

Rules of arbitration

Arbitration clause

Any dispute arising out of or relating to the present contract shall be settled by arbitration in conformity with the provisions of Tunis Center of Conciliation and Arbitration Rules currently in force.

*Consequently, the parties agree:
to submit their dispute to an arbitral tribunal composed of*

- *a sole arbitrator*
- *three arbitrators*

*appointed in conformity with the Center's Rules.
that the language of arbitration is...
that the dispute is settled in accordance with:*

- *the law...*
- *the rules of equity*

The Center commits to provide parties and arbitration tribunal with a secretariat which receives requests, ensure the functioning of arbitration procedures as well as administrative procedures, under the supervision of the President of the Center, and the Scientific Council.

Article 1

These Rules shall apply whenever an arbitration agreement appoints the Tunis Center for Conciliation and Arbitration to conduct arbitration proceedings between its parties.

Article 2

1. Number of arbitrators

The arbitral tribunal shall consist of a sole or three arbitrators nominated by the parties, or alternatively by the Center's Scientific Council.

If the arbitration agreement calls for a sole arbitrator, the parties shall mutually designate the arbitrator within 30 days of receipt by the Center of the statement of claim, which shall be notified immediately to the respondent.

After the expiry of this date, the Scientific Council will make the appointment.

2. Constitution of the Arbitral Tribunal

If the arbitral tribunal is composed of three arbitrators, each party shall appoint an arbitrator within 30 days after receipt of the notification of the statement of claim by the

respondent. Upon the expiry of this time period, and if a party has failed to appoint

an arbitrator, the Scientific Council of the Center shall make the appointment forthwith. Within 14 days from the date of the appointment or the date of notifying the Center of the last appointment, the two appointed arbitrators shall jointly select a third arbitrator who shall chair the Tribunal. Upon the expiry of this period, the Scientific Council of the Center shall promptly designate the chair of the Tribunal.

The Arbitral Tribunal will be legally constituted, providing that the arbitrators expressly accept their appointments, and the parties pay all administrative expenses, in addition to paying a deposit on the arbitrators' fees as fixed by the Center.

One or substitute arbitrators shall be appointed according to circumstances, following the same procedures as for the appointment of the originally appointed arbitrator or arbitrators. Their role shall be to fill any vacancies if necessary. The substitute arbitrator shall not be paid unless he or she is called to replace an arbitrator. The challenge by one of the parties, of a substitute arbitrator, shall not suspend the commencement of the arbitration.

Article 3

Qualifications of arbitrators

The arbitrator shall be independent and impartial. The selected arbitrator shall sign, before his or her appointment, a statement of independence. He or she shall disclose to the Secretariat of the Center any events or circumstances that might give rise to justifiable doubts as to his or her independence or impartiality.

The Center shall notify the parties in writing and fix a time period in which to comment. The arbitrator shall promptly notify the Center and the parties in writing of any facts or circumstances that might arise during the course of arbitration and give rise to justifiable doubts regarding the arbitrator's independence or impartiality.

Article 4

1. Challenge and dismissal of arbitrators

a. Any arbitrator may be challenged if circumstances exist or arise that might give rise to justifiable doubts regarding his or her independence or impartiality, or if he or she fails to meet the qualifications provided in the arbitration agreement by parties.

Parties shall not challenge an arbitrator who they have appointed or in whose appointment they have participated, save for reasons of which they become aware after the appointment was made.

b. The challenge of an arbitrator for a reason of which the challenger was aware prior to his or her appointment shall not be accepted, unless presented within 14 days after the notice of appointment of that arbitrator. After the expiry of that time period, the right to challenge is deemed to be waived, unless based on a reason which arose or was disclosed after the appointment.

c. The arbitrator shall not be dismissed after appointment except by agreement of the parties. In the event of non agreement, a request for dismissal shall be presented to the

Scientific Council of the Center for its decision. This decision shall not be subject to appeal.

d. Challenge or dismissal requests cannot be presented after the closure of the hearings **2.**

Replacement of arbitrators

a. In the event of a decision to withdraw or dismiss a challenged arbitrator, a substitute arbitrator shall replace that arbitrator. If such replacement fails, the appointment shall be made by of the Scientific Council of the Center.

b. The arbitral tribunal may require that hearings, which occurred prior to the replacement, shall be repeated, if it deems appropriate, taking into account the opinions of parties.

c. In the event of a judge or a public agent being appointed an arbitrator or substitute arbitrator, the President of the Center shall ensure that he or she has obtained the necessary administrative authorization. If the selected arbitrator fails to obtain such authorization within 20 days after the nomination notice, the Center shall replace that arbitrator, whether it receives a request to do so from one of the parties or not.

Article 5

Notice of Arbitration

The claimant shall present its claim to the Center in a notice containing the following statements and documents :

- The full names and addresses of the parties ;
- The text of the arbitration clause or the arbitration agreement ;
- A brief statement of the dispute and the nature of the claim, the relief or remedy sought, and any supporting documents ;
- A statement of the selected place of arbitration ;
- Evidence of payment of the Center's administrative fees ;
- Any statements relating to the place and the language of arbitration and the applicable law ;
- Any statements relating to the number of arbitrators, the substitute arbitrators, and the names of the arbitrator and the substitute arbitrator selected, or the mandate to the President of the Center to make the appointment.

The Center may grant an additional time period to the claimant to deliver all the documents set out. Upon the expiry of this time period, the notice of claim lapses, but be renewed by the claimant, if necessary.

Article 6

1. Notification of the notice of arbitration to the respondent

The Center shall promptly notify the respondent of receipt of the notice of arbitration and relevant documents and provide copies thereof. The respondent shall, within 30 days after receipt of the notice, appoint an arbitrator and deliver a brief statement of defense.

In the event of failure to deliver a reply, the Center may grant the respondent additional time, after which the arbitration proceedings shall continue.

The respondent's reply shall not suspend the arbitration proceedings.

2. The counterclaim

The counterclaim of the respondent shall include:

- A statement of the nature of the dispute arising from the counterclaim and its circumstances ;
- A statement of the subject of the counterclaim and the relief sought. The counterclaim shall be subjected to the payment of charges and expenses as provided in articles 26 and 27 of these Rules.

The claimant may deliver a reply to the counterclaim within 30 days after receipt of the notice of counterclaim. The Center may grant additional time in which to respond. A counterclaim shall not be accepted once the date of hearing has been fixed.

Article 7

Terms of reference of the arbitral tribunal

Once the arbitral tribunal is legally constituted, the lawfulness of the arbitration agreement ascertained, the subject matter of the dispute determined, the terms of reference of the tribunal shall be set out in a document that shall specifically include :

- The identity of parties, their advisors, and the arbitrator or arbitrators ;
- The nature of the arbitration and whether it is of a domestic or international character ;
- The subject matter of the dispute and the issues to be decided on ;
- The applicable law in respect of the substance and the procedures ;
- The place of arbitration ;
- The language of arbitration and the languages that might be used in translation ;
- The time period of the arbitration and the schedule of the proceedings.

The terms of reference shall be signed by parties or their representatives and appointed arbitrators. In the event that one of the parties or its representative refuses or fails to sign, the arbitral tribunal shall continue the proceedings with the approval of the Center's Scientific Council on the terms of reference.

Article 8

Procedural rules applicable to arbitration

The procedural rules provided in these Rules shall be applied to the arbitration, and the parties shall select the applicable rules of proceedings. Failing such a designation, the arbitral tribunal shall apply the procedural rules it deems appropriate for an expeditious and economical dispute settlement.

In all cases, the arbitral tribunal shall manage the proceedings fairly and impartially, providing

opportunities of defense to each party.

Article 9

1. Principles of proceedings

a. After its constitution, the arbitral tribunal shall examine its competence in all the issues. Any challenge to the competence of the tribunal shall be made at the beginning of the arbitration proceedings, before going into the substance, otherwise the challenge shall be rejected.

b. The sole arbitrator or the chair of the arbitral tribunal shall sign all the procedural acts, such as summons, notifications, injunctions (and pre-decisions).

The sole arbitrator or the chair of the arbitral tribunal shall be responsible for preparing the hearings, and shall authorize any necessary inspection.

Presence at hearings shall be obligatory. A party shall be considered as such, provided that it appears in a hearing, or at least has been summoned.

The arbitral tribunal shall organize the running of the hearings. Parties are entitled to attend the hearing. Unless the parties and the arbitral tribunal have agreed otherwise, no other person can attend. Parties may select any person to act on their behalf before the arbitral tribunal, and/or represent themselves.

If one of the parties fails to attend despite the legal summon, without a valid excuse, the arbitral tribunal shall continue to examine the case.

The arbitral tribunal shall invite parties to present their supporting documents, and shall schedule the presentation of memoranda and documents, taking into account the nature and the complexity of the file, the distance and the requirements of translation, where necessary.

A party which knows that any provision of, or requirement under, these Rules, or any direction given by the arbitral tribunal, or any other rule of the arbitration agreement related to the constitution of the arbitral tribunal or the proceedings, has not been complied with, and yet proceeds with the arbitration without promptly recording an objection to such non compliance, shall be deemed to have waived its right to object.

2. Exchange of documents

The adherence to these Rules by the parties shall imply their acceptance to expeditiously settle their dispute. Therefore, they shall help to reach a settlement, through the transmission of notices with proof of receipt or any other proof of transmission.

All notices, statements and memoranda shall be submitted to the Secretariat of the Center to be examined by arbitrators within a reasonable time prior to the hearing. Sufficient copies should be provided based upon the number of parties and arbitrators, in addition to a copy for the Secretariat of the Center. These shall be accompanied by a translation in the language or languages of arbitration, as chosen by the parties or the arbitral tribunal.

In all the cases, the arbitral tribunal shall respect the fundamental principles of the proceedings, in particular the principle of equality between parties and cross-examination.

Article 10

Interim measures of protection

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, instruct to take such interim measures of protection as it deems necessary.

The arbitral tribunal may require appropriate security from the claimant as a condition of ordering such measures. The interim measures of protection set out in this article shall be issued in the form of statements or justified decisions, according to the circumstances, which the tribunal considers appropriate.

Article 11

Investigation of the case

The arbitral tribunal shall have the power to conduct investigations of the case and authorize all means of investigation, as it deems appropriate. In the event of an investigation, the arbitral tribunal can appoint one of its members to hear witnesses or organize site visits. The appointed arbitrator can require secretarial assistance from the Center, travel to the residence of the witness or any other place, and summon the witness to the Tribunal.

The record of hearing shall be signed by the chairman of the arbitral tribunal and the witness. The Secretariat of the Center shall give the parties at least 14 days' advance notice by registered post of the date of the hearing.

The arbitral tribunal may authorize expert evidence and fix the advance amount and the expert's fee to be jointly paid by the parties or by one of them. The arbitral tribunal shall fix a deadline for such payment. If one party refuses to pay, the tribunal may instruct the other party to pay.

The expert shall conclude his or her task expeditiously. He or she may be challenged with good reasons within 14 days after the notification of appointment and prior to the hearing.

The tribunal may meet in any place it deems appropriate to inspect goods or documents or any other material, and shall notify parties sufficiently in advance of the date of such inspection and authorize their presence.

The arbitral tribunal may decide the dispute solely on the evidence and statements produced by parties, unless the parties require a hearing.

Article 12

Incidental claims

Unless parties have agreed otherwise, the arbitral tribunal may examine the incidental claims, especially the bringing of third parties into the arbitration. Upon the third party

agreeing to be involved in the arbitration and accepting the composition of the arbitral tribunal, an arbitration agreement shall be signed with the party responsible for bringing them in.

Where the examination of the incidental claim may delay the delivery of the award without good reasons, the chairman of the arbitral tribunal shall, at the request of a party, order the separation of the examination of such incidental claim from the proceedings.

The incidental claims may be subject to the payment of expenses and fees set out in articles 26 and 27 of these Rules.

Article 13

Award by consent

1. The arbitral tribunal shall try, during the proceedings, to conciliate the parties.
2. If the parties consent during the proceedings to settle their dispute, the arbitral tribunal shall end the arbitration proceedings.

The tribunal shall make an arbitral award by consent of the parties, at their request. The arbitral award shall be made by consent of parties in conformity with the provisions of article 17 of these Rules. The award shall contain the text of the consent agreement.

Article 14

Closure of hearings

Where the arbitral tribunal declares the hearings closed and is deliberating, no further submissions or evidence may be presented, unless required by the arbitral tribunal.

Article 15

Time period of arbitration

The arbitral award shall be made within a time period of six months from the date of acceptance of the last arbitrator's appointment.

This period may be extended if parties agree, or at the request of one of them or the arbitral tribunal, made to the President of the Center.

Article 16

Laws applicable to the substance of the dispute

The arbitral tribunal shall decide the substance of the dispute, and examine all the issues of the arbitration.

The arbitral tribunal shall decide the dispute in accordance with the law or rules chosen by the parties.

Failing a choice by the parties, the tribunal shall apply the law or rules that it determines to be appropriate.

The tribunal may decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized it to do so. The tribunal shall, then, decide in accordance with rules of justice and equity.

In all cases, the tribunal shall have due regard to the terms of the contract, and take into account any applicable trade usages.

Article

17

The Award

The tribunal shall make its award in writing. The award shall refer to the respect of the right of defense. It shall state the date on which it was made, the place of arbitration, the names of arbitrators, and the full names and addresses of the parties. If appropriate, it shall also state the names of lawyers or any representative or assistant of the parties, and shall determine the expenses and fees.

The award shall be made in the language chosen by the parties or by the tribunal. The Center shall translate it if necessary.

The award shall be signed by the arbitrator or arbitrators. Where there is more than one arbitrator, the award shall be made by a majority. Failing a majority decision, the chairman shall make the award alone, and his or her signature on the award is sufficient.

Before signing an award, the sole arbitrator or arbitral tribunal shall submit it in draft form to the Scientific Council of the Center. The Council may lay down modifications as to the form of the award and, without affecting the arbitrators' liberty of decision, may also draw their attention to points of substance. The Scientific Council shall respect the time period of arbitration. Its silence shall not suspend the making of the award.

The award shall be deemed to be made in the place of arbitration determined in the notice of appointment. The award shall be confidential and final, and after delivering it, the role of the tribunal with respect to the dispute subject of the arbitration, shall end.

Article 18

Correction and interpretation of the award

Within 20 days after receipt of the award, a party may by notice to the tribunal and after notifying the other party and obtaining their comments, if any, which shall be made within 14 days after receipt of the notice, request the tribunal to do the following without re-opening the hearing :

1. Correct any clerical, typographical or computation errors or any errors of similar nature ;
2. Interpret a part of the award ;
3. Make an additional award as to claims presented but not dealt with in the award.

The tribunal shall comply with the request of interpretation or correction within 30 days after the request.

Copies of the interpretation or correction, or additional awards shall be transmitted to parties within 15 days of the decision having been made.

The notice shall be sent to the original or chosen address of each party. **Article**

19

Dissenting opinions

The arbitral award shall be made in a collegial manner. If the Scientific Council agrees, it may be accompanied with dissenting opinions expressed by some arbitrators.

Article 20

Submission and notification of the award

The Secretariat of the Center shall transmit the award to parties by registered post or through their lawyers with proof of receipt.

The Center shall deposit the awards relating to domestic arbitration at the clerk of the competent court's office in accordance with Article 33 of the Arbitration Code.

Article 21

Filing of the award

Files of the case shall be kept by the Secretariat of the Center for 10 years from the date on which the award was made.

Article 22

Enforcement of the award

The parties shall undertake to fully carry out the award without delay.

Article 23

Ad hoc arbitration

In the event that parties choose ad hoc arbitration, the center may provide secretarial assistance and hearing rooms. Fees will be calculated on the basis of administrative expense rates set out in article 25 hereinafter.

Article 24

Payment of administrative and procedural costs, as well as arbitration fees, shall be made in accordance with the scales set out in articles 26 and 27 hereinafter.

Arbitrators' fees shall be fixed in the final award or in the partial award, and shall be promptly enforced. In the event of contest, the Scientific Council of the Center shall decide on the amounts of deposits and fees. Its decision shall not be subject to appeal.

Unless otherwise decided by the arbitral tribunal, all expenses shall be borne by the unsuccessful party. The claimant shall provide security for the arbitration expenses.

The President of the Center shall determine the amounts of advances on administrative costs and arbitrators' fees.

Apart from the original claim, the Center shall, in the event that counterclaims or incidental claims are presented, determine the advances on their costs.

These advances on costs shall be paid in equal shares by the claimant and the respondent. One party may bear the advances alone, if the other party refuses to pay its part.

The Center can suspend the transmission of the file to the arbitral tribunal until the payment of the advance or a part of it is made.

If the claimant withdraws its request for arbitration before the arbitral tribunal issues summons or if the arbitral tribunal declares its incompetence, the advance on costs already paid shall be reimbursed after deducting the amount incurred by the Center. Failing this, the whole amount paid becomes the property of the Center.

Article 25

The administrative costs fixed by the Center shall include the costs of the constitution of the arbitral tribunal and the secretarial expenses. The constitution fee the arbitral tribunal is fixed at 500 Tunisian Dinars.

The president of the Center shall fix the secretarial costs of each arbitration within the range of 1000 and 5000 Tunisian Dinars, taking into consideration the importance of the dispute and the complexity of the proceedings.

Article 26

Arbitrators' fees

Arbitrators' fees shall be fixed in accordance with the scale hereinafter set out, taking into account the importance of the dispute, the time spent, the complexity of the case and the place of the arbitration. The fee of each arbitrator is as follows :

- Sum in dispute : up to 100.000 Dinars: from 2% to 5% (with a minimum amount of 2000 Dinars)
- Sum in dispute : from 100.000 to 500.000 Dinars : from 1% to 2%
- Sum in dispute : from 500.001 to 1000.000 Dinars : from 0.50% to 1%
- Sum in dispute : more than 1000.000 : from 0.10% to 0.50%

When arbitration proceedings require arbitrators to travel, the travel and accommodation expenses shall be added to the amounts set out above.

The President of the Center shall determine the amounts of these expenses.

Article 27

Exceptional cases

1. Where there is a sole arbitrator, the amounts of arbitrator's fee set out in the article above

shall be subject to a cut of $\frac{1}{3}$.

2. If a settlement is reached between the parties in the first meeting, half of the arbitrator's fee shall be deducted.

Article 28

Neither the arbitrators nor the Tunis Center for conciliation and Arbitration shall assume any responsibility of any act or omission in connection with the arbitration, save the error is serious and deliberate.

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