

International Arbitration Laws in Libya

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2. Code of Civil and Commercial Procedure 1953 p. 5

## **Libyan Law No.4 for 2010 on Arbitration and Conciliation**

### Article (1)

Definitions: Conciliation and arbitration must organize the disputes between the individuals which fall within the jurisdiction of the district courts in civil, commercial and personal status affairs and the personal rights that result from criminal matters as shown in this Law.

### Article (2)

Each Basic Popular Congress should have a committee or more for conciliation and arbitration between the individuals residing in the venue of the Congress. The members of the committee should not be less than three and not more than five. The General People's Congress for Justice should manage the formation of these committees from persons who are known for their integrity, impartiality, efficiency, social prestige and experience in settling disputes. The decision of forming the committee should specify the fees of the members and secretary of the committee.

### Article (3)

The concerned committee should examine the dispute according to a written application presented by the parties to the dispute or one of them. The secretary of the committee must record this application in the registry which is established for this purpose and should specify an appointment for examining the dispute. He should inform in writing the parties to the dispute of the date and place of committee meeting before three days as minimum.

### Article (4)

The committee should hold its meetings for conciliation and arbitration between the parties publicly by presence of the majority of its members. The Head or member of the committee who has a personal benefit in dispute, or is a relative (till 4th degree) of the parties, may not participate in the review of the dispute. The meetings of the committee should be held by the presence of the parties to the dispute or their agents. The committee may invite third parties to attend the hearings if deemed necessary for settling the dispute. Also, the committee may examine the dispute in closed meeting when deemed necessary.

### Article (5)

The committee should start the conciliation between the two parties. If it did not settle the dispute by this method; it should specify another meeting for arbitration and it has to do the following: 1- Listen to the witnesses; 2- charge the parties to submit any documents useful for settling the dispute; 3- Inspecting the places; 4- being assisted by experts.

### Article (6)

The Secretary of the committee should draft the minutes of meetings of the committee and should include in brief the statements of the parties to the dispute and the statements of the

witnesses and the measures taken according to the decision of the Head of committee. The minutes should be signed by the Secretary and members of committee.

#### Article (7)

After a full reconciliation between the parties, the secretary should draft the minutes of agreement including all issues and it should be signed by the parties to the dispute, secretary and members of the committee after reading it loudly. The Head of the committee should deposit the original copy of the minutes at the local competent district court which should issue an order to give those minutes the executive power without paying any judicial fees. If the agreement is related to a dispute pending before one of the courts, the original copy of the agreement must be sent to that court in order to take the legal measures thereon.

#### Article (8)

The parties to the dispute, when they are informed of the date of the committee meeting, should attend the meeting to submit their views and defence. The committee must settle the disputes within one month from the date of submitting the application; otherwise the concerned parties should resort to the court to claim their rights according to the legal procedures. If any party failed to attend the meeting without good reason, the committee should examine the dispute during his absence and consider that party as having waived his right to submit a defence, then the committee should transfer the issue to the concerned court.

#### Article (9)

If a person is not paying the alimony to the persons entitled thereto, for any consideration preventing its payment, the committee must immediately specify the value of alimony temporarily and should submit the issue to the concerned judge for determining the permanent alimony according to the provisions of the applicable legislations.

#### Article (10)

The committee should hold its meetings in the venue of the concerned district court and it has the right to hold them in any other place agreed thereon by the parties to the dispute or to set up the meetings in the house of one of the two parties if the other party agreed thereon. The committee has the right to choose the time of the meetings and inform the concerned parties about it.

#### Article (11)

The provisions of territorial jurisdiction defined in both Codes of Civil and Commercial procedure shall apply to the disputes governed by the competence of the conciliation and arbitration committees provided such provisions do not contradict the provisions of this law.

#### Article (12)

It is permitted to the concerned persons in all contraventions and misdemeanours to send their complaints to the conciliation committee for settling the case by agreement. If the case is settled

through conciliation according to the provisions of the previous paragraph, it will not be considered as a previous crime.

Article (13)

Law No. (74) of 1975 concerning conciliation and arbitration by the People's Committees shall be repealed and any provision contradicting this Law should also be repealed.

Article (14)

This Law shall be applied from the date of issuance and publication. General People's Congress.

Issued on January 28, 2010.

## **Code of Civil and Commercial Procedure 1953 of 1953, Articles 739-777**

### **Article 739 - THE AGREEMENT TO ARBITRATE**

The parties may, generally, agree to refer to arbitration all disputes amongst them arising out of the performance of a particular contract. They may also agree to arbitrate a particular dispute.

### **Article 740 -ARBITRABILITY**

No arbitration is possible on matters of public order, disputes between employees and employers relating to the implementation of provisions of social security, work accidents and labour illnesses, disputes relating to nationality, or civil status including divorce. However, arbitration is possible on the evaluation of alimony in family matters. It may also cover a dispute relating to the amount of the “mahr” (dowry paid by the husband) or any other disputes over amounts arising from a case of personal status. An arbitration between husband and wife may also be made but only as concerns matters which are arbitrable according to the Shari'a.

### **Article 741 -THE ARBITRATOR**

An arbitrator must not be a minor, a person under a disability or deprived of his civil rights, nor a non-rehabilitated bankrupt.

**Article 742 -PROOF OF ARBITRATION CLAUSES** Arbitration clauses can only be proved in writing.

### **Article 743 - DETERMINATION OF THE SUBJECT MATTER OF THE DISPUTE**

The subject matter of the dispute must be determined in the agreement to arbitrate or during the proceedings; otherwise they are void, even if the arbitrators are empowered to act as “amiables compositeurs”.

### **Article 744 -SEVERAL ARBITRATORS**

If there are several arbitrators, their number must always be uneven except in the case of an arbitration between husband and wife which must comply with the provisions of the Shari'a.

### **Article 745 “AMIABLE COMPOSITION”**

The arbitrators may only be empowered to act as “amiables compositeurs” or settle a dispute as such if they were appointed by their name either in the agreement to arbitrate or in a prior agreement.

### **Article 746 -DISAGREEMENT ON THE ARBITRATORS**

If a dispute arises and the parties cannot agree on the choice of arbitrators, or if one or more of the arbitrators appointed by the mutual agreement of the parties refrain from acting or suspend performance of the mission, are unable to act or are removed and if there is no particular provision covering this in this agreement, each party may notify the other party of the name of

the arbitrator(s) which it has appointed through the intermediary of the clerk (of the court) and invite it to appoint its arbitrator(s).

If the latter party refrains from doing so within twenty days following receipt of this notification, the first party may request the court which otherwise would have had jurisdiction over the dispute to appoint the arbitrators itself. The court, if need be, after having heard the other party, must make a decision in this respect which decision is not subject to any means of recourse.

#### Article 747 - ARBITRATORS' ACCEPTANCE OF THEIR MISSION

The arbitrators' acceptance of their mission must be made in writing unless they are appointed by the court. Acceptance may be proved by the arbitrators' signature of the agreement to arbitrate.

Article 748 -WITHDRAWAL OF ARBITRATOR Once he accepted an arbitrator may not withdraw without good reason, otherwise he might be liable in damages.

#### Article 749 -DISMISSAL OF ARBITRATORS

Arbitrators may only be dismissed by the mutual agreement of the parties or by a judgment made by the court upon the request of one of the parties and after having heard the other party and the arbitrator, or upon the request of all parties. The decision of the court either accepting or refusing this request is not subject to appeal.

Dismissal may only be made for reasons which appear or arise after the execution of the agreement to arbitrate.

Arbitrators may only be challenged or dismissed for the same reasons as would lead to the removal of a judge. The request for challenge or dismissal cannot be accepted after the award has been made or the hearings closed.

#### Article 750 -DEATH OF ONE OF THE PARTIES

The arbitration is not ended by the death of one of the parties if all the heirs are of age. The death will only extend the time for the arbitration by thirty days.

#### Article 751 - EFFECT OF APPOINTMENT OF A NEW ARBITRATOR

In case an arbitrator, who withdrew, was dismissed or removed by the decision of the court or by the agreement of the parties, is replaced, the time for the arbitration is extended by thirty days.

#### Article 752 -THE TIME FOR ARBITRATION

The arbitrators must make their award within the time agreed and, if such time has not been determined, they must make their award within three months following the date of their acceptance of the mission.

If there is more than one arbitrator and if the mission was not accepted by all of them at the same time, this period starts as of the date on which the last of them accepted his mission. If a request for dismissal is presented, this time must be suspended until the request is settled. It must also be suspended in the case of any replacement of the arbitrators.

The arbitrators may request the extension of this period only once provided that this extension is justified by the need to complete the evidence and provided further that it does not exceed three months. It must also be agreed to by the parties and made in writing. In case of the death of one of the parties, the period for the arbitration is extended by thirty days.

#### Article 753 -AWARDS NOT MADE WITHIN THE DEADLINE

If the arbitrators do not make their award within the time indicated in the above Article, the most diligent party may refer the dispute to the court or request the courts to appoint other arbitrators if the parties still agree to settle the dispute by way of arbitration.

#### Article 754 -ARBITRAL PROCEDURE

In the agreement to arbitrate or arbitration clause or any other later agreement executed before the arbitrator starts to consider the case, the parties may fix the rules and procedure which must be applied by the arbitrators.

If they do not do so, the arbitrators may determine the rules which they consider appropriate, and failing this, one must apply the procedure and time-limits which apply for court proceedings.

#### Article 755 - PROCEDURE FOR “AMIABLE COMPOSITION”

Arbitrators acting as “amiables compositeurs” are freed from any duty relating to the respect of the law or legal procedures.

#### Article 756 -THE AWARD

The arbitrators settle the case on the basis of what was produced to them by the parties, they must fix a deadline for the parties to submit their documents, submissions and defence.

If one party refrains from producing its evidence and claims within these deadlines, the arbitrators may settle the case on the basis of those produced by the other party only.

All investigative proceedings must be performed by all the arbitrators and each of them signs the minutes unless one of them has been delegated to perform a specific investigative measure and which has been mentioned in the minutes of the hearing.

#### Article 757 - MATTERS NOT WITHIN THE JURISDICTION OF THE ARBITRATORS

If, during the proceedings, a question is raised which is not within the jurisdiction of the arbitrators or if legal proceedings for forgery of any of the documents is started or if criminal sanctions are imposed in respect of this or any other criminal matter, or if there is any other difficulty which in the opinion of the arbitrators might have an influence on the subject matter

of the arbitration, the arbitrators must stay the proceedings and invite the parties to present their requests to the competent court. In this case, the time for the arbitration is suspended until one of the parties notifies to the arbitrators of the final judgment on this question. If the time for making the award is less than twenty days, it must be extended up to twenty days.

#### Article 758 - RESTRICTIONS ON THE JURISDICTION OF THE ARBITRATORS

The arbitrators cannot authorize any attachment or other interim measures of protection.

If a judge authorizes an attachment in an arbitration case, he must decide on the validity of this attachment without examining the merits of the dispute. He must also order the attachment to be lifted if the arbitrators request this.

#### Article 759 -COURT ASSISTANCE

The arbitrators may request the President of the Court mentioned in Article 762 to:

1. impose upon witnesses who refrain from appearing the fine mentioned in Article 181 or to take the measures in Article 182 concerning witnesses who refrain from replying to questions;
2. grant rogatory commissions.

#### Article 760 -MAKING OF AWARDS

The arbitral award must be made by a majority of the arbitrators after they have completed their deliberations. It must be drafted like a judgment and contain inter alia a copy of the agreement to arbitrate, a summary of the claims and arguments of the parties, the reasons for the decision and the decision, the date and place where it was made and the signature of the arbitrators.

If one or more arbitrators refuse to sign, this must be mentioned in the award but the award is still valid if it is signed by the majority of the arbitrators.

#### Article 761 -PLACE OF MAKING THE AWARD

The arbitral award must be made within Libyan territory otherwise it will be governed by the rules applicable to judgments made abroad. The arbitrators must settle the case in law unless the parties authorize them to settle the case “ex aequo et bono” and in compliance with custom.

#### Article 762 -REGISTRATION OF THE ARBITRAL AWARD

An original copy of all awards, even those concerning investigative measures, must be registered with the clerk of the court originally having jurisdiction over the dispute, together with the original of the agreement to arbitrate. This registration must be made within five days following the date of the award and the clerk must record this registration.

If the arbitration was made on appeal, the award must be registered with the clerk of the court originally having jurisdiction over the appeal.

#### Article 763 -ENFORCEMENT OF AWARD

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The award is only enforceable following a ruling by the judge of summary proceedings of the court with which the original of the award was registered, made upon a request from one of the concerned parties. This ruling must be made after consideration of the award and the agreement to arbitrate, and after having made sure that there is no reason which would prevent it from being enforced. The ruling is endorsed on the award and the clerk of the court notifies the parties of the registration as well as the grant of leave to enforce by the court according to the procedure provided for notification of judgments. Recourse against the decision to refuse leave to enforce must be made before the Court of First Instance, if the refusal was made by a sole judge and before the Court of Appeal if it was made by the Court of First Instance.

#### Article 764 -CORRECTION OF MATERIAL ERRORS

The court with which the award was registered may correct any material errors in the award upon request of any party, in accordance with the rules applicable for the correction of judgments.

#### Article 765 -AUTHORITY FOR ENFORCEMENT

The court mentioned in the above Article has jurisdiction over all matters relating to enforcement of the arbitral award.

#### Article 766 - IMPLEMENTATION OF PROVISIONS RELATING TO URGENT ENFORCEMENT

The rules of provisional enforcement are applicable to arbitral awards.

#### Article 767 -APPEAL AGAINST ARBITRAL AWARDS

Arbitral awards may be subject to appeal after they have been approved in compliance with the provisions of Article 763. The appeal must be made in compliance with the rules applicable for appeal against court judgments.

However, arbitral awards are not appealable if the arbitrators acted as “*amiables compositeurs*”, if it was made in a case pending in appeal, if the parties have expressly waived their right to appeal or if the value of the claim settled by the award was such that no appeal is normally possible.

Appeal is made before the court which would have had jurisdiction over the case.

#### Article 768 -REQUEST FOR REHEARING

Arbitral awards may be subject to a request for a rehearing except in the fifth case mentioned in Article 328, and in compliance with the rules applicable to court judgments. The request must be made before the court originally having jurisdiction over the case.

#### Article 769 -SETTING ASIDE OF AWARDS

Even if the parties agreed otherwise, a final arbitral award may be subject to a request for setting aside in the following cases:

1. if the award was made in the absence of an agreement to arbitrate or on the basis of a void or expired agreement;
2. if the award was made by arbitrators who were appointed irregularly or by arbitrators who were not authorized to settle the case in the absence of the others;
3. if the award was made by a minor, a person under a disability or who has been deprived of his civil rights, if one of the parties did not have the capacity to dispose of his rights or if the question related to a matter which cannot be subject to arbitration or conciliation;
4. if the arbitrator did not comply with the mission with which he was entrusted, if he exceeded the scope of this mission or if the award contains an obvious contradiction;
5. if the award does not contain the matters mentioned in Article 760;
6. if the award is made after the expiry of the time agreed for the arbitration unless the interested party has agreed to this or did not notify the other party thereof up to the date on which the award was made;
7. if the arbitrators did not respect the relevant rules of procedure which they undertook to respect under penalty of being void.

#### Article 770 - PROCEDURE RELATING TO THE REQUEST FOR SETTING ASIDE

A request to set the award aside must be made according to the normal procedure which applies before the court originally having jurisdiction over the dispute and within thirty days following notification of the award. A request is not possible after more than one year following the date of the ruling granting leave to enforce.

If a party waives the right to request the setting aside of the award, this does not make such a request inadmissible.

#### Article 771 - ACCEPTANCE OF THE REQUEST TO SET THE AWARD ASIDE

If the request is held to be justified, the court decides by a judgment to set aside the award and the arbitral proceedings. It may settle the dispute if it holds that the case is ready to be decided.

If the court considers however that further investigation is necessary, it transfers the case to one of its judges. If the subject matter of the dispute is related to a case pending before another court, the court orders the enforcement of the decision to be suspended subject to a request to have it set aside.

#### Arbitration Between Husband and Wife

#### Article 772 -MARITAL DISAGREEMENT

In case of a disagreement between husband and wife, a court which fails in its attempt to conciliate between them may appoint two arbitrators with the mission to conciliate them.

#### Article 773 -QUALIFICATIONS OF ARBITRATORS

Both arbitrators must be male and known for their fairness. If possible, they must be the parents of the spouses or else persons who know their situation and are capable to reconcile them.

#### Article 774 -DUTY OF ARBITRATORS

The arbitrators must discover the causes of the disagreement between the husband and wife and they shall attempt to reconcile them if possible, according to the particular method which they may have decided upon.

#### Article 775 -DECISION OF ARBITRATORS

If the arbitrators are unable to reconcile the husband and the wife and if the cause of the dispute lies with the husband, or both parties or if they are unknown, the arbitrators may decide to separate husband and wife with or without compensation.

#### Article 776 -DISAGREEMENT BETWEEN ARBITRATORS

If the arbitrators disagree, the court orders them to study the case again and if they still disagree, it appoints other arbitrators.

Article 777 -REFERENCE OF THE AWARD TO THE COURT The arbitrators must refer their decision to the court which must

make a judgment in compliance with this decision.