

# MOROCCO

CHAPTER PREPARED BY

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## FOR FURTHER INFORMATION

[GAP TABLE OF CONTENTS](#) | [GAP TRAFFIC LIGHTS FOR ALL JURISDICTIONS](#) | [FULL GAP ONLINE](#)

EN [DELOS MODEL CLAUSES](#)  
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## JURISDICTION INDICATIVE TRAFFIC LIGHTS

- |  |   |
|--|---|
| 1. Law                                       | ● |
| a. Framework                                 | ● |
| b. Adherence to international treaties       | ● |
| c. Limited court intervention                | ● |
| d. Arbitrator immunity from civil liability  | ● |
| 2. Judiciary                                 | ● |
| 3. Legal expertise                           | ● |
| 4. Rights of representation                  | ● |
| 5. Accessibility and safety                  | ● |
| 6. Ethics                                    | ● |
| Evolution of above compared to previous year | ● |
| 7. Tech friendliness                         | ● |
| 8. Compatibility with the Delos Rules        | ● |

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

## IN-HOUSE AND CORPORATE COUNSEL SUMMARY

While arbitration is not widely used to resolve domestic disputes in Morocco, it is commonly resorted to in the context of cross-border transactions.

On 5 March 2020, the Government of Morocco put forward a draft law no. 95-17 on arbitration and contractual mediation which is intended to reform the Moroccan arbitration law and thus to promote the attractiveness of Morocco for foreign investors. Its ambition is for Morocco to become a regional hub for international arbitration. The emergence of a number of local arbitration centres such as the Casablanca International Mediation and Arbitration Centre is also likely to make Morocco, and in particular its economic capital (Casablanca), an attractive place for arbitration.

Key places of arbitration in the jurisdiction?	Casablanca.
Civil law / Common law environment? (if mixed or other, specify)	Civil law.
Confidentiality of arbitrations?	Moroccan arbitration law does not expressly provide for the confidentiality of arbitration. However, the Moroccan Code of Civil Procedure (the “Code”) provides that arbitrators are bound by professional confidentiality.
Requirement to retain (local) counsel?	There is no legal requirement to retain local counsel, or for a party to be represented by counsel (Code, Art. 327-12).
Ability to present party employee witness testimony?	There is no specific provision in the Code relating to the ability to present party employee witness testimony, nor is there any provision prohibiting it.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	The arbitral tribunal may, unless otherwise agreed by the parties, hold meetings or hearings at any place it considers appropriate, including at a different venue from the seat, or remotely.  During the Covid-19 pandemic, virtual hearings did take place. However, some commentators consider that while a hearing involving the exchange of information and documents and oral argument may be virtual, parties have a right to require a further hearing in person, in particular in order to examine witnesses.
Availability of interest as a remedy?	Parties are entitled to claim interest as it is not prohibited by the Code.
Ability to claim for reasonable costs incurred for the arbitration?	The Code (Art. 124) sets out a general principle that court costs in litigation before the state courts are borne by the unsuccessful party or parties, which is also applicable to an arbitration in which the procedural law is Moroccan law. The Code does not make express provision in other cases, but it is generally recognized that upon the request of a party, the arbitral tribunal may award costs of the arbitration including the fees and expenses of the arbitrators, the cost of legal representation of the parties, fees and expenses of the arbitral institution and any other costs

	<p>incurred in connection with the proceedings.</p> <p>For domestic arbitration (and international arbitration where Moroccan procedural law applies) the Code provides that the arbitral award shall fix the arbitrators' fees and the arbitration expenses, and apportion them between or among the parties. If the parties and the arbitrators do not agree on the amount of the arbitrators' fees, the fees are fixed by the arbitral tribunal. This decision may be appealed to the president of the commercial court having jurisdiction. The decision of the court is final and there is no further right of appeal (Code, Art. 327-24). The Code does not expressly deal with the question of the arbitrators' fees and arbitration expenses in respect of international arbitration in the event that Moroccan procedural law does not apply to the arbitration.</p>
Restrictions regarding contingency fee arrangements and/or third-party funding?	The Code does not prohibit contingency fee arrangements or third-party funding. However, Art. 44 of the Dahir implementing law no. 1-93-162 dated 10 September 1993 relating to the legal profession prohibits Moroccan lawyers from fixing fees according to the result to be achieved.
Party to the New York Convention?	Yes – Morocco ratified the New York Convention in Dahir No. 1-59-266 of 19 February 1960.
Party to the ICSID Convention?	Yes – Morocco ratified the ICSID Convention by Royal Decree No. 564-65 of 31 October 1966.
Compatibility with the Delos Rules?	No particular concerns.
Default time-limitation period for civil actions (including contractual)?	With some exceptions, <sup>1</sup> all actions arising from an obligation are time-barred after fifteen years. <sup>2</sup>
Other key points to note?	∅
<a href="#">World Bank Enforcing Contracts: Doing Business</a> score for 2020, if available?	63.7
<a href="#">World Justice Project, Rule of Law Index: Civil Justice</a> score for 2020, if available?	In 2020, Morocco ranked 79 <sup>th</sup> out of 128 countries with a score of 0.50.

<sup>1</sup> For instance, five years for commercial actions pursuant to Article 5 of the Moroccan Commercial Code.

<sup>2</sup> Article 387 of the Moroccan Code of Obligations.

## ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	The main sources of the law of arbitration are Dahir No. 1-59-266 of 19 February 1960 relating to the ratification of the New York Convention, and Articles 306 to 327 of the Moroccan Code of Civil Procedure (the “ <b>Code</b> ”), as amended in 2007.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	Moroccan arbitration law is inspired by the principles set out in the 1985 UNCITRAL Model Law (not the 2006 version) although it is not based on the Model Law.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	No. Arbitration matters are handled by the courts of common jurisdiction.
Availability of <i>ex parte</i> pre-arbitration interim measures?	The existence of an arbitration agreement does not prevent the parties, either before initiating the arbitration or during the arbitration proceedings, from obtaining interim or conservatory measures from the urgent matters judge ( <i>juge des référés</i> ). <sup>3</sup> Such interim measures may be obtained <i>ex parte</i> in case of urgency. <sup>4</sup>
Courts’ attitude towards the competence-competence principle?	The arbitral tribunal can rule on its own jurisdiction and on the validity of the arbitration agreement. <sup>5</sup>
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	The Code does not make specific provision for this possibility.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	The grounds for annulment of an award rendered in an international arbitration <sup>6</sup> are similar (but not identical) to the grounds in the New York Convention, and comprise the following: (1) the arbitral tribunal decided without an arbitration agreement or based on an invalid arbitration agreement, or after the time during which the award was required to be rendered, (2) the arbitral tribunal was irregularly constituted or the sole arbitrator was irregularly appointed, (3) the arbitral tribunal failed to comply with the mandate conferred upon it, (4) due process has not been respected, or (5) the award is contrary to domestic or international public policy. The grounds for annulment of an award rendered in a domestic arbitration <sup>7</sup> are broader, for example providing for annulment of the award in case of failure to (1) comply with certain formal requirements for the award set

<sup>3</sup> Article 327-1 of the Moroccan Code of Civil Procedure.

<sup>4</sup> Article 151 of the Moroccan Code of Civil Procedure.

<sup>5</sup> Article 327-9 of the Moroccan Code of Civil Procedure in respect of domestic arbitration; the courts will adopt a similar approach in respect of international arbitration.

<sup>6</sup> Article 327-49 and 327-51 of the Moroccan Code of Civil Procedure.

<sup>7</sup> Article 327-36 of the Moroccan Code of Civil Procedure.

	out in the Code, or (2) respect the procedure or the substantive law agreed between the parties.
Do annulment proceedings typically suspend enforcement proceedings?	Yes, unless (in the case of international arbitration) the award provides that it is provisionally enforceable, in which case the judge has discretion as to whether to suspend. <sup>8</sup>
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	There is no specific provision in the Code addressing the recognition and enforcement of foreign awards annulled at the seat of the arbitration. However, the Rabat Commercial Court has held that recognition and enforcement of an award must be refused if a party demonstrates that the award has not yet become binding on the parties or has been annulled or suspended by a competent authority of the country in which the award was rendered. <sup>9</sup>
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	We are not aware of any authority on this point.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	Assets belonging to public bodies or relating to the performance of a public service (in French " <i>service public</i> ") cannot be seized. <sup>10</sup> Reasons must always be given for an award in a dispute to which a person governed by public law is a party (Code, Art. 327-23). In case of a dispute to which a legal person governed by public law is a party, the arbitral award becomes <i>res judicata</i> (acquires " <i>force de chose jugée</i> ") only by virtue of an <i>exequatur</i> order (Code, Art. 327-26).
Is the validity of blockchain-based evidence recognised?	We are not aware of any authority on this point.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	We are not aware of any authority on this point.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	We are not aware of any authority on this point.
Other key points to note?	∅

<sup>8</sup> Article 327-36 of the Moroccan Code of Civil Procedure in respect of domestic arbitration; Article 327-53 of the Moroccan Code of Civil Procedure in respect of international arbitration.

<sup>9</sup> Rabat Commercial Court, no. 507, file no. 136/3/2013, 22/04/2013.

<sup>10</sup> Article 9 of the 2020 Finance Law (promulgated by Dahir no. 1-19-125 dated 13 December 2019 (Official gazette no. 6838 bis dated 14 December 2019)

## JURISDICTION DETAILED ANALYSIS<sup>11</sup>

### 1. The legal framework of the jurisdiction

#### 1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version?

Morocco has not adopted the UNCITRAL Model Law, although Moroccan arbitration law is inspired by the Model Law (the 1985 version) as well as by French arbitration law (prior to its reform of January 2011). It is contained in Articles 306 to 327 of the Moroccan Code of Civil Procedure.

#### 1.2 When was the arbitration law last revised?

Moroccan arbitration law was amended in 2007 by law no. 08-05 promulgated by Dahir no. 107169 dated 30 November 2007. A further reform is currently in progress (please see below).

### 2. The arbitration agreement

#### 2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The Code does not make specific provision regarding the law governing the arbitration agreement. However, it provides that the parties can freely choose the law governing the merits of their dispute. In the event that such law is not agreed by the parties, the court (or arbitral tribunal) applies the law which would be the most appropriate given the specific circumstances of the case.<sup>12</sup>

The Code also provides that an arbitral tribunal will in any event take into account the terms of the contract and any relevant practices or customs.

#### 2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

We are not aware of any authority on this point.

#### 2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Yes. In domestic arbitration, the Code expressly provides that the arbitration clause is considered to be an agreement independent from the other terms of the contract. The nullity or termination of the contract therefore has no effect on an arbitration clause contained in the contract.<sup>13</sup>

The Code does not deal with this point expressly in respect of international arbitration, but it is likely that the Moroccan courts would follow a similar approach.

#### 2.4 What are the formal requirements (if any) for an enforceable arbitration agreement?

##### Domestic arbitration

In domestic arbitration, an agreement to arbitrate may be contained in an arbitration clause in a contract, or in a separate agreement to arbitrate entered into after the dispute has arisen (in which case it must

<sup>11</sup> The authors would like to thank Dounia El Aissaoui for her invaluable assistance in researching this chapter.

<sup>12</sup> Article 318 of the Moroccan Code of Civil Procedure in respect of domestic arbitration; Article 327-44 of the Moroccan Code of Civil Procedure in respect of international arbitration.

<sup>13</sup> Article 318 of the Moroccan Code of Civil Procedure.

stipulate the nature of the dispute). In both cases, the agreement must either designate the arbitral tribunal or set out how it will be appointed. In the event that it does not do so, it will be null and void.<sup>14</sup>

In both cases, the arbitration agreement must be in writing. It is deemed to be in writing where (1) it is contained in a document signed by the parties or in an exchange of letters, telexes, telegrams or any other conventional mode of communication that proves its existence, (2) it is contained in an exchange of pleadings in which the existence of an arbitration agreement is alleged by one party and not contested by the other party, (3) it is contained in a model contract, international convention or other document which is clearly incorporated into a written contract between the parties, or (4) the parties to court proceedings agree to an arbitration and the court therefore decides to submit the dispute to arbitration.<sup>15</sup>

### International arbitration

The Code does not contain any express provision regarding the requirements for an arbitration agreement in international arbitration.

However, the fact that a party must produce a copy of the arbitration agreement in order to enforce an award made in an international arbitration<sup>16</sup> means that, in practice, the arbitration agreement should be recorded in writing. The necessity of a written agreement has also been confirmed by the Casablanca Commercial Court of Appeal.<sup>17</sup>

## **2.5 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?**

Moroccan legislation does not expressly provide for the possibility of third parties being bound by an arbitration agreement.

However, in the context of international arbitration, some court decisions have held that a third party who has not signed an arbitration agreement but who has had an effective role in the conclusion, performance or termination of the contract containing it may be bound by the arbitration agreement.<sup>18</sup> The Moroccan Courts have not yet recognized this possibility in domestic arbitration.

### **2.5.1 Are there restrictions to arbitrability?**

Moroccan law provides for some restrictions, in particular regarding state entities and the status and capacity of persons.

### **2.5.2 Do these restrictions relate to specific domains (such as anti-trust, employment law etc.)?**

Moroccan law provides that disputes concerning the status and capacity of persons, and concerning personal, non-commercial rights, such as inheritance, marriage, or divorce, cannot be submitted to arbitration.<sup>19</sup> However, disputes between spouses regarding the management, investment or distribution of marital property may be arbitrated, provided that the arbitration agreement is contained in a document independent from the marriage contract.<sup>20</sup>

In addition, disputes concerning the validity of patents, the implementation of tax legislation, the dissolution of companies and the alleged illegality of companies' articles of association are not arbitrable.

<sup>14</sup> Articles 307 and 314 - 317 of the Moroccan Code of Civil Procedure.

<sup>15</sup> Articles 313 and 314 of the Moroccan Code of Civil Procedure.

<sup>16</sup> Article 327-47 of the Moroccan Code of Civil Procedure.

<sup>17</sup> Casablanca Commercial Court of Appeal, No. 163/1/2007, file no. 1387/07/4, 17/7/2007.

<sup>18</sup> For example, Casablanca Commercial Court of Appeal, No. 220, file no. 2669/8224/2013, 15/01/2015.

<sup>19</sup> Article 309 of the Moroccan Code of Civil Procedure.

<sup>20</sup> Article 49 of the Moroccan Family Code.

The arbitrability of a dispute is also subject to the general principle that parties to a contract may not derogate, by agreement, from the rules relating to public policy and morality.<sup>21</sup>

Regarding employment law, the Labour Code provides that collective labour disputes ("*conflits collectifs de travail*") may be submitted to arbitration. Articles 567 to 585 of the Labour Code regulate the arbitration procedure.

The arbitrability of individual labour disputes ("*conflits individuels de travail*") has not been addressed by the legislator, although case law has confirmed that the general rules set out in the Code of Civil Procedure apply to these disputes,<sup>22</sup> which suggests that they can be submitted to arbitration.

There are no restrictions relating to anti-trust law.

### **2.5.3 Do these restrictions relate to specific persons (i.e., State entities, consumers etc.)?**

Disputes involving unilateral acts of the Moroccan State, local government, or other public entities cannot be submitted to arbitration.<sup>23</sup> Nevertheless, financial disputes involving these entities (except disputes of a fiscal nature) may be submitted to arbitration after the dispute has arisen. Moroccan publicly owned companies that are governed by commercial company law may enter into arbitration agreements to the extent that this has been approved by their board of directors.<sup>24</sup>

## **3. Intervention of domestic courts**

### **3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?**

Where a dispute that has been submitted to an arbitral tribunal pursuant to an arbitration agreement is brought before a court, the court must, where the defendant so requests before a ruling on the merits, judge the proceedings inadmissible ("*prononcer l'irrecevabilité*") until the arbitration proceedings have been completed or the arbitration agreement has been annulled.<sup>25</sup> This applies irrespective of whether the seat of the arbitration is within or outside of the jurisdiction.

If the arbitral tribunal has not yet been seized, the court, at the request of the defendant, must also declare the proceedings inadmissible, unless the arbitration agreement is manifestly void.

While the court is considering an application, the arbitration proceedings may be commenced or continued and an award may be issued pending the decision of the court.<sup>26</sup>

A declaration of inadmissibility can only be made on the application of a party and cannot be made on the court's own motion. The Rabat Court of Appeal has stated that when a claim is made to a court in breach of an arbitration agreement and none of the parties relies on the arbitration agreement, the parties are deemed to have waived the right to arbitrate.<sup>27</sup>

### **3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?**

There are no provisions of the Code dealing with this question.

<sup>21</sup> Article 62 of the Moroccan Code of Obligations

<sup>22</sup> Supreme Court, soc., 17 October 2007, file no. 940/5/1/2006

<sup>23</sup> Article 310 of the Moroccan Code of Civil Procedure.

<sup>24</sup> Article 311 of the Moroccan Code of Civil Procedure.

<sup>25</sup> Article 327 of the Moroccan Code of Civil Procedure in respect of domestic arbitration; the courts will adopt a similar approach in respect of international arbitration.

<sup>26</sup> Article 327 last paragraph of the Moroccan Code of Civil Procedure.

<sup>27</sup> Rabat Court of Appeal, 3<sup>rd</sup> Chamber, 25/2/1932.



### **3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/ anti-arbitration injunctions or orders but not only)**

Morocco does not have a tradition of anti-suit or anti-arbitration injunctions or orders. In domestic arbitration, the courts may grant interim measures in support of an arbitration seated outside of the jurisdiction but they are unlikely to grant anti-suit injunctions.<sup>28</sup>

## **4. The conduct of the proceedings**

### **4.1 Can parties retain foreign counsel or be self-represented?**

Both options are possible. The parties may be represented or assisted by any person of their choice.<sup>29</sup>

### **4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of a gravity such as to justify this outcome?**

An arbitrator may be removed if circumstances give rise to justifiable doubts as to his or her impartiality or independence, or if he or she does not meet the prerequisites established by the parties.

In domestic arbitration and, unless the parties have agreed otherwise, international arbitration where Moroccan procedural law applies, an arbitrator who has accepted his or her appointment must declare, in writing, at the time of his or her acceptance, any circumstances likely to give rise to doubts as to his or her impartiality or independence.<sup>30</sup> This principle has been reiterated by the Casablanca Commercial Court of Appeal<sup>31</sup> which held that an arbitrator must declare in writing any circumstance that would be likely to undermine his or her neutrality or impartiality.

The Code does not make specific provision for the grounds on which an arbitrator may be challenged in international arbitration.

### **4.3 On what grounds do courts intervene to assist in the Constitution of the arbitral tribunal (in case of ad hoc arbitration)?**

In domestic *ad hoc* arbitration,<sup>32</sup> if the parties are unable to agree on the appointment of the arbitral tribunal:<sup>33</sup>

- Where the arbitral tribunal is composed of a single arbitrator, the arbitrator shall be appointed by the president of the competent court if either of the parties so requests;
- Where the arbitral tribunal is composed of three arbitrators, each of the parties shall appoint one arbitrator. The two appointed arbitrators shall agree on the appointment of the presiding arbitrator. Where one of the parties fails to appoint an arbitrator within 15 days of receipt of a request to that effect from the other party or where the two appointed arbitrators fail to agree on the appointment of the third arbitrator within 15 days of the appointment of the last of them, the president of the competent court shall make the appointment at the request of either of the parties; and

<sup>28</sup> Article 327-1 of the Moroccan Code of Civil Procedure.

<sup>29</sup> In domestic arbitration and, unless the parties have agreed otherwise, international arbitration where Moroccan procedural law applies, see Article 327-12 of the Moroccan Code of Civil Procedure.

<sup>30</sup> Article 327-6 of the Moroccan Code of Civil Procedure.

<sup>31</sup> Casablanca Court of Appeal, no. 4032, file no. 2014/8230/5628, 14/7/2015.

<sup>32</sup> In institutional arbitration, the rules of the institution will apply.

<sup>33</sup> Article 327-5 of the Moroccan Code of Civil Procedure.

- The president of the competent court shall ensure that the arbitrator that he or she appoints meets any requirements imposed by the law and or the parties. The decision is not subject to appeal.

In international arbitration, unless the parties agree otherwise (1) the president of the court that will have jurisdiction to enforce the award, or (2) the president of the court of Rabat if the seat is outside Morocco but Moroccan procedural law applies, has the power to intervene in the event of difficulties with the constitution of the arbitral tribunal.<sup>34</sup> The Code does not specify the principles to be applied by the court in such cases.

Conversely, it should be noted that if an arbitration is not intended to be enforced in Morocco, or if it is seated abroad and the parties have not agreed to the application of Moroccan procedural law, it is doubtful whether the Moroccan courts have the power to assist with the constitution of the arbitral tribunal.

#### **4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider ex parte requests?**

In domestic arbitration, the interim relief judge of the court may issue provisional or conservatory measures, either before the arbitration proceedings have commenced or during the proceedings.<sup>35</sup>

The Code does not expressly deal with this point in relation to international arbitration, but it is likely that the Moroccan courts would follow a similar approach.

Courts will consider an ex parte request in cases of urgency.<sup>36</sup>

#### **4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?**

In domestic arbitration, the Code expressly provides that due process rights must be respected<sup>37</sup>. It also contains certain provisions regarding the exchange of written submissions, their contents, the consequences of a party's default and the hearing,<sup>38</sup> and provides that the language of the arbitration will be Arabic unless the parties agree or the tribunal decides otherwise.<sup>39</sup> In international arbitration, the Code provides that the arbitral procedure, unless it is set out in the arbitration agreement, will be determined by the arbitral tribunal, whether by reference to a law or rules of arbitration or otherwise.<sup>40</sup>

Otherwise, aside from the matters set out below, the Code does not regulate the conduct of the arbitration. The parties are free to agree an appropriate procedure, failing which the arbitral tribunal will decide on the procedure to be followed.

##### **4.5.1 Does it provide for the confidentiality of arbitration proceedings?**

Arbitrators are bound by professional secrecy.<sup>41</sup> However, there is no specific provision in the Code about the confidentiality of arbitral proceedings. The parties are free to agree to confidentiality provisions in their contract or during the course of the arbitration.

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<sup>34</sup> Article 327-41 of the Moroccan Code of Civil Procedure.

<sup>35</sup> Article 327-1 of the Moroccan Code of Civil Procedure.

<sup>36</sup> Article 151 of the Moroccan Code of Civil Procedure.

<sup>37</sup> Article 319 of the Moroccan Code of Civil Procedure.

<sup>38</sup> Article 327-14 of the Moroccan Code of Civil Procedure.

<sup>39</sup> Article 327-13 of the Moroccan Code of Civil Procedure.

<sup>40</sup> Article 327-42 of the Moroccan Code of Civil Procedure.

<sup>41</sup> Article 326 of the Moroccan Code of Civil Procedure.

#### 4.5.2 Does it regulate the length of arbitration proceedings?

If the arbitration agreement does not specify a time limit by which the arbitral tribunal must render its award, in domestic arbitration (and international arbitration where Moroccan procedural law applies) the arbitrators' term of office shall end six months from the day on which the last arbitrator accepts his or her appointment.<sup>42</sup> If the award is not rendered within this time limit, any party to the arbitration may request the president of the court of competent jurisdiction to end the arbitration and either party may refer the dispute to the court which would have jurisdiction in the absence of an arbitration agreement.<sup>43</sup>

The Supreme Court has confirmed that this time limit is not a rule of public order (*règle d'ordre public*) and is therefore only applicable in the absence of an agreement to the contrary between the parties to the arbitration.<sup>44</sup>

The Casablanca Commercial Court of Appeal has held that if the parties have granted the arbitrators an open-ended time to complete the arbitration, they are not entitled to rely on the provisions of the Code which provide for a time limit for the arbitration.<sup>45</sup>

Moreover, the Code provides that the contractual or legal time limit may be extended either by agreement of the parties or by the president of the competent court at the request of one of the parties or of the arbitral tribunal.<sup>46</sup>

The Code does not expressly regulate the length of arbitral proceedings in relation to international arbitration.

#### 4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

The parties are free to agree on the seat or place of arbitration. In the absence of agreement, the place of arbitration shall be determined by the arbitral tribunal. In domestic arbitration and, unless the parties have agreed otherwise, in international arbitration where Moroccan procedural law applies, the tribunal must take into account the circumstances of the case, including the domicile of the parties.<sup>47</sup>

The arbitral tribunal may meet at any place it considers appropriate for an oral hearing, for hearing witnesses, experts or the parties, for deliberation among its members or for inspection of property or documents.

Several initiatives encourage the use of virtual hearings in appropriate circumstances, for example the Africa Arbitration Academy Protocol on Virtual Hearings in Africa 2020.<sup>48</sup> However, we are not aware of any Moroccan authority regarding whether hearings can be held remotely notwithstanding the objection of one of the parties.

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<sup>42</sup> Article 327-20 of the Moroccan Code of Civil Procedure.

<sup>43</sup> Article 327-20 of the Moroccan Code of Civil Procedure.

<sup>44</sup> Supreme Court, Commercial Chamber, 16/2/2005; *Le droit de l'arbitrage au Maroc*, Mohamed DIYAA TOUMLILT et Ahmed ALAA TOUMLILT, Les Editions Maghrébines, Edition 2014, p.349.

<sup>45</sup> Casablanca Commercial Court of Appeal, 25/4/2006; *Le droit de l'arbitrage au Maroc*, Mohamed DIYAA TOUMLILT et Ahmed ALAA TOUMLILT, Les Editions Maghrébines, Edition 2014, p.349.

<sup>46</sup> Article 327-20 of the Moroccan Code of Civil Procedure.

<sup>47</sup> Article 327-10 of the Moroccan Code of Civil Procedure.

<sup>48</sup> <https://www.africaarbitrationacademy.org/protocol-virtual-hearings/>.

#### **4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?**

In domestic arbitration and international arbitration where Moroccan procedural law applies, unless otherwise agreed by the parties, the arbitral tribunal may, at the request of either party, issue any interim or conservatory measure it deems necessary within the scope of its mandate.<sup>49</sup>

It can be inferred from this article that interim measures cannot be ordered by the arbitral tribunal on its own motion.<sup>50</sup> The arbitral tribunal must first have been seized of a request by at least one of the parties. In addition, interim measures must not be prohibited by the arbitration agreement.

The Code does not expressly deal with this point in relation to international arbitration.

#### **4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence?**

The Code does not restrict the ability of the arbitrators to admit or exclude evidence. However, in domestic arbitration, it does empower the arbitral tribunal to require a party to produce evidence that is in its possession.<sup>51</sup>

The Code does not expressly deal with this point in relation to international arbitration, but the Code grants the Tribunal a broad discretion over procedural matters.<sup>52</sup>

For example, are there any restrictions to the presentation of testimony by a party employee?

The Code does not contain any such restrictions.

#### **4.5.6 Does it make it mandatory to hold a hearing?**

In domestic arbitration and international arbitration where Moroccan procedural law applies, unless otherwise agreed by the parties, the arbitral tribunal may decide either to hold a hearing to enable the parties to explain the subject-matter of the proceedings and to present their evidence, or to dispense with a hearing and decide on the basis of written pleadings and documents.<sup>53</sup>

The Code does not expressly deal with this point in relation to international arbitration, but the Code grants the Tribunal a broad discretion over procedural matters.<sup>54</sup>

#### **4.5.7 Does it prescribe principles governing the awarding of interest?**

Moroccan arbitration law does not expressly provide for any rules relating to the awarding of interest.

#### **4.5.8 Does it prescribe principles governing the allocation of arbitration costs?**

In domestic arbitration and, unless the parties have agreed otherwise, in international arbitration where Moroccan procedural law applies, the Code provides that the arbitral award shall fix the arbitrators' fees and apportion them among the parties. If the parties and the arbitrators do not agree on the amount of the arbitrators' fees, the fees are fixed by the arbitral tribunal.<sup>55</sup>

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<sup>49</sup> Article 327-15 of the Moroccan Code of Civil Procedure.

<sup>50</sup> *Le droit de l'arbitrage au Maroc*, Mohamed DIYAA TOUMLILT et Ahmed ALAA TOUMLILT, Les Editions Maghrébines, Edition 2014, p.325.

<sup>51</sup> Article 327-11 of the Moroccan Code of Civil Procedure.

<sup>52</sup> Article 327-42 of the Moroccan Code of Civil Procedure.

<sup>53</sup> Article 327-14 of the Moroccan Code of Civil Procedure.

<sup>54</sup> Article 327-42 of the Moroccan Code of Civil Procedure.

<sup>55</sup> Article 327-24 of the Moroccan Code of Civil Procedure.

Further, the general principle set out in the Code is that court costs are borne by the unsuccessful party.<sup>56</sup> Arbitral tribunals are likely to apply this principle where the arbitration is governed by Moroccan law.

It should be noted that these provisions do not deal with lawyer's fees. In court proceedings, the judge will not order an unsuccessful party to pay the lawyers' fees of the successful party, and an arbitral tribunal may be inclined to follow the same approach.

The Code does not deal with the question of costs expressly in respect of international arbitration.

## **4.6 Liability**

### **4.6.1 Do arbitrators benefit from immunity from civil liability?**

Arbitrators do not benefit from immunity from civil liability.

### **4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?**

There are no particular concerns arising from potential criminal liability for any of the participants in arbitration proceedings.

## **5. The award**

### **5.1 Can parties waive the requirement for an award to provide reasons?**

In domestic arbitration concerning private parties and, unless the parties have agreed otherwise, in international arbitration where Moroccan procedural law applies, the arbitral award must state the

reasons for the decision, unless (i) the parties have agreed otherwise in the arbitration agreement or (ii) the law to be applied to the arbitration proceedings does not require the award to be reasoned.<sup>57</sup>

However, an award in a dispute involving a party governed by public law must always state the reasons on which it is based.<sup>58</sup>

The Code does not expressly deal with this point in relation to international arbitration.

### **5.2 Can parties waive the right to seek the annulment of the award?**

Parties cannot waive the right to seek the annulment of the award.

### **5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?**

In domestic arbitration and, unless the parties have agreed otherwise, in international arbitration where Moroccan procedural law applies, the award must set out (1) the names, nationalities, roles and addresses of the arbitrators, (2) the date and place at which it was made, (3) the name and nationality of the parties and the names of their lawyers or representatives (if any), and (4) the award relating to the arbitrator's fees.<sup>59</sup> It must be signed by each arbitrator or, if a minority refuses to sign, the award must state this and state the reasons for non-signature.<sup>60</sup>

### **5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?**

No, there is no possibility for a party to appeal an award on the merits or on the basis of errors of law.

<sup>56</sup> Article 124 of the Moroccan Code of Civil Procedure.

<sup>57</sup> Article 327-23 of the Moroccan Code of Civil Procedure.

<sup>58</sup> Article 327-23 of the Moroccan Code of Civil Procedure.

<sup>59</sup> Article 327-24 of the Moroccan Code of Civil Procedure.

<sup>60</sup> Article 327-25 of the Moroccan Code of Civil Procedure.

An arbitral award can only be challenged by way of an action for annulment before the Court of Appeal of competent jurisdiction.<sup>61</sup>

### 5.5 If yes, what are the grounds for appeal?

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### 5.6 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

The Code distinguishes between domestic arbitration and international arbitration:

- In domestic arbitration, enforcement proceedings are brought before the president of the commercial or administrative court having jurisdiction at the place where the arbitration award was rendered.<sup>62</sup> In order to apply for enforcement, the award together with a copy of the arbitration agreement, and a translation into Arabic where applicable, must be deposited by one of the arbitrators or by either party at the office of the clerk of the court within seven clear days of its pronouncement.
- In international arbitration (whether the seat is local or foreign), enforcement proceedings are brought before the president of the commercial court of the place where the arbitration award was made, or before the president of the commercial court of the place of enforcement if the seat of the arbitration is located abroad. Recognition is granted if the existence of the award is proven and if it is not contrary to national or international public policy.<sup>63</sup> A party applying for enforcement must provide the court with the original of the award and the arbitration agreement (or certified copies). If these documents are not in Arabic, a translation certified by a translator approved by the courts must be produced.<sup>64</sup>

### 5.7 A decision to refuse the enforcement of an award may be appealed. A decision to grant enforcement may only be challenged on limited grounds (the grounds for annulment of the award) which differ depending on whether the arbitration is international or domestic.<sup>65</sup>

The grounds for challenging an order for enforcement or for applying for the annulment of an award in a domestic arbitration are that:<sup>66</sup>

- The award was made in the absence of an arbitration agreement, on the basis of a void agreement or after the expiry of the period of time during which the award was required to be rendered;
- The arbitral tribunal was improperly composed, the sole arbitrator was improperly appointed or the agreement of the parties was not complied with;
- The arbitral tribunal has ruled without complying with the terms of reference conferred upon it, has ruled on matters outside the scope of the arbitration agreement or has disregarded the limits of the agreement (although if it is possible to distinguish the parts of the award concerning matters submitted to arbitration from those not submitted to it, the award shall be set aside only in respect of the latter);

<sup>61</sup> Article 327-36 of the Moroccan Code of Civil Procedure in respect of domestic arbitration; Article 327-51 of the Moroccan Code of Civil Procedure in respect of international arbitration.

<sup>62</sup> Article 327-31 of the Moroccan Code of Civil Procedure.

<sup>63</sup> Article 327-46 of the Moroccan Code of Civil Procedure.

<sup>64</sup> Article 327-47 of the Moroccan Code of Civil Procedure.

<sup>65</sup> Articles 327-32, 327-33, 327-48 and 327-49 of the Moroccan Code of Civil Procedure.

<sup>66</sup> Article 327-36 of the Moroccan Code of Civil Procedure.

- The provisions of the Code concerning the names of the arbitrators and the date and signature of the arbitral award have not been observed;
- One of the parties has been unable to arrange for his or her defence because he or she has not been validly informed of the appointment of an arbitrator, arbitration proceedings or for any other reason relating to the duty to respect the rights of due process;
- The arbitral award is made in breach of a rule of public policy; and
- The procedure or the applicable law agreed between the parties has not been applied.

The grounds for appealing an order granting enforcement or for applying for the annulment of an award in an international arbitration are that:<sup>67</sup>

- The award was made in the absence of an arbitration agreement, on the basis of a void agreement or after the expiry of the period of time during which the award was required to be rendered;
- The arbitral tribunal was improperly composed or the sole arbitrator was improperly appointed;
- The arbitral tribunal has ruled without complying with the terms of reference conferred upon it;
- The rights of due process have not been respected; and
- The recognition or enforcement would be contrary to national or international public policy.

It should be noted that in domestic arbitration, if the court annuls the award it will then go on to consider the merits of the case (unless it has found that the arbitration agreement does not exist or is invalid).<sup>68</sup> This provision does not apply in international arbitration.<sup>69</sup>

### **5.8 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?**

The right to enforce an award is suspended during the period of time in which an application for annulment may be made. This suspension is continued in the event that an action for annulment is brought within the time limit, although in international arbitration this does not apply if the arbitral award states that it is provisionally enforceable.<sup>70</sup> If that is the case, the court seized of the challenge to the award may stay the enforcement if it considers it justified.<sup>71</sup>

### **5.9 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?**

The Moroccan Supreme Court has held that recognition and enforcement of an award should be refused if a party provides evidence that the award has not yet become binding or has been annulled or suspended by a competent authority of the country where the award was rendered.<sup>72</sup>

It is also of note that, in a 2008 decision, the Casablanca Commercial Court of Appeal granted enforcement of an international arbitral award only after verifying that the award, which had been subject to annulment proceedings, had not in fact been annulled.<sup>73</sup>

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<sup>67</sup> Articles 327-49 and 327-51 of the Moroccan Code of Civil Procedure.

<sup>68</sup> Article 327-37 of the Moroccan Code of Civil Procedure.

<sup>69</sup> Article 327-54 of the Moroccan Code of Civil Procedure.

<sup>70</sup> Article 327-36 of the Moroccan Code of Civil Procedure in respect of domestic arbitration; Article 327-53 of the Moroccan Code of Civil Procedure in respect of international arbitration.

<sup>71</sup> Article 327-53 of the Moroccan Code of Civil Procedure.

<sup>72</sup> Rabat Commercial Court, no. 507, file no. 136/3/2013, 22/04/2013.

### 5.10 Are foreign awards readily enforceable in practice?

We do not identify substantial issues regarding the enforcement of arbitration awards.

However, in practice, the proceedings can be lengthy and the requirement to translate the award into Arabic can be burdensome, particularly when the award is technical and/or lengthy.

## 6. Funding arrangements

### 6.1 Are there laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

There is no provision in the Code relating to contingency or alternative fee arrangements or third-party funding. However, Article 44 of the Dahir implementing law no. 1-93-162 dated on 10 September 1993 relating to the legal profession prohibits Moroccan lawyers from fixing fees according to the result to be achieved.

## 7. Arbitration and blockchain

### 7.1 Is the validity of blockchain-based evidence recognised?

We are not aware of any authority on this point.

### 7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

We are not aware of any authority on this point.

### 7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

We are not aware of any authority on this point.

### 7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

We are not aware of any authority on this point.

## 8. Is there likely to be any significant reform of the arbitration law in the near future?

A draft law no. 95-17 (the "**Draft Law**") relating to arbitration and contractual mediation was put forward by the Government Council on 5 March 2020. The draft must be considered by both chambers of the Parliament before it is brought into law. At this stage, no date for adoption of the text has been announced.

Unlike the current arbitration law, the Draft Law will not be integrated into the Moroccan Code of Civil Procedure but will rather be a separate code of arbitration and mediation. The government presents the new law as being "*adapted to the economic changes in our country and to the developments of a financial center in the Casablanca*". Its ambition is to promote Morocco as regional hub for international arbitration.

The main amendments proposed by the Draft Law are as follows:

- Clarification of the difference between domestic and international arbitration;

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<sup>73</sup> Casablanca Commercial Court of Appeal, 26/08/2008; *Le droit de l'arbitrage au Maroc*, Mohamed DIYAA TOUMLILT et Ahmed ALAA TOUMLILT, Les Editions Maghrébines, Edition 2014, p.510.



- Recognition of the validity of arbitration agreements signed by electronic means;<sup>74</sup> and
- Provision that enforcement proceedings in domestic and international arbitration must be heard *inter partes*<sup>75</sup> (currently, the Code does not require adversarial proceedings at the enforcement stage although the award debtor can challenge the enforcement order once it has been made).

#### **9. Compatibility of the Delos Rules with local arbitration law**

No particular concerns.

#### **10. Further reading**

Mohamed DIYAA TOUMLILT and Ahmed ALAA TOUMLILT, *Le droit de l'arbitrage au Maroc*, Les Editions Maghrébines, Casablanca, 2014.

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<sup>74</sup> Article 3 of the Draft Law.

<sup>75</sup> Articles 68 and 79 of the Draft Law

## ARBITRATION INFRASTRUCTURE IN THE JURISDICTION

Arbitration has experienced a recent boom in Morocco, due in particular to the restructuring that has taken place in the economic sector.

Several local arbitration centres are likely to make Morocco, and in particular its economic capital (Casablanca), an attractive place for arbitration.

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	<p>Leading arbitration institutions in Morocco are the following:</p> <ul style="list-style-type: none"> <li>- <a href="#">Casablanca International Mediation and Arbitration Center (CIMAC)</a>;</li> <li>- <a href="#">Centre international de médiation et d'arbitrage de Rabat (CIMAR)</a>;</li> <li>- <a href="#">Centre de Médiation et d'Arbitrage de Marrakech (CCIS)</a>;</li> <li>- <a href="#">Centre de conciliation et d'arbitrage d'Agadir (CCISA)</a>; and</li> <li>- <a href="#">The Moroccan Court of Arbitration ("Cour Marocaine d'Arbitrage")</a> in the International Chamber of Commerce of Morocco ("<a href="#">Chambre de Commerce Internationale du Maroc</a>") located in Casablanca.</li> </ul>
Main arbitration hearing facilities for in-person hearings?	Arbitration hearings typically take place in local hotels or offices.
Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?	∅
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	Local providers are available – enquiries should be made on a case-by-case basis.
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	Local providers are available – enquiries should be made on a case-by-case basis.
Other leading arbitral bodies with offices in the jurisdiction?	The <a href="#">Cour Africaine de la Médiation et d'Arbitrage (CAMAR)</a> has offices in Marrakech.