

Presidential Decree No. 22-1992 Issuing The Arbitration Act

The Chairman of the Council of the Presidency,

Having seen the agreement to proclaim the Republic of Yemen, Having seen the Constitution of the Republic of Yemen,

Having seen the Presidential Decree No. 1-1990 relating to the composition of the Council of Ministers, and after approval of the Council of the Presidency, decides

Chapter I General Provisions

Article 1 This law shall be called the Arbitration Act.

Article 2

The terms and expressions mentioned below shall, for the purposes of this Act, have the meaning indicated hereafter, unless otherwise dictated by context.

Arbitration: is the choice by which the parties agree to appoint one or several third parties in order to arbitrate the disputes or conflicts which might arise between them, without resorting to the competent court.

Commercial arbitration: means any arbitration where the parties are natural or juristic persons undertaking commercial, economic or investment operations, whether they are Yemeni, Arab or foreign.

National arbitration: means an arbitration where the parties to the dispute are nationals of the Yemeni Republic.

International arbitration: means an arbitration where the parties are of different nationality or whose domicile or main establishment is located in different countries, or an arbitration taking place within an international arbitration centre.

The agreement to arbitrate: means the acceptance by the parties to resort to arbitration and can be an arbitration agreement (a separate contract) or an arbitration clause (a clause contained in a contract).

The arbitral tribunal: The arbitral tribunal is composed of a sole arbitrator or several arbitrators in compliance with the agreement to arbitrate, or the provisions of this Act.

The competent court: is the court normally having jurisdiction over the dispute or to which this Act refers for any question which is not under the jurisdiction of the arbitral tribunal.

“Amiable composition”: The agreement by the parties to appoint one or several arbitrators to arbitrate between them in compliance with the principles of fairness and justice, without resorting to the competent court.

Article 3

The provisions of this Act shall apply to any arbitration taking place in the Republic of Yemen as well as any arbitration taking place abroad, if the parties so choose.

Article 4

Arbitration is held to be agreed through any expression indicating the will to resort thereto followed by the acceptance of the arbitrator. The agreement to arbitrate can only be made in writing.

Article 5

There may be no arbitration on the following matters:

- (a) “forbidden” things, divorce for adultery by women and the dissolution of the marriage;
- (b) challenge of judges;
- (c) disputes relating to forced enforcement;
- (d) questions which may not be subject to a settlement out of court;
- (e) anything related to public order.

Article 6

For arbitration to be valid:

- (1) The party resorting thereto must have the capacity to dispose of its rights, which are the subject-matter of the arbitration.

A court-appointed or legal guardian may only enter into arbitration in the interest of his ward; a tutor established by a board of guardians can only do so upon authorization of the court.

- (2) The arbitrator must have his entire capacity, be fair and competent to arbitrate the dispute referred to him.

Article 7

Without prejudice to the provisions of this Act, the parties may, if one or all of them are not Yemeni, agree on the law applicable to the procedure and the substantive matters of the arbitration, as well as the language and the place of arbitration.

Article 8

The Courts of Appeal have jurisdiction over any question which this Act refers to the Courts, unless the parties agreed to grant this jurisdiction to another court.

Article 9

Should one party, even though it became aware that one of the provisions of this Act or of the agreement to arbitrate was not respected, continue the arbitration without any objection in the agreed time or in a timely manner, it shall be deemed to have waived its right to object and it shall no longer have this right.

Article 10

The parties may agree to suspend the proceedings before the arbitrator or the arbitral tribunal for any time-period they determine. The arbitrator or arbitral tribunal must approve this agreement. The procedure shall be resumed after expiry of this stay by an application made by one or all of the parties to the arbitrator or the arbitral tribunal, etc.

Article 11

Judges may not be appointed as arbitrator in cases pending before their courts, even if the parties so request. Judges may not agree to swap cases with other judges so that they may be arbitrators.

Article 12

The arbitration shall not stop due to the death of one of the parties but it is extinguished if one of the heirs is incapable, unless it is continued by his guardian or the court authorizes his guardian to continue. This is also the case if one of the parties loses its capacity before the award is made.

Article 13

The competent court or that chosen by the parties must settle the questions which are referred to it in compliance with this law, using summary proceedings.

Article 14

The parties shall bear the costs and fees of arbitration including arbitrator's fees, in compliance with the distribution decided by the arbitral tribunal.

Chapter II The Agreement to Arbitrate

Article 15

An agreement to arbitrate may only be entered into in writing, else it is void, whether it is made before the dispute arose or thereafter. This is so even if the case was already brought before the courts. The agreement is deemed to be made in writing if it is contained in arbitration agreements, in arbitration clauses, telegrams, letters or any other modern means of communication.

Article 16

The agreement to arbitrate may be in the shape of a separate contract (arbitration agreement) or a clause contained in a contract (arbitration clause). In the latter case, the arbitration clause

is held to be an agreement independent of the other clauses of the contract, the voidness of the main contract or its termination does not result in the arbitration clauses also being void.

Article 17

The arbitrator(s) must be appointed in the agreement to arbitrate. Except in arbitrations between spouses, or where the parties explicitly decide otherwise, if there is more than one arbitrator, their number must be uneven, else the arbitration is void.

Article 18

If a court grants a conservatory or provisional measure upon request of one of the parties, this measure is held to be valid and is not contrary to the agreement to arbitrate, whether this measure was taken before the arbitral proceedings or during them.

Article 19

A court which was seized of a dispute or conflict which is subject to an agreement to arbitrate, must refer the parties to arbitration except in the following cases:

- (a) if the court notes that the agreement to arbitrate is expired, ineffective or does not concern the dispute referred to it;
- (b) if the parties continue the legal proceedings before the court, the agreement to arbitrate is held to be non-existent.

Chapter III The Procedure for Appointing Arbitrators Article 20

Arbitrators may not be devoid of capacity, forbidden, deprived of other civil rights or lack competence for the dispute. Their acceptance must be in writing.

Article 21

The parties may agree upon the number of arbitrators. Failing such an agreement, there are three arbitrators.

Article 22

Without prejudice of the provisions foreseen in this Act, the parties are free to agree on the time when the arbitrator or the arbitral tribunal is to be appointed, and the method of appointment. Failing this, the following shall apply:

- (a) if a sole arbitrator is to be appointed, he shall be appointed by the competent court upon request of one of the parties;
- (b) if two arbitrators shall be appointed, each party appoints one;
- (c) if three arbitrators are to be appointed, each party appoints one and the two arbitrators thus appointed shall appoint the third arbitrator. If they cannot agree on the choice of the third arbitrator within thirty days after appointment of the last of them, the appointment is made by

the competent court upon request of one of the parties. The arbitrator chosen by the two appointed arbitrators, or appointed by the court, shall chair the arbitral tribunal.

Article 23

Arbitrators may be challenged for the same reasons as judges or if it turns out that the provisions of the agreement to arbitrate or of this Act were not complied with. These reasons must arise or appear after the agreement to arbitrate was drafted. In any case, a party may not challenge the arbitrator it appointed, or in the appointment of whom it participated, except for reasons which appear after this appointment. In all cases, the person chosen for a possible appointment as arbitrator must point out all circumstances which may give rise to legitimate doubts as to his impartiality or independence.

Article 24

The request for removal of an arbitrator must be made to the competent court within one week of the notification of the appointment of the arbitrator to the challenging party or of its becoming aware of the circumstances justifying the challenge. The court, using summary proceedings, shall rule on the question within one week. If the court rejects the request, the author of the request may appeal against this decision before the Supreme Court within two weeks as of receipt of this judgment. If the competent court does not rule on the request for challenge within one week, the court shall be held to have rejected the request at the expiry of this time- period. The request for challenge can also be presented to the arbitral tribunal: the same procedure as that mentioned in this Article shall then be applied.

Article 25

When an arbitrator finds himself unable to perform his mission in a manner which would not be a hindrance to the arbitration, and should he not resign, the parties may agree to remove him or one of them may make such a request to the arbitral tribunal or the competent court.

Article 26

When an arbitrator's mandate is finished through challenge, removal, resignation or any other reason, a replacing arbitrator is appointed in compliance with the appointing procedure of the replaced arbitrator.

Chapter IV Jurisdiction of the Arbitral Tribunal Article 27

The arbitral tribunal has jurisdiction over the disputes which are referred to it in compliance with this law or the provisions of the agreement to arbitrate.

Article 28

The arbitral tribunal has jurisdiction over its own jurisdiction including arguments as to the non-existence, expiry or voidness of the agreement to arbitrate or arguments to the effect that the subject- matter of the dispute was not included in the agreement to arbitrate. If the arbitral

tribunal rejects such arguments, a recourse against this decision may be made before the Court of Appeal within one week following notification thereof.

Article 29

The arbitral tribunal must respect the agreement to arbitrate and cannot decide more than what is agreed in the agreement or requested by the parties.

Article 30

Upon request of one of the parties, the arbitral tribunal may order the other party to make any provisional or conservatory measure it deems necessary. If such party refrains from performing the order, the arbitral tribunal may, upon request of the other party, authorize the latter to perform this measure itself and the cost thereof is to be borne by the defaulting party.

Article 31

The arbitral tribunal may request the parties to present the necessary guarantees for the proceedings and the performance of the award made.

Chapter V Arbitral Procedure

Article 32

The parties may agree upon the proceedings to be followed by the arbitral tribunal. Failing such an agreement, the arbitral tribunal may proceed with the arbitration as it deems appropriate, without prejudice of the provisions of this Act and the provisions of the Code of Civil and Commercial Procedure which are of public order.

Article 33

The arbitral tribunal must treat the parties equally and give them equal chances to present their rights and defences.

Article 34

The arbitral proceedings start on the date one of the parties receives the request that the dispute be submitted to arbitration in compliance with the provisions of this law or the provisions of the agreement to arbitrate.

Article 35

Within the time foreseen by the parties or determined by the arbitral tribunal, the claimant sends to the defendant and to each of the arbitrators a written memorandum which must contain the following: the name and address of the claimant, those of the defendant, a complete account of the facts of the case, a determination of the points in dispute, its claims and any other indication which the parties may have agreed to mention in the request for arbitration.

The claimant must join to its memorandum the exhibits, documents and proof concerning the subject-matter of the dispute. The claimant may modify or complete its request or defence

during the arbitral proceedings, unless the arbitral tribunal considers that such a modification was time-barred.

Article 36

The defendant sends the claimant and each of the arbitrators a memorandum containing its defence. Its response must contain a reply to the allegations of the claimant as well as any exceptions it deems necessary; it must join to its memorandum all documents, exhibits and proof concerning the subject-matter of the dispute. The defendant may modify or complete its request or exceptions during the proceedings unless the arbitral tribunal holds that these modifications are time-barred.

Article 37

Copy of evidence or documents presented by one of the parties to the arbitral tribunal must be communicated to the other party, as well as any experts' report for means of evidence concerning the subject-matter of the dispute, and which is referred to the arbitral tribunal.

Article 38

The arbitral tribunal shall hold hearings to hear the parties during the oral-stages of pleadings in order to enable each party to make an account of the subject-matter of the dispute and present its exhibits and arguments. The hearings are secret and may only be followed by persons having a relationship with the subject-matter of the dispute.

Article 39

The arbitral tribunal shall notify the parties with sufficient advance of the dates of the oral hearings and the meetings it holds.

Article 40

The arbitral tribunal may, if necessary, hear witnesses and experts, without placing them under oath.

Article 41

Should the claimant not present its request, the arbitral tribunal shall terminate the arbitral proceedings and may request him to pay all costs incurred as of the beginning of the proceedings until the end. If the defendant does not present its defence, the arbitral tribunal shall continue the arbitral proceedings without holding that this default in itself is an acceptance of the claimant's allegations. Should one of the parties not appear during a hearing or meeting, or fail to produce requested evidence, the arbitral tribunal may continue the proceedings and make its award on the basis of the evidence at its disposal, and without prejudice to the rights of the parties foreseen herein.

Article 42

The arbitral tribunal may appoint one or several experts to present it with a written or oral report on such points of the dispute it determines. The parties must supply any necessary assistance to the expert to enable him to fulfil his mission. The arbitral tribunal may decide to hold a hearing to hear the expert and enable the parties to examine and reply to him. In this case, and unless the parties provide otherwise, each party may be assisted by one or several experts as witnesses.

Article 43

The arbitral tribunal or any of the parties may request the assistance of the competent court for production of evidence or any provisional or conservatory measures. The arbitral tribunal may also request the court to settle questions which are not of its jurisdiction; this does not entail a suspension of the arbitral proceedings.

Article 44

The arbitral proceedings are stayed for the same grounds as those indicated in the Code of Civil and Commercial Procedure. This interruption has the same effects as those foreseen in such Code.

Chapter VI Arbitral Award

Article 45

The arbitral tribunal shall settle the award in compliance with the legal rules chosen by the parties. Should the parties agree to apply a law different from that of the Republic of Yemen, the arbitral tribunal shall apply the substantial rules of this law. Failing such an appointment of an applicable law, the arbitral tribunal applies the law held to be the correct law by the Yemeni rules of conflict of laws. The arbitral tribunal shall settle the dispute in compliance with the rules of international law and those of fairness and justice if the parties authorize it to do so. In all cases, the arbitral tribunal must settle the dispute in compliance with Yemeni law, the provisions of the contract by taking into account general social customs and the commercial customs applicable to the operation.

Article 46

If, during the arbitral proceedings, the parties should agree to settle the dispute amicably, the arbitral tribunal shall finish the proceedings and transcribe the transaction in an award which shall have the same effects as an ordinary award made by the arbitral tribunal.

Article 47

The arbitral tribunal makes its award after having deliberated and by a majority of votes. Failing a majority, the voice of the chairman prevails unless the parties agreed otherwise.

Article 48

The award is made in writing and signed by all arbitrators except when it is made by a majority when the dissident arbitrator may not sign the award by mentioning the reasons thereof. Under penalty of avoidance, the award must give its reasons unless the parties decide otherwise.

The award must contain the following mentions: the name, address, capacity and nationality of the parties and arbitrators, a summary of the claims, exceptions and requests of the parties, their documents, the award itself and the reason for it, the date and place where it was made. The award is final if the parties so decide, in amiable composition or in those cases foreseen by this Act. The arbitral tribunal shall communicate signed copies of the award to the parties.

Article 49

Unless the parties accept in writing, the award shall not be published totally or in part.

Article 50

The arbitral tribunal shall register the original of the award or the injunctions it makes, accompanied with the agreement to arbitrate, with the Secretariat of the competent court within thirty days following the making of the award. The Secretariat shall record this registration. The parties may request communication of the copy of this record.

Article 51

The arbitral proceedings are closed by the making of the award. They may also be closed in the following cases:

- (a) if the claimant withdraws his request;
- (b) if the parties agreed to terminate the dispute;
- (c) if the arbitral tribunal notes that, for any other reason, the proceedings have become superfluous or impossible to continue;
- (d) the mission of the arbitral tribunal ends when the proceedings are closed, and this without prejudice to the provisions thereof.

Article 52

Any of the parties may request the arbitral tribunal, within thirty days following receipt of the award, to correct any material error or error of this nature. Any of the parties may also request the arbitral tribunal to interpret an expression or paragraph or part of the award, provided it notifies this request to the other party. If the arbitral tribunal holds that rectification or interpretation is justified, it makes an award in this respect within thirty days following the receipt of the request. The interpretation given by the arbitral tribunal shall be considered to be an integral part of the award.

Chapter VII Means of Recourse Against the Award

Article 53

Without prejudice to the provisions hereof, the avoidance of the award may only be requested in the following cases:

- (a) if the award was made without agreement to arbitrate or if the agreement to arbitrate was null or void or expired;
- (b) if one of the parties lacked capacity;
- (c) if there was an irregularity in the proceedings;
- (d) if the arbitral tribunal exceeded its mission;
- (e) if the arbitral tribunal was constituted in a manner contrary to the agreement to arbitrate;
- (f) if the award was not reasoned;
- (g) if the award is against the provisions of the Moslem Shari'a or public order.

In all other cases, awards made in compliance with this Act are not subject to the means of recourse foreseen in the Code of Civil and Commercial Procedure.

Article 54

The request for avoidance is made to the Court of Appeal within the legal time-period for making an appeal. It leads to the stay of performance of the award until a decision of the Court that performance should continue, upon request of one of the parties. The Court may accept a request for avoidance after expiry of the time-period if this delay is due to a case of force majeure and the request for setting-aside is made as soon as possible after disappearance thereof.

Article 55

The Court of Appeal may set aside an award on its own motion in the following cases:

- (a) if the award was made on an unarbitrable question;
- (b) if the award is against public order or the provisions of the Moslem Shari'a.

Chapter VIII Performance of Awards

Article 56

Awards made in compliance with this Act are res judicata and are enforceable, without prejudice to the provisions hereof.

Article 57

Awards become final and enforceable after expiry of the time-period for making an appeal if no request for setting-aside was made or if such a request was made and rejected by the court.

Article 58

The Court of Appeal or any authority appointed by the latter has jurisdiction over performance of awards.

Article 59

The request for enforcement of the award is made to the court. The following must be joined thereto:

- (a) the original of the award or a copy certified by the members of the arbitral tribunal;
- (b) a copy of the agreement to arbitrate;
- (c) a copy of the record of registration of the award; and a certified Arab translation of the award and other documents if the award was not made in Arabic.

Article 60

Leave to enforce shall only be granted if the award:

- (a) has become final and enforceable;
- (b) is not contrary to a final judgment already given by the courts; (c) was made in compliance with the provisions hereof.

Chapter IX Final Provisions

Article 61

Law No. 33-1981 relating to arbitration issued in Sana' is repealed, as well as any similar provision foreseen in any law issued in Aden, as well as any provision contrary to the provisions hereof.

Article 62

This law shall enter into force as of its issuance and publication in the Official Gazette.

Issued by the President of the Republic at Sana'

on 25 Ramadan 1412 H.

corresponding to March 29, 1992

Haïdar Abou Bakr AL-AJASS

Chairman of the Council of Ministers

Ali Abdallah SALEH

Chairman of the Council of the Presidency