

**REPUBLIC OF TUNISIA**  
**LOCAL AND INTERNATIONAL ARBITRATION**  
**CENTER « AL-INSAF »**

**RUE DE LA MOSQUEE CITE TAIEB M' HIRI AL OUINA ROUTE DE LA MARSA**  
**TUNISIA -2045 TUNISIA -2045 – REPUBLIC OF TUNISIA**



**USED LANGUAGES : ARABIC - FRENCH -ENGLISH - ITALIAN.**

The Local and International Arbitration Centre "AL-INSAF", founded on 24 May 1995, has been the first arbitration institution to be organized in Tunisia and Africa. Its mission is to consider any and all disputes and litigation submitted to the Centre in accordance with the provisions of the Act N°42-93 dated 26 April 1993 relating to the enactment of the Tunisian Code of Arbitration providing for both domestic and international arbitration procedures, in line with the requirements of globalization and partnerships resulting from the World Trade Organization Agreements.

The Local and International Arbitration Centre "AL-INSAF" employs eminent experts in law and legal matters who have acquired a wide experience nationally and internationally, among Tunisian and foreign experts in the different fields of activity as well as distinguished translators in several languages.

In order to ensure independence of the Centre and openness of its acts, the Centre employs independent lawyers and legal experts in the different fields of activity, with no participation of businessmen or any parties from the circles of business. Besides, the Centre receives no financial subsidies, as is the case for other associations, and has never sought any such support from any parties, whatever be their kind and form, convinced that any such subsidies may bring about negative implications on its acts and be prejudicial to the parties' rights and interests and may effect the neutrality of the Centre, which is contrary to the provisions of article 1 of the Tunisian Code of Arbitration .

Among the motives of proud of the Local and International Arbitration Centre "AL-INSAF" members, there is place to mention that they are the pioneers in applying the Institutional Arbitration, in Tunisia and even on the level of Africa, in conformity with national and international competent legal criteria, in the framework of settlement of disputes and in the positive meaning, , as

asserted by the statistics displayed yearly by means of our web site, this fact drew the attention of the European Union representative who expressed every interest for the Centre at the occasion of a mission aiming at an assessment of the Arbitration mechanism in the Mediterranean and African countries, of which, Tunisia, **since the beginning of 2002.**

In order to fully carry out the factors of transparency and flexibility, namely in relation to parties' personal rights, the centre's internal and international institutions provide for the right to appoint arbitrators, of any sex, race or ethnicity, other than the permanent arbitrators of the centre. Such Procedure may allow the parties to exercise their authority will in managing their personal rights.

Considering the professional form on which the Arbitration Center "AL-INSAF" is based and which deals with settling financial and commercial litigation both internally and internationally, the institution resorts to legal and technical experts. This has necessitated the awareness of the high sensitivity of the decisive regulations that the form of the Arbitration award is subject to in general, whether for the Tunisian or the investors permanently residing in Tunisia. Such a situation has contributed to the structuring of the center establishment, in particular, by setting up the accessory arbitration court "AL-INSAF" performing under its banner, in accordance with the institutional **decree N°.01-2006 dated on April 1<sup>st</sup> 2006** to deal separately with settling the domestic arbitration disputes within its competence, on analogy of the jurisdictionally competent Tunisian county courts.

The basic Arbitration Court "AL-INSAF" was also set up by virtue of the institutional **decree N°.02-2006 dated on April 1<sup>st</sup> 2006** to deal separately with settling the domestic arbitral disputes within its competence, on the analogy of the jurisdictionally competent Tunisian Courts of First Instance. The arbitral litigations of international character were subjected to the competence of the center by virtue of the institutional **decree N°.03-2006 dated on April 1<sup>st</sup> 2006.** Such structuring allows the parties to avoid confusing the internal and international categories of arbitral litigations; and to distinguish the judicial courts competent at the recognition and execution of arbitration decisions from those competent at examining the possibilities of appeal against these decisions. Besides, the center formulated the appropriate rules to organize various specialized competencies dealing with it such as lawyers and special attorneys relative to the litigation by virtue of the institutional **decree N°.04-2009 dated on January 1<sup>st</sup> 2009.** This procedure may allow the parties to exercise their will in managing their personal rights, whether they accept to appoint a lawyer or anyone else they judge appropriate, to defend them or to provide training for one their administrative officers to accomplish the mission of defending their personal rights, at the internal and international arbitration bodies representing the center, which may limit the costly honorarium they pay to lawyers compared

to the grant the administration may decide for these officers against such missions.

Considering the great need for highly qualified translators, whose assistance is required to enhance bringing closer cross-cultural concepts, Thus helping internal and international arbitration bodies to accomplish their missions the best, the appropriate institutional rules to organize these specialized competencies are formulated in conformity with the requirements of parties disputes by virtue of the institutional **decree N° .03-2009 dated on January 31<sup>st</sup> 2009.**

Parties' disputes would also require the competence of highly qualified advisors and specialists experts in various fields, to provide technical assistance through opinions, examinations, experiments, diagnoses, technical tests, area determination, maps drawing, photographing, gauging and weighing, calculating, and all the works required for any mission relative to internal or international arbitration dispute, since these works are not in themselves part of the competence of the arbitral tribunal. Therefore, the appropriate rules to organize these specialized competencies are formulated by virtue of the institutional **decree N° .02-2009 dated on January 31<sup>st</sup> 2009.**

With regard also to the importance of functions and missions implemented by the free international Arbitration commissions, and the lacks specialty in the matter of occasional office they choose temporarily for the exercise of their functions under a form that sometimes doesn't correspond to the level that deserve the Arbitration teams themselves or for the parties to the Arbitration agreement, added to their needs in administrative services required by the nature of their works, the centre inserted the chapter twenty five in its regulation of Arbitral and amicable procedures of the International Arbitration to allow the hosting and patronage of the free International commissions from all countries of the world and from both sexes according, to the legal stipulations without regard to their nationalities and beliefs, whether with regard to the settlement of disputes that can occur between them and the parties to the Arbitration agreement, and of which the request of fees or the remaining portions of fees, or regarding the designation, replacement, defamation or revocation of Arbitrators, together with the other questions having relationship with the good functioning of the Arbitration procedures, further to the rendering of administrative services mainly to their works and functions or that the parties need during all the administrative hours, without need to look for occasional offices of the free Arbitrators team or one of its members.

For the domestic and International  
Arbitration Centre "AL-INSAF"  
**of the General Secretariat of the Centre.**  
**Mister Ameer YAHYAOU**

**DEFINITION OF THE CONSIDERATIONS LAID DOWN BY THE INTERNATIONAL CONVENTIONS AND NATIONAL LAWS FOR THE CREATION OF THE LEGAL INSTITUTION THE LOCAL AND INTERNATIONAL ARBITRATION CENTER “AL- INSAF” IN TUNIS**

It seems that all countries from the different parts of the world that adhered to the terms of the International Convention of World Trade Organization, mainly those who previously enacted the former arbitration law, were unanimous on the determination of two categories for the exercise of arbitration on both local and international levels, whether being a free arbitration or institutional arbitration on the one hand, and also the various laws enacted to that effect on the other hand, confirmed the necessity of professionalism of these arbitration institutions in the aim of separating the professional work and the other activities, mainly those in relation with association activities, added to the non submission of the legal arbitration institutions to the authority of the host country in any manner whatsoever, whether as financial or moral support, as this mechanism is endowed with a special character on the one hand, and as constitutes a partial derogation to the national justice of the countries on the other hand.

Even though, the legislators didn't define the legal basis followed in the creation of the arbitration institution mainly those of legal character, the unanimity of the laws in relation with this mechanism as resulting from the term “**special method**”, it needs that the creation of the arbitration institution be based on private “**AL- INSAF**” of the legal and ad individual initiatives, whether from financial or moral sides to put aside any form of support from the host country.

And on the basis of those international legal criteria, and after obtainment of the local and international arbitration centre “**AL-INSAF**” ministrative authorizations, it was created by private initiative from an important number of eminent lawyers and magistrates whose capabilities are recognized on the national and international level, and with a broad experience in the legal and judicial field, and by some senior specialists in the different technical fields in conformity with those criteria, and consequently the creation of the centre was apart from the participation of tradesmen and industrials and those related with affairs; and further didn't adhered to the association action field with its various categories and forms or that related with commercial and industrial chambers as above mentioned, not only to strengthen the independent character and neutrality of the centre's works or the concretization of the international aspect toward privatization only, but also for the following reasons:

**1-First reason:** consists of the fact that the participation of the tradesmen and industrials and businessmen in the creation of the legal arbitration institution leads to the possibility of their intervention in the independency of the decisions taken by the arbitration institutions, but also leads to the emergence of the relationship of defendant and arbitrator at the same time, and therefore the independency in the works of the centre disappears, and has a negative impact on the arbitration sentences.

**2-The second reason:** relates to the non adherence of the institution “**AL-INSAF**” to the body of commercial chambers, being they national or common, as this behaviour leads necessarily to the same result of the institutions where the tradesmen, industrials and businessmen participate, as long as the commercial and industrial chambers receive financial, moral and political support from the official institutions of the state, further to the submission of their functions and associative bodyaterial management to the supervision of the national competent authority.

**3- The third reason** is that related to the extent of adherence to the as to exercise the professional work of arbitration, it was made clear that the terms of the general international chart relating to the associative work, stipulated the separation between the professional work and the associative action, in order to avoid the mixture between the professional character and the other activities, as the actions of the commercial chambers or the various associations of whichever nature or character or even legal form, draw their nature and attributions from the official institutions of the states, as these latter have the capacity of patronage of these associations as to financial subsidy or moral and also political support, further to the donations and others received by various sources to implement their relief or public awareness objectives for the concretization of certain national or international orientations in the different fields and domains, and therefore the exercise by these authorities of the functions and missions conferred upon the professional arbitration institution can make these national or international orientations aiming to the creation of the arbitration without any object, and leaving the settlement of disputes to the official judicial institution will be better and more efficient than settled by these categories of institutions.

And in consideration of all these criteria, the creation of the arbitration institution “**AL-INSAF**” was completely far from the criteria relating to the associative action or those of the commercial and industrial chambers, in conformity with the rules of separation between the professional action and the various other activities conferred to the different organizations and commercial chambers, as the agreement on settlement of the disputes by these institutions becomes without effect, on the one hand, further to the legal stipulations that impede them from receiving the arbitration fees, apart from the donations and official support as their activities are not profit based, which renders the perception of arbitration fees under any form as a way of enrichment without

cause and allows the parties to recover the advance made in conformity with the stipulations of **article 71 of the Tunisian Code of Obligations and Contracts** that stipulates: **“one who receives a thing or other monies from third parties or came into his possession without cause, should return it to its owner”**. And that is our intention from the introduction of the arbitration centre **“AL-INSAF”** to point out the full compliance with the legal rules and international conventions on the one hand, and to separate on the other hand the professional work and the other activities to ensure the biggest proportion of impartiality and independency, and guarantee the rights of all parties notwithstanding their nationalities and beliefs; and finally not to be in material breach of the national laws or international conventions relating thereto.

## **LOCAL AND INTERNATIONAL ARBITRATION CENTER “AL-INSAF”**



### **Domestic and International Arbitration :**

- 1- Settlement of civil, business and financial disputes, whether.**
- 2- based on contracts or not, amicable arrangements.**
- 3- Time for settlement: 24 hours to 3 months for domestic arbitration.**
- 4- Required period of time for the settlement of international disputes according to the parties' agreement or within the deadlines provided for under the Arbitration Rules of the Centre.**
- 5- Non – mandatory assignment of a lawyer in the internal an international arbitration cases to allow the parties to defend their personal interests, either directly or through a special agent from the general public, and through administrative representatives as far as institutions, whether private, shared or public, are concerned.**
- 6-Exemption from registration and stamp duties .**
- 7- Patronage of International Free Arbitration Boards.**

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