

## TEXTS/LAWS/STATUTES

### **The New Moroccan Law No 05.08 Relating to Arbitration and Mediation Agreements\***

**Kingdom of Morocco**

**Law no. 05-08**

**Law no. 05-08**

Abolishing and replacing chapter VIII of title V of the Code of Civil Procedure.

#### **Article 1**

The provisions of chapter VIII of title V of the Code of Civil Procedure approved by the Holy Dahir namely Law no. 1-74-447 dated Ramadan 11, 1394 (December 28, 1974), shall be abolished and replaced by the following provisions:

#### **Chapter VIII – Arbitration and Conventional Mediation**

##### **Section I – Domestic Arbitration**

##### ***Sub-section 1 – Definitions and General Rules***

**Article 306–** The purpose of arbitration is to resolve disputes by an arbitral tribunal entrusted by the parties with the mission of settling a dispute by virtue of an arbitration agreement.

**Article 307–** Arbitration agreement is an agreement by the parties to submit to arbitration the settlement of disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

---

\* Non-official translation.

The arbitration agreement may take the form of an arbitration contract or an arbitration clause.

**Article 308-** All persons, natural or juridical, enjoying full capacity, may conclude an arbitration agreement pertaining to rights that are under their free disposal, within the limits of and according to the procedures set forth in this chapter, subject to the provisions of the Holy Dahir issued on Ramadan 9, 1331 (August 10, 1913), namely the Code of Obligations and contracts as amended and completed, and particularly article 62 thereof.

Disputes included under the competence of commercial tribunals pursuant to article 5 of law no. 95-53 that instituted the commercial courts, may particularly be subject to arbitration.

**Article 309-** In compliance with the stipulations of the aforementioned article 308, the arbitration agreement shall not be concluded for settling disputes relating to the persons' personal status, their capacity, or personal rights that cannot be a subject matter of commerce.

**Article 310-** Disputes relating to the State unilateral acts, local collectivities, or any other entities having public authority prerogatives, shall not be subject to arbitration.

Nonetheless, financial disputes arising therefrom may be the object of an arbitration contract, except for those relating to fiscal law issues.

Notwithstanding the stipulations of the second paragraph of article 317 hereinbelow, disputes relating to contracts concluded by the State or local collectivities may be the object of an arbitration contract, subject to the provisions relating to control or mandate set out in the legislation or regulations applicable to the said contracts.

Either the administrative courts that fall within the jurisdiction of the place where the enforcement of the award will take place, or the Rabat administrative court whenever the enforcement of the award involves the entire national territory, shall have the competence to decide on the request for enforcement of the award rendered within the context of the present article.

**Article 311-** Public enterprises subject to commercial corporate laws may conclude arbitration agreements according to procedures and conditions determined by their board of directors, or managing and supervisory bodies.

Notwithstanding the provisions of the second paragraph of article 317 hereinbelow *et seq*, public institutions may conclude arbitration contracts according to procedures and conditions determined by their boards. Agreements containing arbitration clauses shall be subject to a special meeting of the board of directors.

**Article 312-** In the present chapter:

1. "Arbitral Tribunal" means a sole arbitrator or a panel of arbitrators.

2. "Arbitration Rules" means any text determining a particular procedure that should be followed in the arbitration.

3. "President of the Court" means the president of the commercial court if not otherwise specified.

**Article 313-** The Arbitration agreement shall be made in writing, by virtue of an authenticated deed or a private contract, or minutes drawn before the appointed tribunal.

The Arbitration agreement is "in writing" if it is contained in a document signed by the parties or in an exchange of letters or telex or telegrams or any other means of telecommunications considered as an agreement evidencing its existence, or even in an exchange of statements of claim or defence in which the existence of such agreement is alleged by one party and not denied by the other.

Any reference in a written contract to the provisions of a model-contract or an international convention, or to any other document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

**Article 314-** The arbitration contract is the contract where the parties to a dispute are bound to submit this dispute to an arbitral tribunal.

The arbitration contract may even be concluded during the proceedings already commenced before the courts.

If it is agreed on arbitration during the court proceedings, the court shall decide to refer the parties to arbitration; this decision is considered as a written arbitration agreement.

**Article 315-** The Arbitration contract should include under penalty of nullity:

- 1- The determination of the subject-matter of the dispute.
- 2- The appointment of the arbitral tribunal or the method of its appointment.

The contract is considered null if the arbitrator appointed therein refuses the mission assigned to him.

**Article 316-** The Arbitration clause is the agreement of the parties to a contract to submit the disputes that may arise of the aforementioned contract to arbitration.

**Article 317-** Under penalty of nullity:

- The arbitration clause should be non-equivocally included in writing in the original agreement or in a document that refers to it;
- The arbitration clause shall appoint the arbitrator or arbitrators or the method of their appointment.

**Article 318-** The Arbitration clause is considered as autonomous from the other clauses of the contract. The nullity, rescission, or termination of the contract shall have no effect on the arbitration clause contained therein if this clause is valid in itself.

**Article 319-** Arbitration can be *ad hoc* or institutional.

In case of an *ad hoc* arbitration, the arbitral tribunal shall be in charge of conducting it and determining the procedure that should be followed, unless the parties have agreed otherwise or have chosen specific arbitration rules.

When arbitration is submitted before an arbitration institution, the latter shall be in charge of organizing it and guaranteeing its good conduct according to its rules.

In any event, rules relating to the rights of defence should be respected.

**Article 320-** The mission of arbitrator can only be assigned to a natural person enjoying full capacity and never convicted by virtue of a final verdict for committing actions contrary to honor, probity or good moeurs, thus depriving him from exercising commerce or any of his civil rights.

If the arbitration agreement appoints a legal person, such person will only be empowered to organize the arbitration and guarantee its good conduct.

**Article 321-** Natural persons, performing the mission of an arbitrator, usually or professionally, whether individually or through a legal person having arbitration as one of its purposes, shall make a declaration to the general prosecutor before the court of appeals falling within the jurisdiction of the natural or legal person's domicile.

The general prosecutor shall deliver a receipt of the declaration and register these persons in the list of arbitrators at the competent court of appeals after examining their situation.

**Art 322-** An arbitrator may only be challenged by any of the parties to arbitration for a reason that emerged or was discovered after his designation.

**Article 323-** An arbitrator may be challenged for the following reasons:

- 1- He was definitively convicted for committing one of the actions stated in the aforementioned article 320;
- 2- He, his wife, one of his ascendants or descendants, had a personal direct or indirect interest in the dispute;
- 3- There is a parenthood or in-law relationship to the degree of second cousins between him or his spouse and one of the parties;
- 4- There were ongoing proceedings or proceedings that ended from less than two years between one of the parties and the arbitrator, his wife, or his ascendants or descendants,

- 5- The arbitrator was to one of the parties' debtor or creditor,
- 6- He already pleaded or represented a party or testified as a witness in the dispute,
- 7- He acted as a legal representative of one of the parties,
- 8- There is a subordination relationship between the arbitrator, his spouse, or his ascendants or descendants,
- 9- An enmity or friendship was noticeable between the arbitrator and one of the parties.

The request for challenge containing the reasons for the challenge shall be submitted "in writing" to the president of the competent court within eight days starting from the notification of the party requesting the challenge of the constitution of the arbitral tribunal or of the circumstances justifying the request for the challenge. Unless the challenged arbitrator deliberately withdraws from his office within ten days of the request, the president of the court shall rule on the request within ten days which decision shall be subject to no appeal. The request for challenge shall not be admissible if submitted by a person that did previously challenge the same arbitrator in the same arbitration and for the same reasons. If an arbitrator is challenged, all the arbitration proceedings that he participated therein are considered null and void, including the award.

**Article 324-** An arbitrator may only be recused by the consent of all parties with no prejudice to the requirements of the aforementioned article 320. This recusal terminates the mandate of the arbitrator as soon as he is notified thereof.

**Article 325-** When an arbitrator's mandate is terminated for any reason whatsoever, an arbitrator shall be designated to substitute him according to the same rules that applied to the designation of the substituted arbitrator.

If an arbitrator becomes unable to perform his functions or did not proceed with performing his duties, or suspended his performance, which leads to an undue delay, and unless he withdraws from his office or the parties agree on the termination, the president of the competent court may decide on the termination of the mandate, upon any of the parties' request, which decision shall be subject to no appeal.

**Article 326-** Arbitrators are bound to confidentiality obligation in conformity with the provisions of the criminal law.

**Article 327-** Where a dispute submitted to an arbitral tribunal by virtue of an arbitration agreement is brought before a court, the latter should declare the case inadmissible if the respondent invokes that before going into the merits of the dispute, till the termination of arbitration proceedings or the annulment of the arbitration agreement.

If the dispute is not yet submitted to an arbitration tribunal, the tribunal should also declare the case inadmissible upon the respondent's request, unless the nullity of the arbitration agreement is evident.

The respondent should invoke that before going into the merits of the dispute, and the court shall not in both cases declare *ex officio* the inadmissibility of the case.

When an action referred to in the paragraphs one and two hereinabove has been brought to a court, arbitral proceedings may nevertheless be commenced or continued, and an award may be made while the issue is pending before the court.

**Article 327-1-** The arbitration agreement does not prevent the parties from having recourse to the judge-in-chambers, whether before or during the arbitral proceedings, to request any interim measure of protection, according to the provisions of the present law. Parties may withdraw these measures by the same process.

#### **Sub-section 2— The Arbitral Tribunal**

##### **The Constitution of the Arbitral Tribunal**

**Article 327-2-** The arbitral tribunal is constituted of a sole arbitrator or several arbitrators. Parties are free to determine the number of arbitrators and the method of their appointment in the arbitration agreement or according to the arbitration rules of the chosen institution.

If the parties do not agree on the number of arbitrators, their number shall be three.

If there are several arbitrators, their number should be odd, under penalty of nullity of the arbitration.

**Article 327-3-** If it is evidenced, that the arbitrator or arbitrators appointed do not satisfy the legal requirements to perform their duties, or for any other reason obstructing the constitution of the arbitral tribunal, the arbitrators shall be appointed by the parties' agreement or in conformity with article 327-4 *et seq.*

**Article 327-4-** If the parties appoint an even number of arbitrators, the arbitral tribunal's constitution shall be completed by an arbitrator chosen according to the agreement of the parties, or, in case of the absence of such an agreement, by the appointed arbitrators, or, in case of their disagreement, by the president of the court; such decision that shall be subject to no appeal.

In case of institutional arbitration, the rules of the chosen institution are applicable to the appointment of arbitrators and their number.

**Article 327-5-** If the arbitral tribunal, the method and the date of choosing the arbitrators have not been previously determined, or the parties did not agree thereon the following procedure shall be followed:

1- If the arbitral tribunal is constituted of a sole arbitrator, the president of the competent court shall appoint the arbitrator upon one of the parties' request.

2- If the arbitral tribunal is constituted of three arbitrators, each party appoints one

arbitrator and the two arbitrators appointed shall agree on the appointment of the third. If one of the parties does not designate his arbitrator within fifteen days following his receipt of a request from the other party to do so, or, if the two appointed arbitrators fail to agree on the choice of a third within fifteen days following the latest appointment of one of them, the president of the competent court shall appoint the third arbitrator upon any of the parties' request. The chairman of the arbitral tribunal shall be the arbitrator appointed by the two co-arbitrators or by the president of the court.

3- The procedure set forth in the paragraph two abovementioned shall be followed if the arbitral tribunal is constituted of more than three arbitrators.

4- The president of the competent court shall take into consideration in his choice of the arbitrator the requirements of the present law and those agreed upon by the parties. His decision shall be rendered after the convocation of the parties and shall be subject to no appeal.

Where the arbitral tribunal's constitution faces an obstacle due to one of the parties or to a difficulty in the application of the appointment procedure, the same procedure shall be applied.

**Article 327-6-** The constitution of the arbitral tribunal shall not be considered complete unless the arbitrator or the arbitrators have accepted their mission.

The appointed arbitrator shall disclose in writing any circumstances likely to give rise to doubts as to his impartiality or independence.

The approval of the mission is proven by the signature of the arbitration agreement or by drafting a deed indicating the commencement of the mission.

Every arbitrator shall carry out his mission till its end.

The arbitrator shall not, under penalty of payment of damages, withdraw from his office without a legitimate reason after accepting his mission. He shall send a notice mentioning the reasons for his withdrawal.

**Article 327-7-** An arbitrator aware of the existence of a reason for his challenge, should inform the parties thereof. In that case, he shall only accept his mission after the approval of the parties.

**Article 327-8-** When a request for challenge of arbitration is submitted, the arbitration proceedings shall be suspended pending the decision on the challenge, unless the challenged arbitrator accepts to withdraw from his office.

Difficulties resulting from the challenge or recusal of arbitrators shall be submitted to the president of the court that shall rule after hearing the parties and which decision shall be subject to no recourse whatsoever.

### Proceedings and Incidental Pleas

**Article 327-9-** The arbitral tribunal shall rule, before going into the merits, *ex-officio* or upon the request of one of the parties, on the validity or limits of its own jurisdiction, or on the validity of the arbitration agreement, and which decision shall be subject to recourse whatsoever except in the same conditions of an award on the merits and at the same time.

The arbitral tribunal may, before rendering any award on the merits, submit the matter to the general prosecutor of the court of appeals having the territorial jurisdiction regarding the seat of arbitration, requesting him all information that the arbitral tribunal considers useful as to the requirements of the aforementioned article 308. The general prosecutor has to give the required information within fifteen days from the receipt of the request. Otherwise, the arbitration tribunal shall examine the case as it is.

**Article 327-10-** The arbitral tribunal may direct the arbitration in the manner that it deems appropriate, in compliance with the present law, without having to implement the rules applied in the courts, unless the parties agree otherwise in the arbitration agreement.

Both parties may agree on the seat of arbitration whether in the Kingdom of Morocco or abroad. In the absence of such an agreement, the arbitration tribunal shall determine the seat of arbitration after taking into consideration the circumstances of the case and the place of the residence of the parties. However the arbitral tribunal may meet at any place it considers appropriate for the arbitration proceedings such as hearing the parties, or witnesses, or experts, or the examination of documents, the inspection of merchandise or goods or for the deliberation between its members or any other.

Parties to arbitration dispute shall be treated on equal footing. Each of them should be given a complete and equal opportunity to present his case and pleas and exercise his right of defense.

The arbitration proceedings shall start from the day of the constitution of the arbitral tribunal, unless the parties agreed otherwise.

**Article 327-11-** The arbitral tribunal performs all investigation procedures by hearing witnesses, commissions of experts, or any other investigation measures.

If one of the parties holds an evidence, the arbitral tribunal may order to produce it.

The arbitral tribunal may also hear any person it deems necessary to be heard.

**Articles 327-12-** Verbal statements before the arbitral tribunal are taken under oath.

Parties may be represented or assisted by any person of their choice.

**Article 327-13-** The language of arbitration is Arabic, unless the parties agree otherwise, or the arbitral tribunal determines one or several other languages. Such agreement or determination shall apply on the language of statements, written

memoranda, documents, oral pleadings, as well as every decision taken or award rendered by the arbitral tribunal.

The arbitral tribunal shall decide to annex to all or some of the written documents presented in the case, their translation to the language or languages used in the arbitration. In case there are several languages, the translation may be limited to some of them.

**Article 327-14-** The claimant shall communicate to each of the arbitrators and to the respondent, within the time limit agreed between parties or determined by the arbitral tribunal, a written statement of claim including its name and address, the respondent's name and address, a statement of the facts supporting his claim, the points at issue and the relief or remedy sought and any required elements of such statement upon which the parties have agreed to mention in this statement, and may submit with his statement all documents and evidences he considers to be relevant.

The respondent shall communicate to each of the arbitrators and to the claimant, within the time limit agreed between parties or determined by the arbitral tribunal, a written statement of defence in reply to the particulars of the statement of claim; it may include incidental pleas related to the merits of the dispute, or may claim a right emerging therefrom in order to request set-off and may submit with his statement all documents he considers to be relevant for evidence or rebuttal.

The arbitral tribunal may request the parties to produce the original of the documents that they rely on if it considers it appropriate.

Photocopies of all memoranda, or any other document presented to the arbitral tribunal should be communicated to the other party, as well as all submissions to the arbitral tribunal such as experts' reports and other evidences. Parties should be given a time limit to present requests and comments.

Both parties to arbitration may amend or complement their claims or grounds for defence during the arbitration proceedings, unless the arbitral tribunal refuses that in order to avoid settling again the dispute.

The arbitral tribunal shall hold oral pleadings to allow each of the parties to plead on the merits of the case and present their evidences. It may decide that the proceedings shall be conducted on the basis of documents, unless the parties agreed otherwise.

Both parties to the arbitration dispute should be notified within a fair time limit, at least five days in advance, of the dates of hearings and meetings to be held by the arbitral tribunal.

Minutes of the hearings held by the arbitral tribunal shall be drawn. Copies of the minutes should be submitted to both parties.

If the claimant fails to submit its statement of claim within the fixed time limit, without

a valid excuse, the arbitral tribunal terminates the arbitration procedure, unless agreed otherwise by the parties.

If the respondent fails to submit his statement of defence within the fixed time limit, the arbitral tribunal shall continue the arbitration proceedings, without considering that in itself as a recognition of the respondent of the claimant's case.

If one of the parties fails to appear or to produce the required documents without a valid excuse, the arbitral tribunal may continue arbitral proceedings and render an award based on the available evidence.

**Article 327-15-** The arbitral tribunal may take, within the limits of its competence, interim measures of protection that it deems necessary, unless agreed otherwise.

If one of the parties abstains from executing an award against him, the beneficiary party may recourse to the president of the competent court for issuance of the execution order.

**Article 327-16-** In case of several arbitrators, all of them shall participate in the work and activities as well as in drafting all minutes, unless the parties have allowed them to delegate one of them to perform a certain duty.

The chairman of the arbitral tribunal is authorized by law to decide on the procedural issues presented at the submission of the request, if the parties or the other arbitrators do not object thereto.

**Article 327-17-** During the arbitration proceedings, if the arbitral tribunal is requested to decide on an issue beyond the scope of its competence, or if a claim of forgery of a paper or document produced is presented to the tribunal and criminal procedures were taken concerning the forgery, the arbitral tribunal may continue hearing the merits of the dispute if it considers that the decision on that matter or on the forgery does not affect the decision on the merits of the dispute. Otherwise, it shall stop the procedures till a final decision is rendered on the issue. Consequently, the time limit to render the arbitral award shall be suspended.

**Article 327-18-** The arbitral tribunal applies the rules of law agreed by both parties to the merits of the dispute.

If the parties do not agree on the rules of law to be applied to the merits of the dispute, the arbitral tribunal shall apply the objective rules of the law that it considers the most related to the dispute. It shall in any case take into consideration the terms of the contract which is the subject of the dispute and the commercial customs and usages and the usual previous dealing between the parties. And if both parties to arbitration explicitly agree that the arbitral tribunal shall decide as "amiable compositeur", the arbitral tribunal decides on the merits of the dispute in compliance with the fairness and equity rules without being restricted by the law.

**Article 327-19-** The arbitral tribunal shall terminate the arbitral proceedings if the parties agree on resolving the dispute amicably.

Upon one of the parties' request, the arbitral tribunal evidences the end of the procedure by virtue of a consent award. This award shall have the same authority as any award rendered on the merits of the dispute.

The arbitral tribunal shall order termination of the proceedings when it considers that the continuation of the arbitration proceedings has become, for any reason whatsoever, unfruitful or impossible.

**Article 327-20-** If the arbitration agreement does not determine a time limit to render the arbitral award, the arbitrator's mandate is terminated after six months, starting from the acceptance of the last arbitrator's mission.

The legal or agreed time limit may be extended to a similar period by virtue of the parties' agreement or the decision of the president of the court, upon one of the parties or the arbitral tribunal's request.

If the arbitral award is not rendered within the aforementioned time limit, any of the parties to arbitration may request from the president of the competent court to issue an order to put an end to the arbitration proceedings. Afterward, any of the parties may submit the case to the court that was initially competent to hear the case.

**Article 327-21-** After the performance of the investigation procedures by the arbitral tribunal and when it considers the case ready, the arbitral tribunal shall fix the date for the deliberations and the date for rendering the award.

After that date, no new claim or plea whatsoever may be presented. No new comment may be submitted or any document whatsoever may be produced, unless the tribunal requests so.

***Sub-section 3: The Arbitral Award:***

**Article 327-22-** The arbitral award is given by a majority decision after the deliberations of the arbitral tribunal. All the arbitrators shall vote for or against the draft award subject to provisions of paragraph two of article 327-16.

The deliberations between the arbitrators shall be confidential.

**Article 327-23-** The arbitral award shall be made in writing and shall mention the arbitration agreement and shall include a summary of the facts, the parties' claims and respective pleas, the documents, and shall state the issues that were determined by the arbitral award as well as the ruling on these issues.

The award shall state the reasons upon which it is based unless the parties have agreed otherwise in the arbitration agreement, or the law applicable to the arbitration procedure does not provide for stating such reasons.

Article 327-24- The award shall state the following:

- 1- The names of the arbitrators that rendered the award, their nationalities, titles and addresses;
- 2- The date of its issuance;
- 3- The place of its issuance;
- 4- The names and surnames of the parties or their places of business and domiciles or place of residence, and if necessary, the names of their counsel or any person representing or assisting them.

The arbitral award shall fix the arbitrators' fees, the arbitration costs and their allocation between the parties.

If the parties and arbitrators do not agree on the determination of the arbitrators' fees, such fees shall be determined by a separate decision rendered by the arbitral tribunal.

Such decision is subject to recourse before the president of the competent court whose decision shall be final and not subject to any recourse whatsoever.

Article 327-25- The award shall be signed by each arbitrator.

In case of several arbitrators, if the minority refuses to sign the award, the other arbitrators shall mention such refusal with an indication of the grounds thereof and the award shall have the same effect as if it was signed by each of the arbitrators.

Article 327-26- From the date of its issuance, the award shall enjoy the *res judicata* effect relating to the issues settled.

Nonetheless, where one party to the dispute is a legal person of public law, the award does not have the *res judicata* effect unless by virtue of an *exequatur* decision.

In this case, the *exequatur* is requested by the most diligent party before the competent judge in compliance with the aforementioned article 310 pursuant to the procedure specified in article 327-31 below which consequences are referred to in articles 327-32 *et seq.*

The rules of provisional execution of judgments are applicable to arbitral awards for which *exequatur* is not required.

Article 327-27- The arbitral tribunal communicates to each of the parties a copy of the arbitral award, within a time limit of seven days starting from its issuance.

The publication of the arbitral award or excerpts thereof can only be made after the authorization of the parties to arbitration.

Article 327-28- The award terminates the mandate of the arbitral tribunal with respect to the issues settled.

Nevertheless:

- 1- Within thirty days following the issuance of the arbitral award, the arbitral tribunal

may correct *ex officio* any clerical, computational or typographical error, or any error of any nature whatsoever contained in the award.

2- Within thirty days following the notification of the arbitral award, upon the request of one of the parties and without re-opening the debate, the arbitral tribunal may:

- a) Correct any clerical, computational or typographical error, or any errors of similar nature contained in the award.
- b) Interpret a specific part of the award.
- c) Render an additional award as to claims presented in the arbitral proceedings but omitted from the award, unless the parties agreed otherwise.

The request shall be notified to the other party that shall present its submissions, if necessary, within fifteen days.

The arbitral tribunal shall submit its decision within a time limit of thirty days in case of a correction or interpretation and within a time limit of sixty days in case of an additional award.

**Article 327-29-** If the arbitral tribunal cannot meet again, the president of the court that falls within the jurisdiction of the place where the award was rendered shall have the power to make the decision within a time limit of thirty days; such decision shall not be subject to any recourse whatsoever.

**Article 327-30-** The request for correction or interpretation of the award stays its execution and suspends the time limits for recourse against it until the notification of the correction or interpretation award.

The decision to correct or to interpret the award shall constitute part of the award.

The provisions of the aforementioned article 327-23 are applicable thereto.

**Article 327-31-** The award is not subject to mandatory execution unless by virtue of an *exequatur* decision rendered by the president of the court that falls within the jurisdiction of the place where the award was rendered.

To this end, the original of the arbitral award and a copy of the arbitration agreement, with a translation into Arabic shall be deposited by one of the arbitrators or the most diligent party, with the registry of the court within seven full days following its issuance.

If the subject-matter of arbitration is the appeal against a judgment, the award shall be deposited with the registry of the court of appeals in compliance with the provisions of the previous paragraph.

**Article 327-32-** The *exequatur* shall be affixed to the original of the arbitral award.

The decision granting *exequatur* shall not be subject to any recourse whatsoever. Nevertheless, the application for setting aside the award referred to in article 327-36 below entails *ipso jure*, within the scope of the dispute before the court of appeals, a recourse

against the decision granting *exequatur* or an immediate withdrawal of the president of the court from his office in the event that no decision was not yet been made.

Article 327-33- The decision refusing enforcement should state the reasons upon which it is based. Such decision is subject to appeal, according to normal procedures, within a time limit of fifteen days from its notification. In this case, the court of appeals hears, upon the parties' request, the grounds that they would have submitted against the award by virtue of an application for setting aside.

The court of appeals decides on such appeal pursuant to the procedure for urgent matters.

Article 327-34- The award shall not be subject to any recourse whatsoever, subject to the provisions of the aforementioned articles 327-35 and 327-36.

The award may be subject to a motion for reconsideration, in compliance with the provisions of article 402 hereinbelow, before the court that would have heard the case if no arbitration agreement existed.

Article 327-35- Arbitral awards, even though granted *exequatur*, are not opposable to third parties who may, nonetheless, submit third party objections in accordance with the requirements of the aforementioned articles 303 to 305 before the court that would have heard the case if no arbitration agreement existed.

Article 327-36- Notwithstanding anything to the contrary, arbitral awards may be subject to an application for setting aside pursuant to normal procedures, before the court of appeals that falls within the jurisdiction of the place where they were rendered.

Such application is admissible since the date of issuance of the award; it is no more admissible if not submitted within the time limit of fifteen days starting from the notification of the award granted *exequatur*.

The application for setting aside can only be filed in the following cases:

1- If the award was rendered in the absence of any arbitration agreement or in case the arbitration agreement was null and void, or if the award was rendered after the termination of the arbitral proceedings.

2- If the arbitral tribunal was constituted irregularly, the sole arbitrator was irregularly appointed, or the arbitration agreement was not in accordance with the agreement of the parties.

3- If the arbitral tribunal did not rule in accordance with its mission, ruled on matters beyond the scope of the submission to arbitration, or did not respect the limits of the arbitration agreement.

However, 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.

4- Where the provisions of articles 327-23 paragraph 2, 327-24 concerning the names of arbitrators and the date of the award and 327-25 were not complied with.

5- Where one of the parties was not given the opportunity to present its case for not being given proper notice of the appointment of an arbitrator or of the arbitral proceedings or for any other reason relating to the duty to respect the rights of defence.

6- If the award was not in accordance with a rule of public policy.

7- In case of a failure to comply with the due procedures agreed between the parties or a failure to apply a law applicable to the dispute by mutual consent.

The court of appeals that hears the application for setting aside decides *ex officio* to set aside the arbitral award when deemed contrary to the public policy of the Kingdom of Morocco or when it finds that the subject-matter of the dispute is not arbitrable. The court of appeals rules in accordance with the procedure for urgent matters.

The time limit for filing the application for setting aside the award stays the execution of the award.

The application submitted within the time limit is also suspensive.

**Article 327-37-** In case the court of appeals sets aside the arbitral award, it rules on the merits within the scope of the mission of the arbitral tribunal except if the setting aside was based on the absence of an arbitration agreement or on the nullity thereof.

**Article 327-38-** In case the court of appeals refuses the application for setting aside the award, it shall order for enforcement of the award; its decision shall be final. The rulings of the court of appeals on arbitration matters may be subject to cassation pursuant to normal procedures.

## Section II- International arbitration

**Article 327-39-** This section applies to international arbitration without prejudice to the provisions of the international treaties ratified by the Kingdom of Morocco and published in the "official Gazette".

**Article 327-40-** Is considered international within the meaning of this section, the arbitration that involves interests of international trade, and where one of the parties has its domicile or seat abroad.

Arbitration is international if:

1) The parties to the arbitration agreement have, at the time of the conclusion of the said agreement, places of business in different states; or

2) One of the places mentioned hereinbelow is outside the state where the place of business is located:

a) The seat of arbitration, if stipulated or determined in the arbitration agreement.

b) Any place where a substantial part of the obligations arising from the commercial relationship shall be executed, or the place that has the closest link to the subject-matter of the dispute; or

3) The parties have expressly agreed that the subject-matter of the arbitration agreement is linked to more than one country.

For the application of the provisions of the 2<sup>nd</sup> paragraph of the present article:

a) If a party has more than one place of business, the place of business that has the closest link to the arbitration agreement should be taken into consideration;

b) If a party does not have a place of business, it shall be replaced by its usual place of residence.

**Article 327-41-** The arbitration agreement may, directly or by reference to certain arbitration rules, appoint the arbitrator or the arbitrators or specify the method of their appointment as well as their substitution. If any difficulty arises from the constitution of the arbitral tribunal, the most diligent party may, unless stipulated to the contrary:

1) In case the arbitration takes place in Morocco, submit the matter to the president of the court that has jurisdiction to grant leave for enforcement of the award;

2) In case the arbitration is taking place abroad and if the parties have agreed on the application of the Moroccan Code of Civil Procedure, submit the matter to the president of the Rabat Commercial Court.

**Article 327-42-** The arbitration agreement may, directly or by reference to certain arbitration rules, designate the procedure applicable to arbitration proceedings.

The arbitration agreement may also subject arbitration to the Code of Civil Procedure specified therein.

In the absence of any stipulations in this respect in the arbitration agreement, the arbitral tribunal shall determine, when necessary, the procedure to be applied, whether directly or by reference to a law or to certain arbitration rules.

**Article 327-43-** Where the Moroccan Code of Civil Procedure is applicable to the arbitration dispute, the provisions of the sub-sections II and III of section I of the present chapter only apply in the absence of a particular agreement and subject to the aforementioned articles 327-41 and 327-42.

**Article 327-44-** The arbitration agreement freely determines the rules of law to be applied by the arbitral tribunal to the merits of the dispute.

In the absence of the choice of applicable law rules by the parties, the arbitral tribunal shall settle the dispute pursuant to the rules that it deems necessary.

In any event, the arbitral tribunal shall take into account the provisions of the contract between the parties and the commercial customs and usages.

Article 327-45- The arbitral tribunal shall decide as *amiable compositeur* only if the parties' agreement authorized it to do so.

Article 327-46- International arbitral awards shall be recognized in Morocco if their existence is proven by the party relying thereon, and such recognition was not contrary to the national or international public policy.

Under the same conditions, such arbitral awards shall be recognized and enforced in Morocco by the president of the commercial court that falls within the jurisdiction of the place where they were rendered or by the president of the commercial court of the place of enforcement if the seat of arbitration was abroad.

Article 327-47- The existence of an arbitral award is evidenced by the production of its original along with the arbitration agreement or copies of these documents satisfying the requirements for their authenticity.

If the documents are not written in Arabic, a certified translation produced by a sworn translator should be supplied.

Article 327-48- The decision refusing the recognition or enforcement shall be subject to appeal.

Article 327-49- The appeal against the decision granting recognition or enforcement is only admissible in the following cases:

- 1- The arbitral tribunal ruled in the absence of an arbitration agreement or after the termination of the arbitral proceedings;
- 2- The arbitral tribunal was irregularly constituted or the sole arbitrator irregularly appointed;
- 3- The arbitral tribunal did not rule in accordance with its mission.
- 4- The rights of defence were not respected.
- 5- The recognition or enforcement are contrary to national or international public policy.

Article 327-50- The appeal referred to in the aforementioned articles 327-48 and 327-49 shall be submitted to the court of appeals that has territorial jurisdiction in view of the seat of the court to which the president of the court is related, within fifteen days starting from the date of the notification of the decision. The court of appeals decides in accordance with the procedures for urgent matters.

Article 327-51- The arbitral award rendered in the Kingdom of Morocco in international arbitration matters may be subject to application for setting aside in the cases mentioned in the above article 327-49.

The decision granting enforcement of the award shall not be subject to any recourse whatsoever. Nonetheless, the application for setting aside entails *ipso jure*, within the

scope of the court's jurisdiction, a recourse against the decision rendered by the president of the court or the withdrawal of this president from his office.

**Article 327-52-** The application for setting aside referred to in the aforementioned article 327-51 shall be submitted to the court of appeals that falls within the jurisdiction of the place where the award was rendered. Such application is admissible since the date of issuance of the award; it is no more admissible if not submitted within the time limit of fifteen days starting from the notification of the award granted *exequatur*.

**Article 327-53-** The time limit for the application for setting aside referred to in the aforementioned articles 327-48, 327-49 and 327-51 shall stay the enforcement of the arbitral award.

The application submitted within the time limit is also suspensive, unless the award involves provisional enforcement.

In this case, the authority hearing this application shall stay the enforcement if it deems it justified.

**Article 327-54-** The provisions of the aforementioned article 327-37 shall not apply to the application for setting aside.

### **Section III- Conventional Mediation**

(Article 327-55 → 327-69)

### **Section IV- Miscellaneous provisions**

**Article 327-70-** The provisions of the present chapter shall not be contrary to the provisions that stipulate special arbitration procedures for the settlement of defined disputes.

**Article 2-** The provisions of chapter VIII of title V of the above code of civil procedure shall still be transitorily applicable:

- To arbitration agreements concluded before the date of entry into force of the present law.
- To ongoing arbitral proceedings before the arbitral tribunals or pending before the courts on the aforementioned date until their final settlement and exhaustion of all means of recourse.

**Article 3-** The provisions of the 4<sup>th</sup> paragraph of article 5 of the law no. 53-95 instituting the commercial courts shall be amended as follows:

**Article 5 (4<sup>th</sup> paragraph)-** The parties may agree on submitting the disputes referred to hereinabove to arbitration and mediation in accordance with the provisions of articles 306 to 327-70 of the Code of Civil Procedure.