advance notice of all procedural actions to be taken by the arbitral tribunal.

3. All statements, documents or other information supplied to the arbitral tribunal by one of the parties shall be communicated to the other parties. In addition, any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

#### Article 70

Unless otherwise agreed by the parties:

1. If the claimant, without sufficient reason, fails to communicate his statement of claim in accordance with Article 68(1) of this Code, the arbitral tribunal shall terminate the proceedings.

2. If the respondent, without sufficient reason, fails to communicate his statement of defence in accordance with Article 68(1) of this Code, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the validity of the claimant's allegations.

3. If one of the parties, without sufficient reason, fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

#### Article 71

Unless otherwise agreed by the parties:

1. The arbitral tribunal may:

- a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
- b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection or verification.

2. After delivery of his report, and if a party so requests or if the arbitral tribunal considers it necessary, the expert shall participate in a hearing where his report will be discussed. He shall hear the testimony of other expert witnesses on the same point.

Article 72

The arbitral tribunal, or a party with the approval of the arbitral tribunal, may request from a competent court assistance in taking evidence.

This competent court may grant the request within the limits of its competence and according to its rules on taking evidence.

## **Section VI. Making of Award and Termination of Proceedings**

Article 73

1. The arbitral tribunal shall decide the dispute in accordance with the law chosen by the parties.
2. Failing any such designation, the arbitral tribunal shall apply the law it deems appropriate.
3. The arbitral tribunal may decide *ex aequo et bono* only if the parties have expressly authorized it to do so.
4. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 74

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority vote. However, questions of procedure may be decided by the chairman of the arbitral tribunal, if so authorized by the parties or by the other members of the arbitral tribunal.

If there is no majority, the chairman of the arbitral tribunal shall make the award, according to his own judgment. In this case, the signature of the award by the chairman shall be sufficient.

Article 75

1. The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of the members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.
2. The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under Article 15 of the present Code.
3. The award shall state its date and the place of arbitration as determined in accordance with Article 65 of the present Code. The award shall be deemed to have been made at that place.
4. A copy signed by the arbitrator or arbitrators in accordance with paragraph 1 of this article shall be delivered to each party.

Article 76

1. The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph 2 of this article.

2. The arbitral tribunal shall issue an order for the termination of the arbitral proceedings:

- a) when the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognized a legitimate interest on his part in obtaining a final settlement of the dispute;
- b) when the parties agree on the termination of the proceedings;
- c) when the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

3. The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of Article 77 and paragraph 4 of Article 78 of this Code.

#### Article 77

1. Within thirty days of pronouncement of the award, the arbitral tribunal may on its own initiative, correct in the award any written errors, or errors in computation or any other clerical errors which may have occurred in the award.

2. Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties, upon request of one party, with notice to the other party, the arbitral tribunal may:

- a) correct in the award any written errors or errors in computation, or any other clerical errors which may have occurred in the award;
- b) give an interpretation of a specific part of the award;
- c) make an additional award as to claims omitted from the award.

The arbitral tribunal decides the request on correction or interpretation within thirty days of having been requested to do so, and shall make the additional award within sixty days.

The arbitral tribunal may extend, if necessary, the period of time within which it shall make an interpretation or an additional award.

3. The award made in the cases mentioned in this article shall form an integral part of the initial award.

### **Section VII. Recourse Against Award**

#### Article 78

1. Recourse against an arbitral award may be made only by an application for setting aside. In such case, the procedure to be followed is as set out in paragraphs 2 and 3 of this article.

2. An arbitral award may be set aside by the Court of Appeal of Tunis only in the following cases:

I. When the party making the application furnishes proof establishing one of the following elements:

- a) That a party to the arbitration agreement referred to in Article 52 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing the choice of the applicable law, according to the rules of private international law.
- b) That the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case.
- c) That the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside.
- d) That the constitution of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties in general, with arbitration rules chosen by the parties, with the law of a country held to be applicable or according to the rules of this Chapter on the constitution of the arbitral tribunal.

II. When the court finds that the award is in conflict with public policy, as understood in private international law.

3. An application for setting aside may not be made after three months have elapsed from the date on which the party making that application has received the award, or, if a request has been made under Article 77, from the date on which that request has been disposed of by the arbitral tribunal.

4. The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

5. If the court, which has been requested to set aside the award, sets aside the award, either wholly or partially, the court, if necessary and on application of all parties, may decide on the merits. It shall decide as an *amiable compositeur* according to Article 14 of this Code, if the arbitral tribunal would have fulfilled the required conditions.

The rejection of the application to set aside the award grants leave to enforce the arbitral award.

6. The parties who have neither domicile, principal residence, nor business establishment in Tunisia, may expressly agree to exclude totally or partially all recourse against an arbitral award.

If they request the recognition and enforcement in Tunisia of an arbitral award made subject to this exclusion in Tunisia, Articles 80, 81 and 82 of this Code apply mandatorily.

## **Section VIII. Recognition and Enforcement of Awards**

### Article 79

The provisions of this section are applicable to arbitral awards rendered in international arbitration matters in any country in the world and, under the principle of reciprocity, to foreign arbitral awards.

### Article 80

1. An arbitral award, irrespective of the country in which it was made, is *res judicata* according to Article 32 of this Code. The award shall be enforced upon application in writing to the Court of Appeal of Tunis subject to the provisions of this article and Articles 81 and 82 of this Code.

2. The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in Article 52 of this Code, or a duly certified copy thereof. Both documents mentioned above will be accompanied, if required, by an official translation in Arabic.

### Article 81

Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only in the following two cases:

- I. At the request of the party against whom it is invoked, if that party furnishes to the Court of Appeal of Tunis where recognition or enforcement is sought, proof that:
  - a) A party to the arbitration agreement referred to in Article 52 of this Code was under some incapacity; or the said agreement is not valid under the law to which parties have subjected it or, failing any indication thereon, under the rules of private international law.
  - b) The party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case.
  - c) The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced.
  - d) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the arbitration agreement in general, with the designated institutional arbitration rules, with the law of the country held to be applicable or the provisions on the constitution of the arbitral tribunal of this Chapter.
  - e) The arbitral award has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.
- II. If the court finds that the recognition or enforcement of the arbitral award would be contrary to public policy as understood in private international law.

## Article 82

If an application for setting aside or suspension of an award has been made to a court referred to in paragraph I(e) of Article 81 of this Code, the Court of Appeal of Tunis from which the recognition or enforcement is sought may adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

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\* Promulgated by Law No. 93-42 of 26 April 1993; in force 27 October 1993.