

# Algeria

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## 1 Arbitration Agreements

### 1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your country?

In order to respect the subject matter of this article, we will mostly develop on the Algerian rules applicable to international arbitration, as these rules differ from those applicable to domestic arbitration. However, we will address, in general terms, the major differences between the two sets of rules when necessary. If Algerian law is chosen for procedural purposes, domestic arbitration rules will apply to international arbitrations. In all cases, domestic courts will only intervene exceptionally in the arbitration proceedings.

Article 458 bis of the Algerian Code of Civil Procedure (hereinafter "CCP") defines international arbitration as one that cumulatively (a) involves a dispute relating to international trade, and (b) in which at least one party has its registered office or its residence abroad.

An international arbitration agreement must be in writing in order to be valid. Article 458 bis 1 of the CCP provides that an arbitration agreement governs both existing and future disputes.

Algeria recognises the principle of "autonomy of the arbitration clause": article 458 bis 1 of the CCP clearly states that the validity of an arbitration agreement cannot be disputed solely because the contract it included is void.

An arbitration clause will be considered valid if it conforms to the law governing the object of the dispute and specifically the law applicable to the governing contract. If such a law is not specified, the clause will be valid if it conforms to Algerian law.

Also, public law entities (personnes morales de droit public) may choose arbitration as a dispute resolution method solely when involved in international transactions. We are only referring to public entities which are subject to public law in all aspects i.e., for their organisation and their activities (e.g. Ministries) as opposed to public entities which are subject to commercial law for their activities and to public law for their organisation (i.e. Public commercial companies called "établissements publics industriels et commerciaux"). The latter may have recourse to arbitration

In all cases, the arbitration agreement should not be contrary to public order.

### 1.2 Are there any special requirements or formalities required if an individual person is a party to a commercial transaction which includes an arbitration agreement?

Article 442 of the CCP provides that any person can transact on rights that he or she freely disposes of. Consequently, one cannot

compromise on alimentary alimonies, inheritance rights, clothing, or on questions pertaining to public order and capacity.

Therefore, as long as the individual person is a party to a transaction that is truly commercial in nature, id est, that does not refer to any of the issues stated above, the agreement will be deemed valid.

In matters relating to international arbitration, this rarely is an issue due to the fact that the contracting entity will generally be acting within the scope of international trade.

### 1.3 What other elements ought to be incorporated in an arbitration agreement?

International arbitration agreements should, in practice, refer to the arbitral institution and to the law which will be governing procedure. It is also wise to indicate the chosen procedural language, the number of arbitrators and the venue. Generally, the parties will choose to include a model clause that makes reference to the rules of specific arbitral institutions (such as ICC).

### 1.4 What has been the approach of the national courts to the enforcement of arbitration agreements?

Although recent, Algeria's international arbitration practice is extensive. The country ratified the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. National courts have therefore been exposed to international arbitration procedures and awards, and generally grant exequatur insofar as the arbitration agreement is valid. The tribunal generally requires an original copy of the award, and a signed arbitration agreement. It also verifies whether the audi alteram partem principle has been respected.

### 1.5 What has been the approach of the national courts to the enforcement of ADR agreements?

Please refer to question 1.4. Algeria has less experience in other ADR methods such as mediation. However, the general approach of national courts to the enforcement of ADR agreements is positive as article 17 of the CPC allows the judge to seek conciliation in all domains. ADR agreements other than arbitration are generally considered to be transactions, defined by article 459 of the Algerian Civil Code as agreement intended to end or prevent a dispute by means of reciprocal concessions.

## 2 Governing Legislation

### 2.1 What legislation governs the enforcement of arbitration agreements in your country?

The Algerian Code of Civil Procedure governs the enforcement of arbitration agreements. Specifically, article 458 bis 17 to 458 bis 28 of the CPC, to which we refer throughout the present contribution, sets out the rules applicable to the recognition, enforcement, and appeal of international arbitral awards.

### 2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do the laws differ?

Arbitration law differs according to whether the proceedings are domestic or international.

The rules governing Algerian domestic arbitration are set forth in articles 442 to 458 of the CPC and the rules that are specific to international arbitration are set out in articles 458 bis to 458 bis 28.

From a general standpoint, it can be said that the rules applicable to international arbitration are not as rigid as those applicable to domestic arbitration. For example, the rules applicable to domestic arbitration distinguish between a "compromise" in the case of existing disputes, and a "clause compromissoire" which is freely translated as an "arbitration clause" intended to solve future disputes. As we have seen in question 1.1, article 458 bis 1 does not make this distinction and only refers to an arbitration agreement applicable to both existing and future disputes.

### 2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the governing law and the Model Law?

The UNCITRAL Model Law was taken into consideration by the drafters of Legislative Decree n93-09 in the sense that they tried to avoid any contradiction with the generally accepted rules of international arbitrators. However, the drafters also sought inspiration in the most modern arbitration laws of different countries, including Swiss.

A notable difference can be found in the Algerian definition of international arbitration (please refer to question 1.1).

## 3 Jurisdiction

### 3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your country? What is the general approach used in determining whether or not a dispute is "arbitrable"?

Please refer to question 1.2. Article 442 of the CCP provides that one cannot compromise on alimentary alimonies, inheritance rights, clothing, or on questions pertaining to public order, and to the state and capacity of persons.

The most common obstacle to the arbitrability of a dispute is public order. The Public order is not clearly defined under Algerian law. Generally speaking, one can differentiate between the general concept of public order and the issues that pertain to public order (such as exchange control, tax regulation, and customs law). The general concept of public order refers to the rules that are intended to govern life in society and that aim to protect morality, economy

or safety. Any agreement which violates public order is void.

### 3.2 Is an arbitrator permitted to rule on the question of his or her own jurisdiction?

Algerian law clearly recognises the principle of "competence-competence" in international arbitration. Article 458 bis 7 states that the arbitral tribunal rules on its own competence. The same article provides that a party can challenge the competence of an arbitrator before defences are raised on the subject matter of the dispute: the arbitral tribunal rules on its competence by a preliminary decision, except if a challenge is mounted that relates to the subject matter of the dispute.

### 3.3 What is the approach of the national courts in your country towards a party who commences court proceedings in apparent breach of an arbitration agreement?

In practice, a national court will declare itself incompetent if it regards the arbitration agreement as valid. However, in a recent decision, a national court decided that arbitration may not obstruct a person's natural right to have recourse to justice. These types of decisions are, however, exceptional and legally unfounded.

### 3.4 Under what circumstances can a court address the issue of the jurisdiction and competence of the national arbitral tribunal?

Please refer to question 3.3. As we have seen supra, in some cases, a party may seize the domestic court in order to see it decline the arbitrator's competence. However, the court will start by studying the validity of the arbitration agreement. The court will declare itself incompetent if it considers the arbitration agreement valid. Please refer to section 1 for more information on the validity of an international arbitration agreement under Algerian law.

In practice, the national courts have addressed the issue of the jurisdiction and competence of the national arbitral tribunal in the following cases: (a) one of the parties disputed the competence of the arbitration court; (b) one of the parts could not pay the provision; (c) one of the issues may not be subject to arbitration; (d) the clause is pathological; (e) the arbitrator is challenged; or (f) there is an objection based on professional or national secrecy or security.

### 3.5 Under what, if any, circumstances does the national law of your country allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

Under article 113 of the Algerian Civil code, a contract is only binding to the signing parties and cannot be imposed on a third party. This rule is applicable to arbitration agreements.

Also, article 458 bis 21 of the CPC states that arbitral awards may not be opposed to third parties.

The CPC, in its article 81, allows a party to involve an entity or individual in a suit if it considers that the latter should ultimately bear the burden of damages (insurers, or subcontractors for example). This is called "call for guarantee" and may, in principle, be used also in the framework of arbitration.

## 4 Selection of Arbitral Tribunal

### 4.1 Are there any limits to the parties' autonomy to select arbitrators?

Algerian law does not fix direct limits to the party autonomy. However, indirect limits result from rules allowing parties to challenge the arbitrators.

The nomination of an arbitrator may be challenged under certain circumstances. Under article 458 bis 5 of the CPC, a challenge is possible (a) if the arbitrator does not fulfil the qualifications agreed upon between the parties; (b) when an additional cause of challenge is included in the arbitration regulation adopted by the parties; and (c) when an arbitrator has indirect or direct economic ties with one of the parties.

Disputing parties may challenge the arbitrators they designated or contributed to designate only on the basis of reasons that emerged after the designation.

### 4.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

The CPC provides for a default procedure. However, one must distinguish upon whether the arbitration is to take place within or outside of Algeria.

If the arbitration is to take place in Algeria, the diligent party may seize the competent court in order to have it designate the arbitrator. Under article 458 bis 3, the competent court is, alternatively: (a) the court designated by the arbitration agreement; (b) the court having jurisdiction over the area in which the arbitral tribunal has its seat; (c) the court having jurisdiction over the area where the defendant has his domicile; or (d) if the defender is situated outside of Algeria, where the plaintiff has his domicile.

If the arbitration is to take place outside of Algeria and Algerian procedural law is chosen, the court of Algiers will have jurisdiction.

### 4.3 Can a court intervene in the selection of arbitrators? If so, how?

Yes, a court can intervene in the selection of arbitrators. Please refer to question 4.2. When a court is required to designate an arbitrator, it will do so by way of ordinance and upon party request.

If the courts described under question 4.2 are to nominate a third arbitrator, the latter's nationality must differ from those of the two first arbitrators.

Furthermore, the court can designate the arbitrators from a list that has been drafted by the parties.

### 4.4 What are the requirements (if any) as to arbitrator independence, neutrality and/or impartiality?

Please refer to question 4.1. Under article 458 bis 5 of the CPC, an arbitrator can be challenged when there is a doubt as to his impartiality. Article 458 bis 5 specifies that this is notably the case when the arbitrator has indirect or direct economic ties with one of the parties. It should be noted that article 458 bis 5 is not exhaustive, and in practice, a judge can deem an arbitrator as impartial in other circumstances.

Also, in order to protect neutrality, a judge who is called upon to nominate an arbitrator will have to choose an arbitrator whose nationality is different from that of the party.

## 5 Procedural Rules

### 5.1 Are there laws or rules governing the procedure of arbitration in your country? If so, do those laws or rules apply to all arbitral proceedings sited in your country?

Some of the rules contained in the "International Arbitration" chapter of the CPC address, in general terms, procedural matters such as administration of evidence, and temporary or conservatory measures.

However, in the main, the CPC refers to the choice of the parties for all procedural aspects. Article 458 bis 6 clearly states that the parties can, directly or by reference to an arbitration regulation, choose the procedure to be followed during arbitration. The arbitration may also be subject to a procedure elaborated by the parties in the agreement.

If the agreement is silent on such issues and unless the parties have agreed otherwise, the arbitral tribunal chooses the procedure as needed, either directly or by reference to a law or arbitration regulation.

Rules governing domestic arbitration address more procedural issues than those governing international arbitration (please refer to question 2.2).

### 5.2 In arbitration proceedings conducted in your country, are there any particular procedural steps that are required by law?

Algerian Law does not provide for any particular steps in international arbitration proceedings. This is not the case with domestic arbitration (please refer to questions 2.2 and 5.1)

### 5.3 Are there any rules that govern the conduct of an arbitration hearing?

Algerian law does not govern the conduct of an arbitration hearing. This will be defined in the chosen procedure. However, as we will see in section 10, arbitration proceedings must abide to due process of law principles. This requirement indirectly affects the conduct of hearings.

### 5.4 What powers and duties does the national law of your country impose upon arbitrators?

The arbitral tribunal has authority to examine its own competence. Aside from this attribute, Algerian law is somewhat silent as to the powers and duties of the arbitrator.

In most cases, the powers which an arbitral tribunal is granted under the CPC may be limited in the Arbitration Agreement. For example, article 458 bis 9 of the CPC provides that the arbitral tribunal may grant interim measures and temporary relief unless such a possibility is excluded in the arbitration agreement. Also, article 458 bis 12 allows an arbitrator to grant partial awards, once again provided that the arbitration agreement does not state otherwise.

### 5.5 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

The national courts do not have power to deal with procedural issues in international arbitrations. However, in some circumstances, the arbitrators may call upon the national courts in order to obtain assistance in procedural matters (such as admission of evidence).

Rules applicable to domestic arbitration oblige the courts to

intervene if the procedure involved forgery or criminal conduct (article 448 al 2 of the CPC)

- 5.6** Are there any special considerations for conducting multiparty arbitrations in your country (including in the appointment of arbitrators)? Under what circumstances, if any, can multiple arbitrations (either arising under the same agreement or different agreements) be consolidated in one proceeding? Under what circumstances, if any, can third parties intervene in or join an arbitration proceeding?

Algerian law has not yet adapted its practice to multiparty arbitrations. The agreement of all parties would be necessary in order to consolidate proceedings. The joining of the third party will generally involve an amendment to the arbitration agreement or a new arbitration agreement signed by all parties.

- 5.7** What is the approach of the national courts in your country towards ex parte procedures in the context of international arbitration?

Please refer to question 5.1. On the basis of 458 bis6, it is possible to organise an ex parte procedure when a party voluntarily does not present itself before the arbitral tribunal after having been regularly convened.

The general rules applicable to Algerian judicial proceedings allow ex parte procedures (article 35 of the CPC). Therefore, if Algerian law is chosen as the applicable procedural law in the framework of an international arbitration, ex parte proceedings will be deemed valid.

## 6 Preliminary Relief and Interim Measures

- 6.1** Under the governing law, is an arbitrator permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitrator seek the assistance of a court to do so?

Under article 458 bis 9 of the CPC, an arbitrator may grant interim relief or conservatory measures. He is under no duty to seek the assistance of the court in such cases. However, he may seek the assistance of the court if the party does not voluntarily accept the injunction. The court will then apply its own law.

Article 458 bis 6 of the CPC allow the parties to convene otherwise.

- 6.2** Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

Rules applicable to international arbitration are silent on this point. However, once again, article 458 bis 6 of the CPC allows the parties to give such powers to the courts. If the parties are silent on this point, a court will not be allowed to grant such measures.

- 6.3** In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

Please refer to question 6.2. Since arbitrators are given the right to grant preliminary relief and interim measures, courts will declare themselves incompetent even when faced with a request for preliminary or interim relief. This will be the case unless the parties have agreed to grant courts specific powers which will be

recognised in the arbitral proceedings

- 6.4** Does the national law allow for the national court and/or arbitral tribunal to order security for costs?

Algerian law does not explicitly grant such a power. Nor does it impede it.

## 7 Evidentiary Matters

- 7.1** What rules of evidence (if any) apply to arbitral proceedings in your country?

The CPC does not develop on specific rules of evidence applicable to international arbitration procedures. However, under article 458 bis 10. "the arbitral tribunal proceeds on its own to the administration of evidence."

Article 446 of the CPC, applicable to domestic arbitration, provides that the "timeframes and forms" applicable to jurisdictions will be applicable to arbitral tribunals. Therefore, if Algerian law is chosen to govern procedural issues, the evidence rules of the CPC will apply.

- 7.2** Are there limits on the scope of an arbitrator's authority to order the disclosure of documents and other disclosure of discovery (including third party disclosure)?

Please refer to questions 7.1 and 7.3

Article 458 bis 11 of the CPC allows an arbitrator to seek the assistance of a tribunal for evidence purposes. Generally, one must refer to the normal procedural guarantees offered under the majority of the legal systems. Arbitrators must abide to the rule of professional secrecy.

Also, article 458 bis 6 of the CPC allows parties to implement a specific discovery system.

- 7.3** Under what circumstances, if any, is a court able to intervene in matters of disclosure/discovery?

Article 458 bis 11 of the CPC provides that a court may be called upon in order to facilitate the administration of evidence. The arbitral tribunal, the parties in agreement with the arbitral tribunal, or the most diligent party once authorised by the arbitral tribunal may request the assistance of the jurisdictionally competent judge.

- 7.4** What is the general practice for disclosure / discovery in international arbitration proceedings?

The practice is to invite the party to submit the document. Failure to do so will give rise to a presumption against the defaulting party. If the document is absolutely necessary and a party does not provide it, intervention by the Courts may be requested.

- 7.5** What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal? Is cross-examination allowed?

There are no specific rules directly applicable to the production of written and/or oral testimony in the framework of international arbitration. These matters will be governed by the procedural law chosen by the parties.

- 7.6 Under what circumstances does the law of your Country treat documents in an arbitral proceeding as being subject to privilege? In what circumstances is privilege deemed to have been waived?

Algerian law does not address privilege. However, in practice, an arbitral proceeding is generally protected by confidentiality. This confidentiality applies to all documents submitted within the proceeding.

## 8 Making an Award

- 8.1 What, if any, are the legal requirements of an arbitral award?

Article 458 (bis) 13. - of the CPC provides that the award is delivered in the procedure and in the form agreed upon by the parties. If the parties have not agreed on these modalities, an award will be rendered by a single arbitrator when applicable and by majority when there are numerous arbitrators. The award is written, explained, located, dated and signed by each arbitrator. If one of the arbitrator refuses to sign, the other arbitrators must mention it in the award; the award will then produce the same effect as if it had been signed by each one of them.

A dissenting arbitrator may include his opinion in the award.

## 9 Appeal of an Award

- 9.1 On what bases, if any, are parties entitled to appeal an arbitral award?

The general rule is that an arbitral award may not be subject to appeal. However, under article 458 bis 25 of the CPC, an award delivered in Algeria in the scope of an international arbitral proceeding may be annulled for the reasons listed in article 458 bis 23. Article 458 bis 23 deals with the appeal of enforcement decisions rendered by domestic courts. Such an appeal is possible in the following circumstances: (a) if the arbitral tribunal is considered not qualified or inefficient; (b) if the arbitration agreement is inexistent, void, or expired; (c) if the arbitral panel was improperly formed or if the sole arbitrator was irregularly designated; (d) if the arbitral tribunal rendered its award without conforming itself to its delimited assignment; (e) if the arbitral tribunal decided ultra petita; (f) if the proceedings were not adversarial; (g) if the arbitral tribunal did not or insufficiently explained its award, or if its explanations are contradictory; or (h) if the recognition or the execution of the award is contrary to international public order.

The CPC provides that the decision refusing the enforcement of an award may always be appealed.

- 9.2 Can parties agree to exclude any basis of appeal or challenge against an arbitral award that would otherwise apply as a matter of law?

Parties may agree to exclude the above described basis for appeal. However, in practice, some courts may consider that recourse to justice is a fundamental right that cannot be waived. They therefore may accept the appeal even if the parties have agreed to exclude it.

- 9.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

The parties are allowed to choose the procedural law that will govern the arbitral proceedings. If these laws or regulations comprise an additional appellate procedure, the procedural law will be enforced. It is therefore possible to expand the scope of appeal.

- 9.4 What is the procedure for appealing an arbitral award in your country?

Article 458 bis 24 of the CPC provides that the appeal of enforcement awards envisaged in articles 458 bis 22 and 458 bis 23 (please refer to question 9.1) is carried out before the court with appellate jurisdiction over the tribunal that granted enforcement. The appeal must be formed within one month following the judge's "notification" of the decision.

## 10 Enforcement of an Award

- 10.1 Has your country signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Algeria adhered to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards through Law n° 88-18 of July 12th 1988. Algeria will apply the Convention only to recognition and enforcement of awards made in the territory of another contracting State, and only to differences arising out of legal relationships, whether contractual or not, that are considered commercial under Algerian law.

One of the objectives behind the CPC's 1993 modification (please refer to question 1) was to adapt Algerian regulation to its international obligations deriving from the convention. Articles 458 bis and following of the CPC are therefore largely inspired by the Convention and sometimes even go further in the recognition of arbitral awards than the CPC itself.

- 10.2 Has your country signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

Algeria approved the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States by Ordinance n° 95-04 of January 21st 1995. The convention was ratified by the Presidential Decree n° 95-345 of October 30th 1995.

- 10.3 What is the approach of the national courts in your country towards the recognition and enforcement of arbitral awards in practice? What steps are parties required to take?

Articles 458 bis 17 to 458 bis 21 set out the steps that parties are required to take for recognition and enforcement. The steps are the following:

- A party seeking recognition of an arbitral award must first establish the existence of the arbitral award. The said award must not be contrary to international public order.
- The award will be declared enforceable by the president of the court having jurisdiction over the territory where the award was rendered or where enforcement is sought.

- The existence of an award is established by an original copy of the award and by the arbitration agreement, or by copies of these documents that sufficiently prove their existence.

Notwithstanding the fact that Algerian courts, in general, apply the law, many of the country's most important companies are parties to international contracts that include arbitration clauses. The credibility of these companies is therefore largely dependent on a correct application of international arbitration rules by Algerian courts.

#### 10.4 What is the effect of an arbitral award in terms of res judicata in your country? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

As soon as it is rendered, the arbitral award is res judicata in application of article 458 bis 16 of the CPC. An Algerian court may therefore not re-judge the dispute at issue.

## 11 Confidentiality

### 11.1 Are arbitral proceedings sited in your country confidential? What, if any, law governs confidentiality?

No rule specifically deals with the confidentiality of the arbitral proceedings. However, parties systematically include this principle in their agreement and courts enforce it.

### 11.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

There is no impediment to the use of information disclosed in arbitral proceedings. On the one hand, if the subsequent proceedings are not confidential, and the court requires disclosure, parties will have to abide. On the other hand, if the parties voluntarily disclose such information, they will almost certainly be held ultimately liable on the basis of tort or contractual liability. Also, courts will generally bring the attention of the parties to the importance of confidentiality.

### 11.3 In what circumstances, if any, are proceedings not protected by confidentiality?

In some cases, public policy or acts of the prince may justify the violation of confidentiality. This may be the case for example, with tax inspections or criminal actions.

## 12 Remedies / Interests / Costs

### 12.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

Algerian international arbitration law does not limit damages. However, the law applicable to the merits of the case may limit the types of remedies offered.

If Algerian law is chosen, the following rules will apply: Article 182, Paragraph 2 of the Civil Code, provides that losses are compensable, provided they are the "normal consequence of the non performance of the contract or of the delay in performing". The Civil Code (articles 184 al 2 and 185) also allow the judge to reduce damages in certain circumstances, notably if the claims are excessive.

The Algerian Civil Code also allows for liquidated damages. Article 183 states that "the parties may determine in advance the quantum of the compensation for liability. They can do so either in the contract itself or in another deed at a later stage...".

### 12.2 What, if any, interest is available?

Algerian international arbitration law does not deal with interest rates. However, the law applicable to the merits of the case may limit the types of remedies offered. If the chosen substantive law is Algerian, article 186 of the Algerian Civil code will apply. The said article forces a debtor to repair the damage caused by the delay of his payment.

### 12.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

Algerian international arbitration law does not address such issues, which are generally governed by the procedural law. There is no provision expressly allowing or impeding the shifting of fees and costs between parties. Under the Algerian CPC, the defeated party in a law suit must cover all related expenses. Courts systematically apply this principle.

### 12.4 Is an award subject to tax? If so, in what circumstances and on what basis?

The award itself is not subject to tax. However, the damages which may be allocated will be taxable if the entity is Algerian and subject to Algerian revenue tax.

## 13 Investor State Arbitrations

### 13.1 Has your country signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965)?

Algeria signed the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States on April 17th 1995. The convention was ratified on February 21st, 1996 and entered into force on March 22nd, 1996.

### 13.2 Is your country party to a significant number of Bilateral Investment Treaties (BITs) or Multilateral Investment treaties (such as the Energy Charter Treaty) that allow for recourse to arbitration under the auspices of the International Centre for the Settlement of Investment Disputes (ICSID)?

Algeria has signed bilateral investment agreements with the following countries Austria, Belgium-Luxembourg, Bulgaria, China, Czech Republic, Denmark, Egypt, Ethiopia, France, Germany, Greece, Italy, Jordan, Korean Republic, Kuwait, Libya, Mali, Malaysia, Mozambique, Niger, Nigeria, Qatar, Romania, Saudi Arabia, Spain South Africa, Sudan, Sultanate of Oman, Syria, Turkey, USA, Vietnam, and Yemen. Most, if not all of these investment treaties, provide two options for parties involved in a dispute: they may either use ad hoc arbitration (Cnudci), or ICSID.

Algeria is currently an observer to the energy charter.

**13.3 Does your country have standard terms or model language that it uses in its investment treaties and, if so, what is the intended significance of that language?**

Not all investment treaties follow the same model. However, most of them include the same general concepts and provisions that address issues such as national treatment and most favoured nation treatment, expropriation, transfer of funds, and dispute resolution.

**13.4 In practice, have disputes involving your country been resolved by means of ICSID arbitration and, if so, what has the approach of national courts in your country been to the enforcement of ICSID awards?**

The first ICSID based award involving Algeria was rendered on January 10th, 2005. The arbitral tribunal declined its own jurisdiction. A second decision based on the same dispute was rendered on the 12th of July 2006. The arbitral tribunal this time declared itself competent and sent back to a subsequent ordinance on the merits of the case. We therefore cannot yet evaluate the attitude of the Algerian courts in the face of such a decision. However, we have strong reasons to believe that it will continue enforcing awards as long as annulment may not be requested on the ground of article 458 bis 23 (please refer to question 9.1).

**13.5 What is the approach of the national courts in your country towards the defence of state immunity regarding jurisdiction and execution?**

No immunity is granted to the state in the framework of its international agreements. This is true for both jurisdiction and enforcement purposes.

## 14 General

**14.1 Are there noteworthy trends in the use of arbitration or arbitration institutions in your country? Are certain disputes commonly being referred to arbitration?**

Algeria's experience in international arbitration is solid. The country has provided some of the world's most reputable arbitrators. Arbitration has been practiced in Algeria since its independence in 1962.

From a financial point of view, Algeria is a healthy country. It has recently paid off all of its debts and is currently embarking on a spending spree intended, notably to modernise its infrastructures. An Association Agreement with the European Union was enforced as of September 1st 2005, and Algeria's accession to the WTO should happen in the following years, if not soon.

Given these facts, the Algerian state and the country's economic operators are currently signing and will continue to sign international contracts which, in most cases will include arbitration clauses. Algerian international arbitration practice is therefore bound to augment.

**14.2 Are there any other noteworthy current issues affecting the use of arbitration in your country?**

Please refer to the questions above for a discussion of current issues.



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Amine Ghellal, the founding partner of Ghellal & Mekerba, has 42 years of experience as a legal practitioner. He has developed, in more than twenty years, a strong reputation in the field of international arbitration. He is an international arbitrator and a member of the International Arbitration Institute. He also has a perfect knowledge of contractual mechanisms and precautions governing dispute resolution. Dr. Ghellal currently acts as an arbitrator before the International Chamber of Commerce (CCI) and the Algerian Chamber of Trade and Industry (CACI).

Dr. Ghellal is a graduate in both law and political science. He studied in France and obtained a Higher Diploma in Public law with Magna Cum Laude, a Higher Diploma in Political Science with Magna Cum Laude, and a PhD with Summa Cum Laude and praises of the examination board. He also taught public law, both in France and Algeria, for many years, and has published many articles. Dr. Ghellal is a member of the Algerian Bar Association, a member of the International Bar Association, a member of the International Arbitration Institute (IAI), a correspondent of the World Bank in Algeria, an honoured Member of the International Who's Who of Professionals, a member of the International Lawyers Club (Head Office in France), and a member of the International Lawyers Association "Mackrell International" (Head Office in Great Britain).



Over the last two decades, Ghellal & Mekerba has been the trusted legal advisor of most prominent foreign and national corporations operating in Algeria. Ghellal & Mekerba's constant efforts to achieve outstanding performance have allowed it to substantiate its status as Algeria's leading law firm (Martindale Hubbell, Legal 500, Practical Law).

Ghellal & Mekerba's team is truly international and comprises Algerian, European and American trained members. Its sixteen dedicated attorneys, some of whom have more than thirty years of experience, provide the knowhow needed to guide their clients towards the complete success of a business venture. Several of the firm's attorneys have significant corporate experience at high-level posts. This particular feature has allowed Ghellal & Mekerba to build an extensive professional network and has ensured its thorough understanding of the Algerian and North African business environment. All the firm's lawyers are at least bilingual and work in French, Arabic, English, Spanish or German.

The Firm is regularly ranked leading firm in Algeria by international institutions in the following specialities: corporate and commercial, mining and natural resources, financing/project financing and international arbitration.

The Firm is in close relations with major law firms throughout the world and the representative in Algeria of "Mackrell International," a worldwide International Lawyers Association established in the United Kingdom.