

Different models of clauses and arbitration agreements Local and International in English

model for permanent compromissory clause

ARTICLE...:The parties agreed that any disputes that may arise from such relationship should be settled through Local ad International Arbitration Center «AL-INSAF », Tunisia, according to its Rules and permanent pure legal provisions unless the parties have meanwhile willingly agreed on amicable settlement. Such competent jurisdiction in terms of arbitration shall include all financial and vindictive claims for damages that may arise from any such crimes, offences or further penal infringements.

Pattern of an uncompromising arbitration clause

Article...:

The parties agree to submit any disputes that may arise out of the implementation of this contract/agreement to the arbitration center “**Al-Insaf**”, rue la mosqué cite taieb m’hiri al aouina route de la marsa, Tunis 2045, for settlement according to the center’s rules in pursuance of the provisions of the law, subject to any agreements reached by the parties which may be contrary to the arbitration rules and to any powers that may be conferred by them to the arbitration court in accordance with the provisions of article 3 of the arbitration act and article 242 of the Tunisian obligations and contracts act.

Pattern of a double arbitration clause

Article...:

The parties agree to submit any disputes that may arise out of the implementation of this contract/agreement to the Arbitration Center “**AL-INSAF**”, Rue la Mosque cite Taieb M’hiri al Aouina Route de la Marsa, Tunisia 2045, in order to reach a compromise solution. Failing such compromise solution or amicable settlement, then the dispute shall be settled in accordance with the laws in force by the application of the Center’s Rules and subject to any powers conferred to the arbitration body by the parties under the provisions of articles 3 and 15 of the Arbitration Act and article 242 of the Tunisian Obligations and Contracts Act.

Customary arbitration clause

Article...

The parties agree to submit any disputes that may arise out of the implementation of this contract/agreement to the Arbitration Center “AL-INSAF”, Rue la Mosque cite Taieb M’hiri al Aouina Route de la Marsa, Tunisia 2045, with a view to settle the same by the application of the customary procedures in accordance with the Center’s Rules, subject to the powers conferred by the parties to the arbitration body and subject to any special measures agreed upon by the parties in relation to the arbitration proceedings whether with a view to amend any of the arbitration rules or to agree upon any provisions contrary thereto, whether in total or in part, by objectively renouncing the application of the provisions of the law in order to apply the rules of justice and equity in pursuance of articles 3 and 14 of the Arbitration Act and article 242 of the Tunisian Obligations and Contracts Act.

Two models of arbitration clause in marriage contracts or in communal estate settlements or both together

Preamble:

Upon due consideration of the provisions of article 7 of the Arbitration Act, which empowered the arbitration court “AL-INSAF” to settle any and all financial matters that may arise out of the dissolution of the marriage, whether by abusive divorce or by the termination or cancellation of the marriage contract whether by offence or the like or by any deliberate act, in addition to the agreements provided for by the Tunisian legislation, which may be contained in the marriage contracts made before notaries or registrars with respect to the communal estate settlement between the spouses, the arbitration clause as defined under article 3 of the Arbitration Act related to contractual and non-contractual matters, may be included in advance in the marriage contracts whether for the settlement of any matters that may arise of the dissolution of marriage, in respect of material loss and moral wrong or in relation to the communal estate settlement. Any such matters may be submitted separately or together to the Arbitration Center “AL-INSAF” for settlement, according to the following provisions:

First draft:

(...and by mutual agreement of the spouses, any proceeding aimed at reaching divorce between the parties under any of the forms provided for by the law, shall be assigned to the Arbitration Center “AL-INSAF” for settlement, without prejudice of the moral and financial advantages arising out of the dissolution of marriage, according to the rules of the Center in pursuance of the provisions of

articles 2-3-7 of the Arbitration Act and article 242 of the Tunisian Obligations and Contracts Act.

Second draft:

(...and by mutual agreement of the spouses, any dispute between the spouses which may result in the dissolution of marriage under any of the forms provided for by the law, and any conflict related to the communal estate settlement shall be submitted to the Arbitration Center “AL-INSAF” for consideration and settlement according to the rules of the Center in pursuance of the provisions of articles 2-3-7 of the Arbitration Act and article 242 of the Tunisian Obligations and Contracts Act.

Draft of minutes related to an agreement on arbitration in the absence of the arbitration clause

REPUBLIC OF TUNISIA

Local and International Arbitration “AL-INSAF”

Rue la Mosqué cite Taieb M’hiri al Aaouina

Route de la Mmarsa, Tunisia 2045

SITE WEB : www.al-insaf.com.tn

On this.....day of.....in the year 200.....at.....in the head offices of the arbitration Center “AL-INSAF”, Rue la Mosque cite Taieb M’hiri al Aouina Route de la Marsa, Tunisia 2045, has appeared the representative of the company “A”, Limited by shares, register of trade of the county court of.....N°.,

Mr/Mrs.....bearer of identity card N°.....issued on.....residing in (head offices of the company). He/she declares that his/her company had entered into contract with company “B”, limited liability co., registered in the Register of Trade of the County Court of.....under N°.....He/she asserts that Company “A” had supplied Company “B” with.....(quantity) of.....(goods) for a total amount of.....The goods were shipped under Bill of Lading N°...issued by.....on.....

The receivers had paid, upon receipt of the goods, part of the amount and still have not settled the balance without cause, although no reserves had been formulated upon receipt of the goods. Therefore, in his/her capacity as legal representative of Company “A”, he/she wishes to submit this dispute for settlement by the Arbitration Center “AL-INSAF” according to its Arbitration Rules.

Also appeared the legal representative of Company “B”, Mr/Mrs....,bearer of identity card N°.....issued on.....residing in.....and acknowledged the contractual relation and the debt. He/she noted, however, that the goods were not in conformity with the specifications and that the supplier had not complied with

the date of delivery. He/she agrees that the dispute be submitted to the Arbitration Center “AL-INSAF” after survey to be made on some samples of the goods by one or more experts to be selected by mutual agreement between the parties or by the arbitration body who shall settle the accounts between the parties taking into consideration the advance payment made to the petitioner, in accordance with the provisions of articles 2-4-17 of the Arbitration Act and article 23 of the Tunisian Obligations and Contracts Act, without prejudice of the center’s rights in relation to any objections or challenges whether pertaining to the arbitrators or to the expert to be designated by the arbitration body.

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Two models of arbitration clause in marriage contracts related to the financial rights that may arise out of divorce or under the communal estate settlement

Witness their hand and seal

Preamble ..:

Upon due consideration of the provisions of article 7 of the Arbitration Act, which empowered the arbitration court “AL-INSAF” to settle any and all financial matters that may arise out of the dissolution of the marriage, whether by abusive divorce or by the termination or cancellation of the marriage contract whether by offence or the like or by any deliberate act, in addition to the agreements provided for by the Tunisian legislation, which may be contained in the marriage contracts made before notaries or registrars with respect to the communal estate settlement between the spouses, then the parties- if they had not agreed in advance that any financial matters that may arise out of the dissolution of marriage or under the communal estate settlement be settled by arbitration- may agree on that at any later phase and submit any such matters for consideration and settlement by the Arbitration Center “AL-INSAF” in accordance with its rules whether before any action was brought before the courts or pending any such action, as described below:

Agreement on arbitration with respect to the financial rights arising out of the dissolution or marriage.

The spouses have agreed as follows

(indicate the full name and address of each spouse).

Single article ..:

With reference to the marriage contract made by (name of Notaries.....on.....) or by the registrar of the district of.....on....., the spouses agree that any penalties to be paid as result of abusive divorce and any other rights that may arise out of the dissolution of marriage whether because of an offense or the like or for any other cause, be settled by the Arbitration Center “AL-INSAF” according

to its rules, in pursuance of the provisions of articles 2-4-7 of the Arbitration Act and article 23 of the Tunisian Obligations and Contracts Act.

Agreement on arbitration with respect to the financial rights arising out of the dissolution or to the Communal Estate Settlement.

The spouses have agreed as follows :

(indicate the full name and address of each spouse).

Single article ..:

With reference to the marriage contract made by (name of Notaries.....on.....) or by the registrar of the district of.....on....., stating that the spouses had opted for the Communal Estate Settlement, the parties agree, hereunder, that the Arbitration Center “AL-INSAF” be entitled to consider and settle the matters that may arise out of the case of divorce under examination by the County Court or the court of appeal of.....under N°...,with respect to the financial rights that may arise of the dissolution of the marriage, both material and moral rights, as well as any disputes that may arise between the parties in relation to the Communal Estate Settlement, in accordance with the Arbitration Rules of said center, in pursuance of the provisions of articles 2-4-7-17 of the Arbitration Act and article 23 of the Tunisian Obligations and Contracts Act.

Model of a double agreement on the transfer of competence from the courts pending consideration of the case by the courts of Justice and assignment of competence to the Arbitration Center “AL-INSAF” instead of the Courts of Justice

Agreement:

The parties hereunder agree (indicate the full names and addresses of the parties):

Single article..:

With reference to the provisions of article.....of the contract, agreement or transaction executed between the parties on/...../200..... where it had been agreed that any disputes that may arise out of the relationship between the parties be settled by the courts of.....; now the parties have agreed to amend the provisions of said clause/article in accordance with the provisions of articles 2-4-14-15-17 of the Arbitration Act and article 23 of the Tunisian Obligations and Contracts Act.

Under this agreement, said clause shall be rescinded and competence be assigned to the Arbitration Center “AL-INSAF” who shall be entitled to consider and settle any such disputes in part or in whole as well as their legal, material and moral implications in accordance with the provisions of the law, in relation to the case submitted to court of appeal of...under N°....; to seek compromise in relation to the case submitted to the County Court of...under N°....and to settle by the customary rules the dispute submitted to the district court ofunder N°...It is

further agreed that all cases submitted to any of the courts of justice mentioned above shall be withdrawn by the diligent party and submitted to the Arbitration Center "AL-INSAF" for settlement according to its rules.

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Model of a double Agreement on the transfer of competence from the courts pending consideration of the case by the courts of Justice and assignment of competence to the Arbitration Center "AL-INSAF" instead of the Courts of Justice

Agreement:

The parties hereunder agree (indicate the full names and addresses of the parties):

Single article:

With reference to the provisions of article of the contract, agreement or transaction executed between the parties on .../.../200... where it had been agreed that any disputes that may arise out of the relationship between the parties be settled by the courts of; now the parties have agreed to amend the provisions of said clause/article in accordance with the provisions of articles 2-4-14-15-17 of the Arbitration Act and article 23 of the Tunisian Obligations and Contracts Act .

Under this agreement, said clause shall be rescinded and competence be assigned to the Arbitration Center "AL-INSAF" who shall be entitled to consider and settle any such disputes in part or in whole as well as their legal, material and moral implications in accordance with the provisions of the law, in relation to the case submitted to court of appeal of under N°; to seek compromise in relation to the case submitted to the County Court of under N° and to settle by the customary rules dispute submitted to the district court of under N°

It is further agreed that all cases submitted to any of the courts of justice mentioned above shall be withdrawn by the diligent party and submitted to the Arbitration Center "AL-INSAF" for settlement according to its rules .

Draft Agreement on the transfer of competence from the courts before the rise of the dispute and assignment of competence to the Arbitration Center "AL-INSAF" instead of the Courts of Justice

Agreement:

The parties hereunder agree (indicate the full names and addresses of the parties):

Single article.. :

With reference to the provisions of article of the contract, agreement or transaction executed between the parties on .../.../200... where it had been agreed that any disputes that may arise out of the relationship between the parties be settled by the courts of; now the parties have agreed to amend the provisions of said clause/article in accordance with the provisions of articles 2-4-17 of the Arbitration Act and article 23 of the Tunisian Obligations and Contracts Act . Under this agreement, said clause shall be rescinded and competence be assigned to the Arbitration Center "AL-INSAF" who shall be entitled to consider and settle any such disputes in part or in whole as well as their legal, material and moral implications in accordance with its rules.

**Model of an Arbitration Agreement pursuant to a
shareholders' agreement before the occurrence of the dispute**

The classes of companies as defined by the law N°93 of 03 November 2000 related to the enactment of the Business Companies' Act:

- 1) **Accompany limited by shares .**
- 2) **Limited liability company .**
- 3) **Joint venture company .**
- 4) **General partnership .**
- 5) **Limited partnership .**
- 6) **Company with variable capital .**
- 7) **Private company.**

Article...The shareholders unanimously (or by the majority) resolved that any disputes that may arise between the shareholders in relation to the company's business and interests be submitted to the Arbitration Center "AL-INSAF", whether any such disputes are related to the distribution of dividends, the nomination of directors, managers or auditors, to the dissolution and winding up of the company or to any other matters .

The Arbitration Center "AL-INSAF" may, upon receipt of a notice to such effect, seek an amicable settlement between the parties or may consider the case and deliver its award according to its arbitration rules in pursuance of articles 2-4-16-17 of the Arbitration Act; article 23 of the Tunisian Obligations and Contracts Act; the provisions of the law N°93 dated 03 November 2000 related to the enactment of the Business Companies' Act and the provisions of the law N°44 dated 02 May 1995 related to the register of trade .

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**Two models of arbitration clause in marriage contracts related
to the financial rights that may arise out of divorce or under
the communal estate settlement**

Preamble:

Upon due consideration of the provisions of article 7 of the Arbitration Act, which empowered the arbitration court "AL-INSAF" to settle any and all financial matters that may arise out of the dissolution of the marriage, whether by abusive divorce or by the termination or cancellation of the marriage contract whether by offence or the like or by any deliberate act, in addition to the agreements provided for by the Tunisian legislation, which may be contained in the marriage contracts made before notaries or registrars with respect to the communal estate settlement between the spouses, then the parties-if they had not agreed in advance that any financial matters that may arise out of the dissolution of marriage or under the communal estate settlement be settled by arbitration-may agree on that at any later phase and submit any such matters for consideration and settlement by the Arbitration Center "AL-INSAF" in accordance with its rules whether before any action was brought before the courts or pending any such action, as described below:

-1) Agreement on arbitration with respect to the financial rights arising out of the dissolution or marriage.

The spouses have agreed as follows

(indicate the full name and address of each spouse) .

Single article ..:

With reference to the marriage contract made by (name of Notaries on ...) Or by the registrar of the district of on, the spouses agree that any penalties to be paid as result of abusive divorce and any other rights that may arise out of the dissolution of marriage whether because of an offense or the like or for any other cause, be settled by the Arbitration Center "AL-INSAF" according to its rules, in pursuance of the provisions of articles 2-4-7 of the Arbitration Act and article 23 of the Tunisian Obligations and Contracts Act .

-2) Agreement on arbitration with respect to the financial rights arising out of the dissolution or to the Communal Estate Settlement .

The spouses have agreed as follows

(indicate the full name and address of each spouse) .

Second draft :

With reference to the marriage contract made by (name of Notaries on) Or by the registrar of the district of on, stating that the spouses had opted for the Communal Estate Settlement, the parties agree, hereunder, that the Arbitration Center "AL-INSAF" be entitled to consider and settle the matters that may arise out of the case of divorce under examination by the County Court or the court of appeal of under N°, with respect to the financial rights that may arise of the dissolution of the marriage, both material and moral rights, as well as any disputes that may arise between the parties in relation to the Communal Estate Settlement, in accordance with the Arbitration Rules of said center, in persuance of the provisions of articles 2-4-7-17 of the Arbitration Act and article 23 of the Tunisian Obligations and Contracts Act.

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FORM OF ARBITRATION AGREEMENT ON CIVIL AND MORAL COMPENSATIONS RESULTING FROM THE VARIOUS PENAL CRIMES AND VIOLATIONS IN THE DIFFERENT CONTRACTS AND TRANSACTIONS
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Preamble:

Although the arbitration institution competence doesn't cover the different cases in relation with penal crimes and violations in conformity with article 7 of the arbitration code, the parties are not impeded to agree later on, on the limitation of the competence of national civil law courts to examine the element of determination of penal liability only, for the arbitration center "AL-INSAF" being competent in solving the disputes relating to financial and moral compensation that should result from the various penal crimes and violations.

Form of arbitration agreement:

It was agreed between the two parties named below on the following: (indication of full identity of each party and domicile).

Sole article: In consideration of the contract concluded between the two parties indicated above dated mentioning the agreement on the competence of judicial courts to examine the disputes resulting from said contract or transaction, they agreed herewith that the extent of competence of the court mentioned on the contract or transaction is limited to the determination of penal responsibility element that could result from said relationship only, whether the disputes relating to the financial or moral compensations are solved by the local and international arbitration center "AL-INSAF", to be examined according to its rules in conformity with articles 2 –4 – 7 and 17 of the Arbitration Code, and the stipulations of article 23 of the Tunisian Code of Obligations and Contracts.

Preamble:

It is evident that each party to contractual or non-contractual relationships with regard to the various transactions should foresee the commitment by a party to that relationship a crime or violation that could impact the civil and moral rights, notwithstanding the pure civil and commercial claims, and therefore the parties can anticipate the condition of limitation of the competence of national judicial courts only to the determination of the penal responsibility, with competence to the arbitration center "AL-NSAF", to solve the disputes relating to financial and moral compensations that could be generated by the various penal crimes and violations in conformity with articles 2 –4 – 7 and 17 of the Arbitration Code, and the stipulations of article 23 of the Tunisian Code of Obligations and Contracts.

Model of the partial condition on arbitration:

It was agreed between the two parties named below on the following: (indication of full identity of each party and domicile).

Sole article: By agreement between the two parties or parties, all disputes resulting from any penal crime or violation in relation with this contract or transaction, the competence of the national judicial courts is limited only to the determination of the penal responsibility, whether the disputes relating to

financial and moral compensations that could be generated by the various crimes and violations are settled by the local and international arbitration center “AL-INSAF”, according to its rules in conformity with articles 2 –4 – 7 and 17 of the Arbitration Code, and the stipulations of article 242 of the Tunisian Code of Obligations and Contracts.

Preamble:

Where the various transactions and exchanges in all financial and commercial and even tertiary fields in relation with economic and industrial investment from all parts of the world , whether these relations are international or internal, are based on the proofs given by distant communication means through the internet sites, contrarily to the other traditional means of proofs, it is rather appropriate to agree in advance during the presentation of the order or payment document, on the option of settlement of claims that could arise from those relations by the International and Local Arbitration Center “AL-INSAF” in Tunis, wither with relation to the execution of the obligation resulting there from, or in connection with the consequent compensations element in the various crimes and violations as fallows.

**FORM OF MODEL AGREEMENT ON ARBITRATION TO BE
INSERTED IN THE DOCUMENTS OF ORDRES OR
PAYEMENT INVOICES**

...,**Claims clause:** in case of acceptance of execution of this order or invoice, the claims that could arise in relation thereto are settled by the International and Local Arbitration Center “AL-INSAF” in Tunis, according to its system and legal rules, whenever the amicable attempts fail to reach and agreement to which all party adhere.

**FORM OF ARBITRATION AGREEMENT IN THE
DOCUMENTS OF ORDRES AND INVOICES WITH THE
COMPENSATIONS THAT COULD RESULT FROM THE
VARIOUS CRIMES AND VIOLATIONS**

...,**Claims clause:** in case of acceptance of execution of the consequences of this order or invoice....., the claims that could arise in relation thereto are settled by the International and Local Arbitration Center “AL- INSAF” in Tunis, according to its system and legal rules, whenever the amicable attempts fail to reach and agreement to which all party adhere, and the arbitration competence comprises the settlement of any compensations that could result from any crimes and violations.

* * * *

Preamble:

In conformity with the stipulations of the fourth paragraph of article 58 of the Tunisian Arbitration Code, and on diligence by the arbitration institution “AL-INSAF” and for the sake of preserving the best position of the competences supervising the exercise of the free arbitration, the center prepared a special statute for the patronage of these arbitral formations, in the aim of their protection and preservation of their integrity up to the position they deserve, with the setting up of the appropriate conditions for the exercise of the functions and missions conferred upon them, and safeguard the rights of the parties and supply the administrative services they necessitate, as well as solving the disputes that can arise between them and their arbitrators, mainly those relating to defamation or compensation or dismissal or ordering the execution of their mission in the shortest time and the easiest conditions.

Model of the free arbitration condition under the auspices of the arbitration center “AL-INSAF” of Tunis.

Article : ..In conformity with the arbitration condition relating to the settlement of disputes that could emerge between the parties of the present relationship by way of free arbitration, the arbitration venue is at the local and international arbitration center “AL-INSAF” in Tunis, according to its statute relating to the patronage of the free arbitration formations.

Model of the patronage of the arbitration center “AL-INSAF” of Tunis of the free arbitration

Convention:

(After indication of the identity of the parties to the relationship, and their capacity and occupation whether physical or commercial and domicile):

Sole article: following the terms of the contract or act or transaction drafted on mainly its article that stipulates the necessity of solving the dispute that could arise there from by free arbitration, it was agreed that the local and international arbitration center “AL-INSAF” in Tunis is the place of examining the disputes that could arise with regard to said relationship in conformity with its rules relating to the patronage of the free arbitration formations.

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