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Tunisia

International Arbitration

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Tunisia.

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Tunisia: International Arbitration

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

The code of arbitration.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Yes, Tunisia is a signatory of the New York Convention.

3. What other arbitration-related treaties and conventions is your country a party to?

ICSID Convention.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

Yes, it is based on the UNCITRAL Model Law, There are no significant differences between the two.

5. Are there any impending plans to reform the arbitration laws in your country?

No impending plans to reform the arbitration laws in Tunisia.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The main arbitral institution is CCAT, its rules were not amended and at our best knowledge there is no amendments being considered.

7. Is there a specialist arbitration court in your country?

No.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

The requirements are those of any agreement + a written form.

9. Are arbitration clauses considered separable from the main contract?

Yes, it is.

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

The validity of the arbitration agreement is considered under the applicable law which is defined by the court on the basis of the choice of the parties or with the link criteria.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

There is evolution with Tunisian courts since 2013 and the courts are accepting more and more the extension of the arbitration clause to all involved parties.

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

Third party can be bound by an arbitration agreement in the case of a group of companies or if it is proven its involvement in the agreement.

13. Are any types of dispute considered non-

arbitrable? Has there been any evolution in this regard in recent years?

The non arbitrable topics are defined strictly and limitedly by law and there is no evolution at this regard.

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

No significant court decisions on this point, indeed, the courts in the absence of the party's choice applied the link criteria.

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

First, choice of parties,

Second, the law considered by the arbitrators as suitable to the case,

Third, Equity if authorized by the parties,

Fourth, taking the customs in consideration.

16. In your country, are there any restrictions in the appointment of arbitrators?

Non restrictions about the appointment of arbitrators except as for the number (1 or 3).

17. Are there any default requirements as to the selection of a tribunal?

Independence, impartiality, competence and for public servant he should not be in a situation of conflict of interests with his administration.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Yes, in case of failure of one party to choose an arbitrator or in case the two arbitrators didn't reach an agreement in choosing the third arbitrator.

19. Can the appointment of an arbitrator be

challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Yes, it can be, the ground for such challenge is anything that can affect the independence or impartiality of the arbitrator towards the parties or if he hasn't the qualities required by parties.

The procedure of challenging is first before the arbitration tribunal and then before the court of appeal.

20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators, including the duty of disclosure?

No, there isn't.

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

No, one of parties should made a request to the court to help in this case.

22. Are arbitrators immune from liability?

No.

23. Is the principle of competence-competence recognised in your country?

Yes, it is.

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

If one party before answering in the merit raises an exception about the existence of an arbitration clause, the court should dismiss the case and direct parties to the arbitration process.

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

No, the local courts can take place of the failing party in

appointing the arbitrator.

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

In case of voluntary intervention, the arbitral tribunal examines the involvement of the intervening party in the transaction or in the agreement on the arbitration clause.

If all parties don't agree on the intervention, the court may allow for it.

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

The local courts can take interim and provisional measures like seizures, expertise.

It can help in providing evidence following a request of one party and the authorization of the arbitral tribunal.

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

No.

29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

The local courts can help in providing evidence following a request of one party and the authorization of the arbitral tribunal.

30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

No specific codes apply.

The main standards required by law are, independence, impartiality, and competence of arbitrators.

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

No specific rules at this regard.

32. How are the costs of arbitration proceedings estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?

Yes.

33. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

- capacity of the parties,
- validity of the arbitration clause,
- respect of the procedure essentially defense rights and convocation,
- the award should be in the framework of the arbitration clause,
- respect of the arbitration clause and rules as for the constitution of the arbitral tribunal and the procedure followed,
- non violation of a rule of public order,

The minimum of motivation of the sentence was required by the courts as additional condition for the recognition and enforcement of the award.

34. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

The average time for the recognition of an award is 1 year.

35. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Mainly the standards are the same.

36. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

No specific rules at this regard.

37. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Arbitration awards can be challenged before local courts for absence of one of the conditions of recognition or enforcement, indeed the reasons for annulment of an award are the same as those for the non-recognition or non-enforcement.

38. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

They can waive the right of appeal for local arbitration.

For international arbitration it is only subject to a request for annulment which cannot be waived.

39. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

The third party can be bound by an award if he is admitted as a party in the arbitration case.

As a part in the case, the third party can challenge the recognition or the award.

40. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

No.

41. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Yes, since 2019 emergency arbitrators' orders are recognized and enforceable before Tunisian courts.

42. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

Not yet.

43. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

No.

44. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

Not at our knowledge.

45. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

Not yet.

46. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

Suspension of the procedure and the deadlines.

47. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

Not yet.

48. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

Not at our knowledge.

49. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

Yes, at some extent, the Tunisian courts considered the international economic sanctions as part of their international public policy, the case was about the Libyan assets and funds belonging to Kaddafi family transferred to Tunisia after the Libyan revolution and about which the UNO has taken a decision of freezing.

At our knowledge, there is no case dealing with this matter in international arbitration involving a Tunisian party.

50. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

Not yet.

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