

Arab Convention on Commercial Arbitration

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Content

The governments of the following States:

1. The Hashemite Kingdom of Jordan

2. The Tunisian Republic

3. The Algerian Democratic and People's Republic

4. The Republic of Djibuti

5. The Republic of Sudan

6. The Arab Republic of Syria

7. The Iraqi Republic

8. Palestina

9. The Lebanese Republic

10. The Libyan People's Socialist Arab Jamahiriya

11. The Kingdom of Morocco

12. The Islamic Republic of Mauritania

13. The Arab Republic of Yemen

14. The People's Democratic Republic of Yemen

Convinced of the need to conceive unified Arab rules on commercial arbitrations which would find their place amongst the international and regional arbitration rules;

Wishing to obtain a fair balance in the matters of solution of disputes which might arise out of international commercial contracts as well as wishing to find fair solutions to these disputes;

And on the basis of the objectives of the Council of Arab Ministers of Justice with the purpose of a unification of Arab legislations and their adaption to modern evolution;

Have agreed the following:

Chapter 1 - General provisions

Article 1

The terms used in this Convention shall have the following meaning:

- a. "The Convention" means the Arab Convention on Commercial Arbitration.

- b. "The Contracting State" means a State acceding to this Convention.

- c. "The Council" means the Council of Arab Ministers of Justice.

- d. "The Secretary General" means the Secretary General of the Council of Arab Ministers of Justice.

- e. "The Centre" means the Arab Centre for Commercial Arbitration.

- f. "The Board of Directors" means the Board of Directors of the Arab Centre for Commercial Arbitration.

- g. "The Bureau" means the Bureau of the Centre.

- h. "The Director of authentications" means the Director appointed for the authentications of the Centre.

- i. "The Agreement to Arbitrate" means the written agreement by which the parties agreed to resort to arbitration before or after the dispute arose.

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- j. "The Roster" means the roster of the names of arbitrators.

Article 2

This Convention applies to commercial disputes between natural or juristic persons of any nationality, linked by commercial transactions with one of the contracting States or one of its nationals, or which have their main headquarters in one of these States.

Article 3

1. Reference to arbitration can be made by one of the two following means:

The first is to insert an arbitration clause in contracts entered into between the concerned parties, and the second is to establish an arbitration agreement once the dispute has arisen.

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2. The following standard clause should be inserted into contracts where one wishes to refer to arbitration:

"All disputes arising out of this Contract shall be settled by the Arab Centre for Commercial Arbitration in compliance with the provisions of the Arab Convention on Commercial Arbitration."

Chapter 2 - The Arab Centre for Commercial Arbitration

Article 4

By virtue of this Convention, a permanent organization called Arab Centre for Commercial Arbitration is created. It shall be an independent juristic person which is administratively and financially linked to the Secretariat General of the Council of Arab Ministers of Justice.

The Secretary General appoints the officials of this Centre in compliance with the provisions of the statutes of the Council and its implementation rules.

Article 5

1. The Centre shall have a Board of Directors made up of Arab personalities experienced in matters of law and arbitration and who are appointed by each of the contracting States for a period of three years, renewable.
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2. The Board of Directors chooses amongst its members a president for the Centre and two Vice-Presidents elected for a period of three years, renewable. The President thus elected shall also be the chairman of the Board of Directors.
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3. The Chairman of the Board of Directors and the two Vice-Presidents shall devote all their time to the Centre.
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4. The Centre shall dispose of a Bureau made up of the Chairman and the two Vice-Presidents.

Article 6

1. The Board of Directors shall meet each year in an ordinary session but it can may also meet in extraordinary sessions if necessary. The internal rules of the Centre determine the date of these sessions and the manner in which they are held.
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2. The quorum is deemed to have been met when the majority of the members of the Board of Directors are present. The decisions are taken by a majority of two-thirds of those present.
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3. The meeting of the Board of Directors are directed by the chairman who must also convene them.

Article 7

The Board of Directors has the following functions:

1. To make sure of the execution of the provisions of this Convention.
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2. To establish internal rules for the Centre.
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3. To examine the annual report on the activities of the Centre and to refer them to the Council for approval.
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4. To establish the roster of arbitrators.
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5. To exercise the other functions foreseen in this Convention.
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6. To establish a list of fees and expenses.

Article 8

The Bureau organizes commercial arbitration, fixes its bases, drafts model agreements to arbitrate in international commerce, establishes rules for commercial transactions, summarizes the principles on which awards were based and classifies, prints and edits them.

Article 9

The Chairman of the Board of Directors of the Centre is also its legal representative.

Article 10

1. The Convention of the League of the Arab States on the privileges and immunities is applicable to the Centre and to all persons appointed as members of the arbitral tribunal, as well as to the parties to the dispute and their Counsels and Lawyers as well as to witnesses and experts within the limits of what is necessary for a good performance of their mission.
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2. The provisions relating to documents and archives of the Council are applicable to the documents and archives of the Centre.

Article 11

The Council determines the fees of the Chairman, the two Vice-Presidents of the Centre and the members of the Board of Directors.

Article 12

The seat of the Centre is that of the Secretariat General of the Council in Rabat, capital of the Kingdom of Morocco.

Article 13

1. The Secretary General of the Council appoints a director for the authentications, chosen amongst persons holding a law degree ("licence en droit") and who have experience in this matter.
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2. This Director works under the supervision of the President of the Centre.
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3. He gives an official character to the arbitral awards and certifies each copy. He also takes all official measures foreseen in this Convention and which need execution of its provisions.

Chapter 3 - The arbitral tribunal

Article 14

1. The Board of Directors shall establish each year a roster of arbitrators chosen amongst lawyers or jurists or persons having a large experience and knowledge of commerce, industry and finances and of good reputations and morals.
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2. Before performing their mission, the arbitrators must take an oath before the President of the Centre or his deputy. This oath shall be as follows:

"I swear before God almighty that I shall judge fairly and that I shall respect the law applicable and that I shall exercise my mission with fidelity, fairness and impartiality."

Article 15

1. The arbitral tribunal shall be made up of three members, but the parties may agree on a sole arbitrator.
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2. Without prejudice of Article 33 of this Convention, the mission of arbitrators is only terminated once they have settled the dispute subject to the arbitration.

Chapter 4 - The arbitral proceedings

Article 16

The claimant must:

1. present to the Chairman of the Centre a claim containing:
 - (a) its names, first name, qualifications, nationality and address;

 - (b) the names, first name, qualifications and nationality of the defendant;

 - (c) a summary of the dispute and the facts relating thereto;

 - (d) its claims;

 - (e) the name of the proposed arbitrator.
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2. Join to its claim the agreement to arbitrate and all documents and evidence relating to the dispute.
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3. The request for arbitration is only accepted after payment of the dues.

Article 17

1. As of receipt of the request, the chairman of the Centre acknowledges receipt thereof and notifies a copy of this to the defendant.
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2. The defendant must, within thirty days following this notification, present its defence and counterclaims, if any, as well as the name of the arbitrator which it had chosen. To this must be added all documents of which this party disposes. Upon its request, the Bureau may grant it an additional time-period not exceeding thirty days.

Article 18

1. If the claimant does not appoint its arbitrator in its request, the Bureau itself appoints the arbitrator chosen on the roster within a week following registration of the request.
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2. If the defendant does not appoint its arbitrator within the thirty days foreseen in the above article, the Bureau appoints him itself from the roster.
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3. The chairman of the Centre invites the parties to agree on a chairman of the arbitral tribunal chosen upon the roster once the two other arbitrators have been appointed provided that such appointment of the chairman shall be made within thirty days following the date at which the parties have been invited to do so. If the parties cannot agree on this choice the Bureau itself appoints the Chairman from the roster.
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4. The arbitrators appointed by the Bureau may not be nationals of one of the parties.
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5. If one of the parties objects against the validity of the appointment of an arbitrator, the Bureau settles this dispute by a final decision which must be taken urgently.
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6. If one of the arbitrators dies or is unable to perform his mission because of an event of force majeure, another arbitrator is appointed in his place according to the same manner that was used for the appointment of the first arbitrator.
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7. The arbitrator may not resign after having started his mission. If serious grounds appear which hinder him from following up his mission, he may resign after approval of the Bureau of the Centre.

Article 19

1. Each party may challenge one of the arbitrators provided the grounds for such challenge are mentioned in the request for challenge.
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2. The Bureau settles the request for challenge within seven days following the date at which this request was received.
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3. If the request for challenge is accepted, a new arbitrator is appointed according to the same manner than the challenged arbitrator. The latter as well as the parties are notified of the Bureau's decision as of its making.

Article 20

Once the arbitral tribunal has been set up, the chairman of the Centre transmits the file to it so that it starts to perform its mission.

Article 21

1. The arbitral tribunal shall settle the dispute in compliance with the contract entered into between the parties and the provisions of the law on which they might expressly or tacitly have agreed, else with the law which has the closest relation with the subject matter of the dispute provided that the well-established rules of international commercial usages are respected.
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2. The arbitral tribunal must settle the case *ex aequo, et bono* if the parties expressly so agree.

Article 22

The arbitration takes place at the seat of the Centre unless the parties have agreed that it shall take place in another country approved by the arbitral tribunal after consultation of the Bureau.

Article 23

1. The language of the proceedings, pleadings and the award is arabic.
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2. The arbitral tribunal may decide to hear parties, witnesses and experts who do not speak arabic by resorting to a translator after having him take an oath.
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3. The arbitral tribunal may authorize that pleadings and evidence as well as all submissions be made in languages other than arabic provided that they be translated into arabic.

Article 24

A plea for a lack of jurisdiction as well as other pleas must be raised before the first hearing. The arbitral tribunal must settle these points before going into the substance of the dispute and its decision in this respect is final.

Article 25

The arbitral tribunal may, at any stage during the proceedings, request the parties to produce other documents and evidence. It may also inspect places and make any investigations it deems necessary.

Article 26

At any time after the closure of the hearing and before the award is made, the arbitral tribunal may, by its own motion or upon request of one of the parties, decide to re-open the hearings for serious grounds.

Article 27

Arbitration under the provisions of this Convention shall have the effect to forbid reference of the dispute to the courts of law as well as a recourse against the award before these courts.

Article 28

1. If one of the parties refrains from appearing without valid grounds during any stage of the proceedings, the proceedings shall take place in its absence.
2. If a party does not appear and does not submit any defence before the arbitral tribunal, this shall not be considered as an acknowledgment (by such party) of the truth of the other party's allegations.

Article 29

Upon request of any of the parties, the arbitral tribunal may take any interim measure of protection it deems necessary.

Article 30

A party who is aware of a breach of any of the provisions or conditions of this Convention and continues the arbitration without objecting against this shall be deemed to have waived its right to put this forward.

Chapter 5 - The Award

Article 31

1. Once the hearing is closed, the arbitral tribunal shall meet to deliberate and make the award.

2. The award is made by mutual agreement or by a majority within six months following the date of transmission of the file to the arbitral tribunal.

3. Upon request of the arbitral tribunal, the Bureau may extend the above-mentioned time.

4. If the Bureau is not convinced by the reasons put forward by the arbitral tribunal to request an extension of time, the Bureau fixes a time in which the arbitral tribunal must make its award and once this time has expired, the mission of the arbitral tribunal shall be terminated.

5. If the arbitrators cannot agree, the award is made according to the opinion of the Chairman and it is signed by the latter but this must be mentioned in the award.

6. A dissenting arbitrator may mention his dissenting opinion on a separate page which is joined to the award.

Article 32

1. The award must give the reasons on which it is based and it must mention the names of the arbitrators and of the parties, the date and place where it was made, a general summary of the facts, the claims of the parties, the summary of their arguments, the reply of the arbitral tribunal which is given to these and the award must mention which party must pay the expenses in whole or in part.

2. Within the three months following the making of the award, the Director of Authentication sends a copy of it to each party by registered letter with acknowledgment of receipt.

Article 33

1. If there is a material error in the award, the arbitral tribunal, either by its own motion or upon written request of one of the parties, may correct this error after having notified this request to the other party and provided that this request is made within fifteen days following the date at which the written award was received.

2. The decision to correct a material error is made on the award itself and is deemed to be an integral part thereof. Both parties must be notified of the decision to correct.

Article 34

1. Each party may, by a request sent to the Chairman of the Centre, request that the award be set aside in one of the following cases:
 - (a) if it is obvious that the arbitral tribunal exceeded the scope of its functions;

 - (b) if a judgment established a new fact which could substantially influence the award, provided, however, that the ignorance of these facts was not due to the lack of diligence of the party which requests the setting aside;

 - (c) if one of the arbitrators was under undue influence and if this had an effect on the award.

2. The request for setting aside must be presented within sixty days following the date of receipt of the award. However, if this request is based on one of the two grounds mentioned in paragraphs (b) and (c) above, it must be presented within sixty days following the date at which these facts were discovered. In all cases, the request of setting aside cannot be accepted after expiry of one year following the date of making the award.

3. The Bureau appoints a Commission made up of a chairman and two members chosen upon the roster which studies the request and settles it quickly. However, this Commission cannot analyze grounds other than those mentioned in the request for setting aside.

4. The Commission may not contain among its members one of the arbitrators who made the award or an arbitrator who has the same nationality as one of the parties to the dispute.

5. The Commission may set aside totally or in part the decision if the ground on which the request for setting aside was made is justified.

6. The Commission may provisionally suspend enforcement of the award until the request for challenge had been dealt with.

Article 35

The Supreme Court of each contracting State must give leave to enforce to awards of the arbitral tribunal. Leave may only be refused if this award is contrary to public order.

Article 36 - Transitory provisions

By exception to the provisions of paragraph 2 of Article 5 and the provisions of Articles 11 and 13 of this Convention, the Secretariat General of the Council shall be the Chairman of the Bureau and shall appoint two vice-presidents chosen amongst the officials of the Secretariat General of the Council. He also chooses the Director of Authentications amongst the officials of the Secretariat General holding at least a law degree ("licence en droit") until the Centre has sufficient financial capacity to cover its expenses.

Chapter 6 - Final provisions

Article 37

This Convention is subject to approval, acceptance and ratification of the signatory parties. The instruments of approval, acceptance and ratification shall be deposited with the Secretariat General of the League of Arab States within thirty days following the date of approval, acceptance and ratification. The Secretariat General must notify the other member States of the deposit of these instruments and its date, as well as the Secretariat General of the Council and the Presidency of the Centre.

Article 38

Each concerned authority in each signatory country shall take the necessary national measures for the execution of this Convention.

Article 39

This Convention shall come into force thirty days after the seventh deposit of the instrument of approval, acceptance or ratification.

Article 40

1. Each State of the League of Arab States, who has not signed this Convention may accede thereto by addressing a request to this effect to the Secretariat General of the League.
2. A State wishing to accede to the Convention is held to be bound by this Convention due to the sole fact that he has deposited the instrument of approval, acceptance or ratification and 30 days after the date of this deposit.

Article 41

No party may make any reservation implying explicitly or tacitly a contradiction with the provisions of this Convention or contrary to its purpose.

Article 42

1. Any contracting or acceding party may withdraw from this Convention by presenting a written reasoned request which it must send to the Secretary General of the League of Arab States.

2. This withdrawal will only be effective one whole year after the date of sending of this request.