

**Law n° 93-42 issued on April 26, related to the promulgation of the Arbitration Code
(Tunisian Official Gazette n° 33 dated May 4, 1993 page 580)**

In the name of the people,
The Chamber of Deputies having adopted,
The President of the Republic promulgates the law which states the following:

Article 1:

By virtue of the present law, the “Arbitration Code”, relating to the organization of the proceedings of domestic and international arbitration, is promulgated.

Article 2:

The provisions of the present Code do not derogate to the special rules prohibiting the settlement of some disputes through arbitration, or to those stipulating special procedures to have recourse to arbitration.

Article 3:

Are hereby abrogated the provisions of Articles 250 to 284 of the Code of Civil and Commercial Procedure promulgated by law n° 59/130 dated October 5, 1959.

Nevertheless, arbitration proceedings pending either before arbitrators or before jurisdictions remain subject to the rules in force at the above indicated date, until their final settlement and until all remedies at law are exhausted.

The provisions of the present code do not question the validity of arbitration conventions concluded before its coming in force.

Article 4:

The provisions of the present code are applicable six months after the promulgation of the present law.

The present law will be published in the Official Gazette of the Republic of Tunisia and applied as a state law.

ARBITRATION CODE

CHAPTER I Common provisions

Article 1

Arbitration is a private procedure for the settlement of certain categories of disputes by an arbitral that the parties appoint by virtue of an arbitration convention.

Article 2

The arbitration convention is the agreement by which the parties agree to settle through arbitration the whole or part of certain disputes, whether existing or that may arise in the future, and regarding a legal relationship, whether contractual or non contractual. The arbitration convention may be in the form of either an arbitration clause or an arbitration agreement.

Article 3

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

Article 4

The arbitration agreement is the agreement by which the parties engaged in a dispute agree to submit the said dispute to an arbitral tribunal.
An arbitration agreement may be concluded even when the case is pending before a court.

Article 5

It is meant by :

- a) « **Arbitration rules** » any text which defines a specific procedure to be followed in arbitration ;
- b) « **Arbitration tribunal** » the sole arbitrator or the group of arbitrators ;
- c) « **Jurisdiction** » the college or the body of the judicial organization.

Article 6

The arbitration convention can only be established in writing, either by an authenticated deed or a private agreement or by minutes of a hearing in a session or minutes drawn up before a chosen arbitration tribunal.

The arbitration convention shall be established in writing, when it is written down in a document signed by the parties or in an exchange of letters, telexes, telegrams or any other means of communication which proves its existence, or also in the exchange of statement of claims or the statement of defense in which the existence of the arbitration agreement is asserted by one party and not disputed by the other party. The reference, in a contract, to a document including an arbitration clause is considered to be an arbitration convention provided that the said contract is established in writing, and that the reference is such that the clause is part of the contract.

Article 7

No arbitration is permitted in:

- 1) matters regarding law and order ;
- 2) disputes related to nationality ;
- 3) disputes concerning personal status, except for the financial disputes that ensue therefrom ;
- 4) matters where no arbitration is permitted ;
- 5) disputes involving the State, public administrative authorities and local communities, with the exception of the disputes arising from international economic, commercial or financial relationship, regulated by chapter three of the present code.

Article 8

Parties of an arbitration agreement shall have the capacity to dispose of their rights.

Article 9

Unless otherwise agreed by parties, arbitral proceedings in a given dispute start from the date of receipt of the notice of arbitration by the respondent.

Article 10

The arbitrator shall be a natural person, of full age, competent and enjoying all his civil rights. He shall be independent and impartial towards the parties.

If the arbitration agreement appoints a legal entity, the mission of such an entity is limited to the appointment of the arbitral tribunal.

A judge or a civil servant may be appointed as arbitrator, provided not to fall short of his/her main functions and to obtain, prior to any arbitration mission, an authorization from the competent authority.

Moreover, the civil servant shall make sure that the mission, he accepts, does not affect the interests of the Administration.

Article 11

The evidence that an arbitrator has accepted his mission shall be established in writing, either by signing the arbitration agreement or by the accomplishment of an act indicating the beginning of his mission.

The arbitrator cannot, under penalty of damages, withdraw without a valid reason, after having accepted his mission.

Article 12

The requests of dismissal or challenge of an arbitrator are inadmissible when submitted after the closing of the hearings.

Article 13

The arbitration may be ad-hoc or institutional.

In case of an ad-hoc arbitration, the arbitral tribunal will be in charge of fixing the proceedings to be followed, unless the parties agree otherwise or choose specific arbitration rules.

In case of institutional arbitration, the institution will administer it in accordance with its rules.

In all events, the fundamental principles of the civil and commercial procedure, notably the rules related to the rights of the defendant, shall be respected.

Article 14

The arbitrators shall apply the law, unless the parties agree, in the arbitration agreement, to invest them with the powers of *amiable compositeur*. In that case, the arbitrators are not bound to apply the law and shall settle the dispute according to the rules of equity.

Article 15

- 1) If the parties consent, during the arbitral proceedings, to settle their dispute, the arbitral tribunal shall end the arbitration proceedings.

At the request of parties and if the arbitral tribunal does not have any objection, the arbitral tribunal shall ascertain the fact by rendering an award by consent of the parties.

- 2) An award by consent shall be rendered in accordance with the provisions of Article 30 or Article 75 of the present code and shall state that it is an award.

Such an award shall have the same status and the same effect as an award rendered on the substance of the case.

Chapter II

Domestic arbitration

Article 16

Without prejudice of the provisions of Article 7 of the present code, a compromise may be concluded in any already arisen dispute. An arbitration clause can also be agreed on regarding all the disputes that may arise, relating to civil or commercial obligations and transactions, as well as disputes that may arise between partners in a company because of their partnership contract.

Article 17

The arbitration convention shall involve a statement of the subject of the dispute, the names of the arbitrators in an express and precise manner in order to eliminate any doubt on their individuality, otherwise it is declared 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 President, chosen either:

- by consent 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 tribunal of first instance in the jurisdiction of which the arbitration is located shall, following a summary procedure not subject to any appeal, 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 will be followed, the appointment of the arbitral tribunal shall be done in conformity with these rules.

Article 19

When by virtue of an arbitration agreement, a pending dispute before an arbitral tribunal is brought before a court, the latter, and at the request of one of the parties, shall declare itself incompetent.

When an arbitral tribunal is not yet entrusted, the court of competent jurisdiction shall also declare itself incompetent, unless the arbitration agreement is obviously null and void. In both cases the tribunal of competent jurisdiction cannot automatically declare itself incompetent.

The *juge des référés* may take any measure, within the scope of his competence, providing that the arbitral tribunal has not started the proceedings.

When the arbitral tribunal starts in the proceedings, the adoption of any provisional measure enters within the scope of its competence.

The president of tribunal of first instance, in the jurisdiction of which the arbitration is located, orders the enforcement to any provisional or preliminary decision taken by the arbitral tribunal.

Article 20

The arbitral tribunal shall be dissolved after the death, impediment, refusal, withdrawal or challenge of the arbitrator or one of the arbitrators. It shall also be dissolved when the arbitration time period expires.

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

Article 21

If an arbitrator becomes *de jure* or *de facto* unable to fulfil his/her mission and does not withdraw from his/her functions within 30 days, this mission shall be terminated. Failing that, he/she may be challenged.

The challenge cannot be declared only after 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 tribunal of first instance of the place where the arbitration takes place.

The matter must be adjudicated as soon as possible and in any case with a deadline not exceeding three months from the date of the challenge.

In case an arbitral institution is entrusted, the request for challenge is examined in conformity with its rules.

Article 22

When a person is approached in connection with his/her possible appointment as arbitrator, he/she shall disclose any circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence. An arbitrator, from the time of his/her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties, unless he/she had already done so.

That person shall allow time for the parties to reply and shall inform the said parties that he/she shall neither accept his/her 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/her impartiality or independence, or if he/she does not possess qualification 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.

The 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 of which the arbitral dispute is located. The said court will review 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 arbitration until the parties are being notified that the arbitral procedure will be continued.

During that period, the time allowed to render the award is left in abeyance.

In 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

Shall 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/her duty.

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

However, the arbitral tribunal, by decision, extends once or twice the arbitration period if it appears that it was impossible to settle the dispute in the time specified in the above paragraphs. The decision to extend the period is subject to no recourse.

These periods can be extended with the approval of the parties or in accordance with the arbitration rules.

Article 25

When a request for dismissal 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 is raised and relates to the dispute pending before it, 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 does not have 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 arbitration, is raised before it, the latter stays arbitration until the court of competent jurisdiction 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.

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

The arbitral tribunal may also hear any other person who might help understanding the dispute.

Furthermore, 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 proceedings closing date.

Article 30

The arbitral tribunal, after deliberation, renders the award at the majority of its members. The award must include all the indications required by article 123 of the Code of Civil and Commercial Procedure, with the exception of the provisions of Article 14 of the arbitration code, regarding the power to settle the dispute as an *amiable compositeur*.

Moreover, the award must be signed by the arbitrators.

A refusal or incapacity of one or several arbitrators to sign the award shall be mentioned in the award.

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

Should there be no majority of votes, the president of the arbitral tribunal, after mentioning it, shall render the award under his own authority. In that case, the signature of the president shall be sufficient.

Article 31

The rules on provisional enforcement of judgment as stated in the Code of Civil and Commercial Procedure Code 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 settled.

Article 33

The arbitration award may be spontaneously enforced by the parties or by a mandatory execution by judgment rendered by the president of the tribunal 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 sole competence to grant the award a leave of enforcement.

The arbitral tribunal shall serve 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 most diligent party shall notify to the other party the award 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 request the enforcement of the arbitral award, the President of the competent jurisdiction shall rule on the request, and if there is no objection enforces the award at the bottom.

The appeal – when possible – shall entail the recourse against the decision by which the award is enforced or, within the limits of the recourse, the handing over by the judge in charge of the enforcement procedure.

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.

In the president of the said court dismisses the request, his decision shall be well reasoned, and might be subject to appeal.

Article 34

Within 20 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

Within twenty days from serving the arbitral award, and upon the request of one of the parties, and after having notified the other party who has fifteen days to submit his conclusions, the arbitral tribunal may, without resorting again to pleadings and to hearings:

- 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 adjudicated;

An award rendered according to the 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 the tribunal to render an award for correcting interpreting or an additional award.

Should the arbitral award be appealed, the parties cannot request the tribunal to render an award to correct interpret the award or render an additional award.

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. The most diligent party shall submit the request 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 tribunal in the jurisdiction of which the arbitral award was rendered shall have thirty days to rule on petitions for correcting, interpreting or rendering an additional award.

Article 38

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

The clerk of the court's office keeps the original of the corrected, interpreted or additional award together with the initial award. The clerk shall mention in the margin of this award, whether it is a corrected, an interpreted or an additional award.

The ruling on the execution of the corrected, interpreted or additional award shall be made simultaneously with the ruling on the initial award.

Article 39

Can not be appealed:

- 1) any arbitral award rendered by the arbitrators ruling as *amiable compositor*.
- 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 in the same manner as 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 renders a judiciary decision.

Article 40

The arbitral award which is subject to appeal can not be subject to a setting aside action.

Article 41

The arbitral award may be subject to an opposition by a third person before the Court of appeals in the jurisdiction of which the arbitral award was rendered..

Article 42

Even if the parties agree otherwise, the setting aside of a final arbitral award may be done in one of the following:

- 1) the award deals with a dispute not contemplated by or not falling within the terms of the arbitration convention.

- 2) the award is rendered pursuant to a void arbitration convention or after the expiring of the time to arbitration.
- 3) the award contains decisions on matters beyond the scope of the submission to arbitration.
- 4) the award is rendered in violation of a public policy rule.
- 5) the arbitral tribunal is not correctly constituted.
- 6) the fundamental rules of procedure are not respected.

Article 43

The setting aside action shall not suspend the enforcement of the award.

The setting aside action is set into motion before the Court of Appeals in the jurisdiction of 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 action is prescribed.

Article 44

If the said Court admits the ground upon which the award is to be set aside, the award or the proceeding shall be annulled in part or in totality, as the case may be.

Upon request of the parties, the Court shall rule on the merits. It shall rule as an *amiable compositeur* provided that the arbitral tribunal also rules according to the same rules.

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 a leave of enforcement for the said award.

Article 45

An arbitral award cannot be appealed before the Supreme Court.

Article 46

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

Chapter III

International Arbitration

Section I – General provisions

Article 47

Without prejudice to the provisions of international conventions applicable to Tunisia, this Chapter shall apply to International Arbitration.

The Provisions of this Chapter, except Articles 53, 54, 80, 81 and 82, shall apply only if the place of arbitration is in the territory of Tunisia, or if these provisions are chosen by the parties or the arbitral tribunal.

Article 48

1- An arbitration is international in any of the following cases:

- (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States.
- (b) One of the following places is located outside the State in which the parties have their places of business:
 - (i) the place of arbitration as determined in the arbitration agreement or pursuant to the methods provided therein for determining it.
 - (ii) 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) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.
- (d) in a broader sense, an arbitration is international if it implicates international commercial interests.

2- The place of business shall be construed according to the following :

- (a) if a party has more than one place of business, the place of business shall be that which has the closest relationship to the arbitration agreement ;
- (b) if a party does not have a place of business, reference shall be made to his habitual residence.

Article 49

1- Unless otherwise agreed by the parties:

- (a) any written communication shall be deemed to have been received if it is delivered to the addressee personally or if it is delivered 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 shall be 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 that can be kept in record.
- (b) the communication shall be deemed to have been received on the day it is delivered in conformity with the preceding paragraph.

2- The provisions of this article shall not apply to communications relating to court proceedings.

Article 50

A party who knows of any provision of this law from which the parties may derogate or of any requirement under the arbitration agreement that has been complied with, and yet proceeds with the arbitration without stating his objection to such non-compliance promptly, or if a time-limit is provided, within that period of time, is deemed to have waived his right to object.

Article 51

In matters governed by an international arbitration clause no Court shall intervene except where provided in this law.

Section II. – Arbitration agreement

Article 52

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

Article 53

Where an action referred to in Article 52 has been brought, or where the arbitral proceedings have not yet commenced, provisions of Article 19.2 of the present code shall apply.

Article 54

It shall not be incompatible with an arbitration agreement that a party requests from a court, prior to or during arbitral proceedings, a conservatory measure of protection. The court can grant such a measure.

Section III. – Composition of arbitral tribunal

Article 55

1- The parties are free to determine the number of arbitrators. However, this number must be odd.

2- In the absence of such an agreement on the number of arbitrators, the number 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 shall be free to agree on a procedure for appointing the arbitrator or arbitrators, without prejudice to 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 one party fails to appoint an arbitrator within thirty days of receipt of the 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 one party, by the President of the Tunis Court of Appeals following a summary procedure.

b) In an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, this latter shall be appointed, upon request of one party, following a summary procedure rendered by the President of the Tunis Court of Appeals.

When appointing an arbitrator, the judge shall take into consideration the requirements set out in Article 10 (1) of the present code.

4- Where, under an agreed upon appointment procedure, the parties do not account for different ways of appointment in the arbitration agreement, either one or the other can refer to the President of the Tunis Court of Appeals to appoint the arbitrator(s). The latter will rule on the matter, pursuant to a summary procedure, in the case of any one of the following:

- (a) a party fails to act as required under such procedure, or
- b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or
- c) an authority, including an institution, fails to perform any of the functions that it has been entrusted with under such procedure.

5- The decisions rendered by the President of the Tunis Court of Appeals, pursuant to paragraphs (3) and (4) are not subject to any remedies.

Article 57

1- The person that is approached in connection with his possible appointment as an arbitrator, shall disclose all circumstances which are 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 proceeding, shall without delay disclose any such circumstances to the parties unless he has already done so.

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

Article 58

1- Without prejudice to the provisions of paragraph (3) of his article, the parties shall be free to agree on the procedure for challenging the arbitrators.

2- Failing such an 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 knowledge of those reasons mentioned in paragraph 2 of article 57 of the present code, must send to the arbitral tribunal a written statement stating the reasons for the challenge.

3- If the challenged arbitrator does not withdraw from his office, or if the other party objects to the challenge request, then the challenging party may request, within forty-five days after having received the notice in accordance with Article 57(2), from the Tunis Court of Appeals to adjudicate the challenge request. The decision of the Tunis Court of Appeals is final and subject to no recourse. Awaiting the Court's decision, the arbitral proceedings shall be suspended.

4- Where an arbitration institution is entrusted, the challenging procedure shall be held inadmissible by the judiciary.

Article 59

1- If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act within thirty days, his mandate terminates when he

withdraws from his office or when the parties agree on the termination. In case a controversy remains concerning any of these grounds, any party may request from the President of the Tunis Court of Appeals to decide, following a summary procedure on the termination of the mandate, which decision shall be subject to no remedy.

If an arbitrator has been appointed under the Arbitration Rules of any arbitral institution, the procedure for challenging the arbitrator shall be subject to its provisions.

2- If, under this article or Article 58(2) of the present code, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of the arbitrator, this shall not imply admittance of the validity of any ground referred to in this article or in Article 57.

Article 60

Where the mandate of an arbitrator terminates under Article 57 or 58 of this Code, or because of his withdrawal from office for any other reason or because of the revocation of his 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 the arbitral tribunal

Article 61

1- The arbitral may rule on its own jurisdiction, including any objection with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not affect the arbitration clause.

2- A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than the submission of the statement of defence. A party is not prevented from raising such a plea by the fact that it 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. In all cases, the arbitral tribunal may admit a late plea if it considers that the delay had a justified reason.

3- If the arbitral tribunal rules on the aforementioned pleas as a partial award, any party may request, within thirty days after having received notice of that ruling that, the Tunis Court of Appeals decides the matter in accordance with the provision of Article 78 of the present Code.

The Court shall rule on the matter expeditiously and, in all cases within a three-month period from the date the request has been made.

The restart of the arbitral proceedings shall remain subject to the Court ruling on the matter.

All other exceptions that are being raised after the arbitral tribunal has ruled on the matter are to be discussed on the merits.

Article 62

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order an interim or conservatory measure of protection if deemed necessary in accordance with the circumstances of the dispute.

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

In both cases, the arbitral tribunal or the judge may require any party to provide appropriate security to cover the costs of the interim measures ordered.

Section V. – Conduct of arbitral proceedings

Article 63

The parties shall be treated with equality and each party shall be given the full opportunity for presenting its 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 manners it considers appropriate. The powers conferred upon the arbitral tribunal include the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 65

Subject to the provisions of Article 47 of the present law, the parties are free to determine the place of arbitration whether in the Republic or abroad. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal with due regard to the circumstances of the case, including the convenience of the parties.

Article 66

Notwithstanding the provisions of Article 65, 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 to the dispute, or for inspection of goods, other property or documents.

Article 67

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

2- The arbitral tribunal may order that any documentary evidence 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 the relief or remedy sought. The respondent shall state his defence with respect to these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or they may add a reference to the documents or other evidence they will submit.

2- Unless otherwise agreed by the parties, either party may amend or supplement its claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendments to be submitted past specified deadlines.

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 any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

3- All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. 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, without showing sufficient cause, the claimant fails to communicate his statement of claim in accordance with Article 68(1), the arbitral tribunal shall terminate the proceedings.

2- If the respondent fails to communicate his statement of defence in accordance with Article 68(1) of the present law, the arbitral tribunal may continue the proceedings, without treating such failure in itself as an admission of the claimant's allegations.

3- If either party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and base the award on the evidence at his disposal.

Article 71

Unless otherwise agreed by the parties:

1- The arbitral tribunal:

- a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
- b) may 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.

2- If a party so requests, or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his report, participate in a hearing where the parties have the opportunity to discuss his report. The arbitral tribunal can also hear other expert's testimony on the same matter.

Article 72

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

The Court may execute the request within its competence and according to its rules on taking evidence.

Section VI : Rendering of award and Termination of proceedings

Article 73

1- The arbitral Tribunal shall decide the dispute in accordance with the law agreed upon by the parties.

2- Failing any designation by the parties, the arbitral tribunal shall apply the most appropriate law to the dispute.

3- The arbitral Tribunal may decide *ex equo et bono* if the parties have expressly authorized it to do so.

4- In all cases, the tribunal shall decide in accordance with the terms of the contract and shall take into account the usage 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 of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

In case a majority cannot be reached, the President of the arbitral tribunal may render the award relying on his own opinion. In that regard, he needs to sign the award.

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 all 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- After the award is made, 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 when:

a) the claimant withdraws his claim, unless the respondent objects to that and the arbitral tribunal recognizes a legitimate interest of the claimant in obtaining a final settlement of the dispute;

b) the parties agree on the termination of the proceedings;

c) the arbitral tribunal finds that the continuation of the proceedings has for some reason become unnecessary or impossible.

3- The mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings, subject to the provisions of Articles 77 and 78(4) of the present Code.

Article 77

1- Within thirty days of the rendering of the award, the arbitral tribunal may ex officio, correct any errors in computation, any clerical or typographical errors.

2- Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties and, if a party so requests, and the request has been notified to the other party, the arbitral tribunal may proceed to the following:

a) correct any errors in computation, any clerical or typographical errors or material errors in the award;

b) give an interpretation of a specific part of the award ;

c) render an additional award as to claims presented in the arbitral proceedings but omitted the award.

The arbitral tribunal has to render its decision within thirty days, if it is an interpretative award, of sixty days if it is an additional award.

The arbitral tribunal may extend, if necessary, the period of time within which it can make interpretations or additional awards.

3- The award rendered according to the provisions of this article is to be considered as part of the original award.

Section VII. – *Recourse against the award*

Article 78

1- The arbitral award can only be subject to the setting aside action. In that respect, the following procedure applies:

2- the Tunis Court of Appeals will set aside the award only if :

(a) – the party making the application furnishes proof that:

- (i) a party to the arbitration agreement referred to under article 52 was under an incapacity of some kind or that the said agreement is not valid under the law to which the parties have subjected it to, or, failing any choice of substantive law, under the rules of private international law;
- (ii) 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 its case;
- (iii) the award deals with a dispute not falling under the terms of the arbitration clause or *compromis*, or contains decisions on matters beyond the scope of the submission to arbitration. 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;
- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, the rules of an arbitral institution, the rules of a given country held applicable, the provisions of this Code, or with the constitution of the arbitral tribunal.

(b) – the court finds that the award is in conflict with public policy according to private international law.

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

4- the court, when asked to set aside an award may, where appropriate and 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 other action which, according to the arbitral tribunal will eliminate the grounds for setting aside.

5- when an awards is set aside either in part or in its entirety, the competent court, when deemed necessary and requested by all the parties, may rule on the merits as an *amiable compositeur*, in accordance with Article 14 of the present Code, provided that the arbitral tribunal ruled on the matter as an *amiable compositeur*.

The rejection of the setting aside action confers a leave of enforcement to the award in question.

6- if neither party is domiciled, nor has its habitual residence or place of business in Tunis, the parties may expressly agree to waive their right to challenge the arbitral award.

Articles 80, 81 and 82 of the present Code shall apply if the parties seek recognition and enforcement of the said award in Tunisia.

Section VIII. –Recognition and enforcement of arbitral 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 rendered, shall be recognized as binding subject to the provisions of Article 32 of the present Code. The award shall be enforced upon application in writing before the Tunis Court of Appeals, according to the provisions of this article and articles 81 and 82 of the present 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, and the original arbitration agreement referred to in Article 52 of the present Code, or a duly certified copy. If neither documents is in Arabic, the party may, if it is necessary, supply a duly certified translation in Arabic.

Article 81

I- Recognition and Enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

1- at the request of a party against whom it is invoked, if that party furnishes to the Tunis Court of Appeals where the recognition or enforcement is sought; evidence that:

- a) a party to the arbitration agreement referred to under Article 52 was under some incapacity; or said agreement is not valid under the law to

which the parties have subjected it or, failing any choice of substantive law, 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 its case ;

c) the award deals with a dispute not falling under the terms of the arbitration clause or *compromis*, or contains decisions on matters beyond the scope of the submission to arbitration. If decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matter submitted to arbitration may be recognized and enforced;

d) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with an arbitration agreement in general, or the rules of an arbitral institution, or the laws of a given country which are deemed to be applicable, or to the provisions of this Code with regard to the constitution of the arbitral tribunal.

e) the award has been set aside or suspended by a court of the country in which, or under the law of which, the award was rendered.

2- The court finds that the award is in conflict with the public policy rules in the sense of private international law.

Article 82

If an application for setting aside or suspension of an award has been made to the court referred to in Article 81(e), the Tunis Court of Appeals where recognition or enforcement is sought may, if deemed appropriate, 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.