

# The Sudanese Arbitration Act 2016 -SAA

Following Article 109 of Sudan's Transitional Constitution 2005, hereby the President issued this Temporary Decree :

## Chapter I

### *Preliminary Provisions*

#### **Title and commencement:**

1. This Act may be cited as the, "Arbitration Act, 2016", and shall come into force, as from the date of signature .

#### **Repeal:**

2. Arbitration Act 2005 , shall be repealed; provided that:

- a. The arbitration procedure, which has been made hereunder, shall be deemed valid, unless the dispute parties agree otherwise.
- b. All procedures and awards obtained under it are authentic and valid until it changes or repealed by this Act.

#### **Application of the Act:**

3. Subject to the provisions of international agreements, pertaining to arbitration, to which Sudan is a party :-

(1) the provisions of this Act shall apply to every arbitration conducted in the Sudan, or abroad , where the parties thereof have agreed to subject the same to the provisions of this Act whenever the legal relation is of a civil nature, whether contractual or non-contractual .

(2) Subject to the provision of section 2, the provisions of this Act shall apply to every arbitration, which is existing at the time of coming into force of this Act .

#### **Interpretation:**

4. In this Act, unless the context otherwise requires, :-

"Arbitration", means the agreement of parties to disputes having civil nature, to refer any dispute, as may arise between them, concerning the execution of specific contract or to refer any dispute as may be between them, to be resolved through tribunals, or individuals, to be selected by their wills and agreement;

"Arbitration

agreement", means every agreement wherein the parties undertake to submit their disputes for determination thereof through arbitration, or every subsequent agreement to refer the existing dispute for arbitration;

"Arbitration

tribunal", means any tribunal, constituted of one or more arbitrators, to determine the dispute referred for arbitration;

“Arbitrator”, means any natural person, to whom the parties agree to resort to, for arbitration;  
“Competent court”, means the originally competent court to consider the dispute, where the same is not submitted to an Arbitration Tribunal;

**Local jurisdiction:**

5. Subject to the provisions, set out in Chapter II, of Part I, of the Civil Procedure Act, 1983, jurisdiction to consider arbitration matters shall be to the competent court, in accordance with the provisions of this Act. As where the arbitration is outside the Sudan, jurisdiction shall be to the general court , in Khartoum, unless the parties agree to the jurisdiction, being vested into another general court in the Sudan.

**Plea of non-jurisdiction:**

6.(1) Any of the parties may plea the non-jurisdiction by reason of the non-existence, lapse or nullity of the arbitration agreement, or the non inclusion of the same of the subject of dispute, and in such a case :-

- (a) such plea shall be stuck to, on a date not exceeding the date of presenting the defense of the defendant;
- (b) the Arbitration Tribunal shall determine the pleas referred to above, before determining the dispute subject.

(2) The arbitration conduction shall be deemed an agreement independent of the Contract Conditions, and nully, revision or termination of the contract shall not entail any effect upon the arbitration condition which it includes.

**International Arbitration:**

7. In accordance with the provisions of this Act, the arbitration shall be international in the following cases :-

- (a) where the headquarters of the business of the arbitration parties business is in two different states;
- (b) where the subject of dispute, included in the arbitration agreement is connected to more than one state.

**Arbitration agreement written:**

8. Arbitration agreement shall be in writing, otherwise it shall be null; and messages exchanged between the two parties through the various communication means shall be deemed as written.

**Plea of Arbitration Condition:**

9. The Court, to which a dispute is submitted, with respect to which there is an arbitration agreement, shall dismiss the suit, where the defendant, before the response of the suit pleas the same; otherwise he shall be deemed as relinquishing his right to plea the arbitration condition .

**Agreement on arbitration during court proceedings:**

10. 1. If parties agree during the court proceeding to arbitrate, the court must refer the dispute to arbitration according to the parties agreement, the arbitration agreement in this case shall be considered as a written agreement.

10.2 No contest allowed against the judgement issued according to sub article (1).

**Interlocutory procedures:**

11. 1. Any party may request the competent court, before the formation of the tribunal, or the Arbitration Tribunal after the formation to take interlocutory procedure.

11.2 The court or the tribunal, as relevant, issue its decisions in sub-article (1) according to the Civil Procures Act 1983 and shall be final.

11.3. The request shall be attached with a copy of the arbitration agreement and a copy of the suit petition.

11.4. The competent court shall execute its decisions and the tribunal decisions on the interlocutory procedures, according to the Civil Procedures Act 1983, which shall be final.

## **Chapter II**

### ***Arbitration Tribunal***

**Constitution of the Tribunal:**

12. The Arbitration Tribunal shall be constituted by agreement of the two parties; of one or any odd number of arbitrators Where agreement has not been reached as to the number of arbitrators, then their number shall be three.

**Capacity of the arbitrator:**

13. An arbitrator shall not be a minor, or interdict, or have previously been convicted of an offense in contravention of honour, or honest.

**Selection and appointment of the Tribunal President and arbitrator:**

14. 1. In case of Arbitration, with more than one arbitrator, both parties shall select a similar number of arbitrators; provided that the arbitrators shall agree upon the president of the Tribunal, or the manner of selecting him.

14.2. In case any of the two parties, or failed to appoint an arbitrator, or the arbitrators fail to agree on the appointment of the presiding arbitrator, the appointment shall be done by the decision of the competent court shall appoint upon the request of one of the parties.

14.3. Where the Arbitration Tribunal has been constituted of one arbitrator, then he shall be selected by the parties of the dispute, or as to such way, as may be agreed upon; otherwise the Competent Court shall appoint him, upon the request of one of the parties.

**Written consent and disclosure of the arbitrator:**

15.1. Acceptance by the arbitrator of his task shall be in writing.

15.2 The arbitrator shall disclose any circumstances may create serious doubts around his independence and neutrality, or at any later date.

### **Challenge of Arbitrator:**

16.1. Both parties to the dispute shall challenge the arbitrator if;

- a. Circumstances raise serious doubts, about his independence or neutrality.
- b. Impossibility of the arbitrator to do his mandate, or did not or cease to carry his mandates, which resulted to unjustified delay in the arbitral proceedings and no agreement reached by both parties to challenge him.

16.2. With consideration to sub article (1), the party may not challenge the arbitrator who is appointed or participated in his appointment, unless he acknowledged reasons after the completion of the appointment procedures.

### **Procedure of application for challenge of the arbitrator:**

17. 1. Application for challenge the arbitrator shall be presented in writing, to the competent court, shown therein the reasons of challenge within one week, of the date of knowledge, by the applicant of challenge, or by any reasons, arising during the procedures of arbitration, justifying the challenge.

17.2 Where the Arbitrator, requested to be challenged, does not step aside, the court shall determine such application as soon as possible, and its decision shall be final. The procedure of Arbitration shall be stayed during such period.

### **Appointment of substitute arbitrator:**

18.1. Where the task of one of the arbitrators has terminated in accordance with the provisions of section 17, by reason of his stepping aside by agreement of both parties or by any of the cases of termination of mandate, then a substitute arbitrator shall be appointed.

18.2. The substitute arbitrator appointed according to sub article (1), shall continue with the members of the tribunal, in the arbitration proceedings, from where the procedures stopped, before his appointment.

18.3 When challenge of any of the tribunal members and appointment of substitute arbitrator according to sub article (1), the substitute arbitrator shall deliberate with the and the members of the tribunal about repeating the previous procedures or part of it or continue from where the procedures ended.

18.4. The tribunal must repeat all the arbitral procedures if the challenge was based on reasons pertained to independence or neutrality, which affected the procedures of arbitration, in this case the period of arbitration shall be extended to the same period elapsed.

18.5. If the arbitrator received part of the fees agreed, and substitute arbitrator has been taken his place, the tribunal shall decide on the value entitled to him or the value in which he must return.

### **Costs of the Arbitration Tribunal:**

19.1. Costs of the arbitration tribunal and the manner of payment thereof shall be specified in the Arbitration Agreement, or according to the fees schedule attached to this Act. The tribunal

shall specify any necessary costs to complete the arbitration procedures where parties shall pay equal shares.

19.2. The Minister may deliberate with the relevant bodies of arbitration to amend the attached schedule from time to time.

**Establishment of Arbitration Centres:**

20.1. Independent and specialized Arbitration Centres may be established after the approval of the Minister and the arbitration centres established must comply with the provision of this Act.

20.2. The Minister shall keep such register of the arbitrators their qualifications and the Arbitration Centres, established under sub section (1), as may contain the basic information on the Centres and any other information as he may deem necessary.

20.3 The Minister may revoke the arbitration centres approval in case of violations to the conditions and regulations of the approval.

## Chapter III

### ***Arbitration Procedure***

**Arbitration Agreement applied:**

21.1. The Arbitration Tribunal must apply the procedural and substantial laws agreed by the parties.

21.2 in case of non existence of such agreement stated in sub article (1), the Tribunal shall apply the procedures and substantial rules as it may deem appropriate and more related to the merit of the dispute; on condition that the parties shall be treated on equally in all the stages of the procedure of considering the suit .

**Arbitration proceedings commenced:**

22. The Arbitration proceedings shall commence on the day upon which the defendant receives the plaint, unless the parties agree upon a date to commence the proceedings.

**Arbitration venue:**

23. The Arbitration Tribunal shall specify the venue of arbitration, and shall have due regard in the same, to the circumstances and parties of the suit, unless the parties agree upon a prior venue of Arbitration.

**Language of Arbitration:**

24. Arabic Language is the language of arbitration, unless the parties agree upon another language, together with the possibility of existence of translation to such other languages, as the parties may request.

**Statement of the Arbitration Suit:**

25.(1) The statement of the Arbitration plaint shall include the following :-

- (a) name, capacity, nationality and address of the plaintiff;
- (b) name, capacity, nationality and address of the defendant;

(c) presentation and facts of the dispute;

(d) the plaintiff's claims .

(2) The plaintiff shall present his plaint in writing, to each of the defendant and the Arbitration tribunal, within such period of time as may be agreed upon, or as the Arbitration Tribunal may specify . A copy of the contract and a copy of the Arbitration agreement shall be attached to the plaint, where the same is not included in the contract .

(3) The defendant shall present, within a specified period, a memorandum including his pleas and claims, for the plaintiff to join issue.

#### **Hearing of the suit:**

26.(1) The Arbitration Tribunal shall hold sittings for hearing, to enable each of the two parties to explain the subject of the suit, and present his justifications, and evidence .

(2) The Tribunal may be satisfied with written statements and documents, where the parties agree thereto.

#### **Appearance and non-appearance of parties:**

27.(1) Where one of the parties fails to appear without acceptable excuse, at any of the stages of the suit, then the Arbitration Tribunal may continue in the proceedings , in his absence, upon the request of the other party.

(2) Non-appearance of the absent party, in sub-section (1), shall not be deemed as an admission of the allegations of the other party.

#### **Seeking the help of the court:**

28. Either party may request the tribunal to notify any witness to hear in the suit or anybody to present evidence. The tribunal, if it sees this necessary, request the assistance of the competent court to summon that witness or write to that body to obtain evidence or accessing files, and the court shall execute the request and proceed with the necessary measures in case of non execution of its order within its jurisdiction.

#### **Seeking the help of expert:**

29.1. The tribunal may request the assistance of experts upon a commitment of both parties to present all information related to the dispute

29.2 The tribunal shall furnish the parties with a copy of the expert report and allow both parties to examine the documents that the expert depended on in the report.

#### **Proceeding in the arbitration procedures:**

30.1. If the tribunal finds during the arbitration procedures an issue out of its jurisdiction, it may:

- a. Proceed, if it sees that the issue is not substantial to determine the dispute;
- b. Stop the proceeding, if the issue is substantial to determine the dispute, until a final court judgment is issued, accordingly, the period set for the award shall be suspended.

30.2. If a document submitted to the tribunal and has been contested with forgery, the contested party shall notify the tribunal within a week of the legal procedures processed by him. In this case, the tribunal shall proceed with one of the following procedures:

- a. Proceed with the arbitration procedures if the document is not substantial to determine the dispute.
- b. Stop the proceeding, if the document is substantial to determine the dispute, until a final court judgment is issued on issue of forgery, accordingly, the period set for the award shall be suspended.

## **Chapter IV**

### ***Award of the Arbitration Tribunal***

#### **Permissibility of Reconciliation:**

31. The Arbitration Tribunal, upon determination of the dispute, shall have due regard to the conditions of the contract, subject of dispute, and the current customs in the type of transaction. Where the parties to the dispute agree to authorize the Arbitration Tribunal for reconciliation, then the same may determine the dispute, in accordance with the rules of justice, and equity.

#### **Permissibility of Settlement**

32. The tribunal may issue a settlement award made by the agreement of both parties during the progress of the proceedings and the tribunal amicable settlement award shall be final, and not subject to contest of nullity.

#### **Issuing the award:**

33. 1. The award of the Arbitration Tribunal shall be passed unanimously, or by majority, within such period, as may be agreed upon, or within six months, of the date of commencement of the arbitration proceedings, in case of non-existence of an agreement upon specifying the period .

33.2. Where the award of the Arbitration Tribunal has not been passed within the period referred to in sub-Section (1), then the two parties may agree to extend the period. In case of difference, the tribunal may extend to reasonable period, upon the request of one of the parties; provided that such extension shall be final, after which any of the two parties may institute his suit, before the competent court.

#### **Award of Arbitration Tribunal:**

34. The award of the Arbitration Tribunal shall be in writing, reasoned and signed by the members of the Arbitration Tribunal, or by majority thereof; provided that the dissenting opinion of the member shall be registered in a separate paper, if he submits it.

#### **Arbitration proceedings terminated**

35. Arbitration proceedings shall be terminated by any of the following:

- (a) passing of the award ending the dispute,;
- (b) passing an award ending the proceedings, in accordance with articles (31) or (32) , hereof;

(c) passing a decision of the Tribunal ending the proceedings, in the following cases :  
(1) where both parties agree to end the proceedings;  
(2) where the plaintiff abandons, or waives the arbitration dispute.

**Arbitration Tribunal task terminated:**

36. Without prejudice to the provisions of articles 40, 39, 38 and 35, the task of the Arbitration Tribunal shall end by termination of the Arbitration proceedings.

**37. Keeping the record of arbitration suit:**

The chair of the tribunal or any member of its members shall keep the record of the arbitration suit for five years from the date of end of the arbitration procedures according to article (35).

**Interpretation of the Arbitration Tribunal award:**

38. Any one of the parties of Arbitration may request the Tribunal, within one month, of the date of award, to interpret such ambiguity as may have effected the decree. The Tribunal shall inform the other party of such request. . An interpretation shall be passed in writing , within one month, of the date of requesting the same. The Tribunal may extend the period, where necessity requires the same, and the award passed by the interpretation shall be deemed as complementary to the award of Arbitration and the provisions thereof shall apply thereto.

**Rectification of the award:**

39. The Arbitration Tribunal shall assume the rectification of such mere written, or mathematical mistakes, by a decision to be passed thereby, of its , or upon the request of one of the parties . The Arbitration Tribunal shall conduct the amendment, without pleadings, within one month, of the date of the award.

**Revision of the Arbitration Tribunal award:**

40.1. Any one of the Arbitration parties may request the Arbitration Tribunal, within one month, of the date of passing the award, to pass an additional award in such requests, as may have been presented during the proceedings, and the award has neglected. The other party shall be informed of such request.

40.2. The Arbitration Tribunal shall pass its decision on the revision request, within one month, of the date of presenting the request, unless it deems there is necessity to extend the period .

## **Chapter V**

### ***Arbitration Tribunal, its Contest, Execution Bindings and the Authority to Issue Regulations***

**Arbitration Tribunal award binding:**

41. With prejudice to articles (38),(39) and (40), the award of the arbitration tribunal shall be



binding and shall automatically be executed, or upon a written request to the competent court, to which is attached an authentic copy of the original award.

**The Arbitration Tribunal Award Nullity:**

42. 1. Both parties may request the dismissal of the arbitration tribunal award, for nullity , from the Appeal Court to any of the following reasons :

- a. Where there is no arbitration agreement or is null, applicable to be a null, or ceased due to expiry.
- b. If one of the parties to the arbitration agreement, at the time of entering into the agreement, was under some incapacity according to the law that governs his capacity.
- c. If one of both parties was unable to present his case as a result of not given proper notice to appoint an arbitrator or of the arbitral proceedings or to any other reason out of his control.
- d. If the award set aside the applicable law that the parties agreed to apply on the merit of the dispute.
- e. If the formation of the tribunal or the appointment of the arbitrators was not according the law or the parties agreement.
- f. The award has determined issues not included in the Arbitration Agreement or exceeds the limits of agreement, nevertheless, if it is possible to separate the issues submitted to the arbitration from the issues not submitted to arbitration, the nullity shall fall into the latter issues only;
- g. If the arbitration award is annulled or the arbitration procedures are annulled, which affected the award.

42.2. The request referred to in sub-article (1), shall be presented before the appeal court.

42.3 The appeal court may adjudge the nullity of the award, of its own motion, if the award contravenes with public order in Sudan.

**Nullity Request:**

43 the nullity request shall be submitted to the appeal court within two weeks from the date of the applicant knowledge of the award, or from the date of rendering the award if he was properly notified to the award session and was not present.

**Procedures of reviewing the nullity request:**

44. 1. The request of nullity shall be filed at the appeal court inspector or, to be electronically filed, and to be recorded in the relevant record. Fees must be paid and the date for the session before the competent circle shall be specified where the other party shall be notified. The other party shall submit his response to the request.

44.2. The court shall issue its judgement after completion of pleadings or adjourn the judgement to another session. The court may not adjourn the issuance of the judgment more than once without necessity. In both cases, the period of adjournment shall not exceed a month from the date of pleadings completion.

44.3. the circle shall deliberate confidentially among the judges where the presiding judge collect the opinions and issue the judgement unanimously or in majority with dissenting opinion.

44.4 The judgement shall be rendered in public hearing session where parties are notified. In case any party is not present, he shall be notified.

44.5 the head of the circle shall sign the original copy of the judgement that includes the facts of the suit, the reasons and the verdict within ten days from the date of rendering the judgement where that copy shall be kept in the suit file.

44.6 with prejudice to all the above sub articles, the same procedures followed in the appeal court when reviewing an appeal request shall be applicable when reviewing the nullity request.

**Dispute submitted to the competent court:**

45. Where the award of the Arbitration tribunal has been dismissed, in accordance with article (42), then the dispute may be submitted to the competent court, upon the request of one of the parties.

**Execution stayed:**

46.1. Where the request of contest for nullity is based upon serious reasons, then the competent court may order stay of the execution.

46.2. The competent court shall determine the request of stay of the execution, within two weeks, of the date of presenting the same. Where it has ordered stay of the execution, then it may order presenting bail or financial security, and shall determine in the nullity suit within two months, of passing the order.

**Requirements of execution:**

47. No execution of the Arbitration Tribunal award shall be made, in accordance with this Act, save after verifying the following :-

- a. attachment of a copy of the Arbitration award;
- b. end of the date of instituting the nullity request;
- c. the award debtor having validly been informed;
- d. the award, or part of it, is not contrary to public order in Sudan. the court shall execute what is compatible with public order while abstain the part contradicts with public order.

**Execution of the foreign Arbitration Award:**

48. No execution of the award of a foreign Arbitration Tribunal shall be made, before Sudanese courts, save after verifying the satisfaction thereby of the following conditions :

- a. the award, or order is passed by an Arbitration Tribunal or centre, in pursuance of the arbitration rules of jurisdiction of international arbitration, prescribed by the law of the country, in which it has been passed, and it has been final, in accordance with such law;
- b. the opponents in the suit, in which the award has been passed, have been summoned and have been validly represented;

- c. the award or order is not inconsistent with an award or order, which has been previously passed by Sudanese courts in the same substantive issue of the dispute;
- d. The award does not include what is inconsistent with public order, or morals in Sudan.
- e. The country where the award is issued and requested to be executed, is executing Sudanese courts judgements, centres and tribunal awards in its jurisdiction, or by the judgments conventions ratified by Sudan.

**Appeal of execution order:**

49. No order passed by the competent court to execute the Arbitration award shall be appealed against.

**Issuing regulations, rules and orders:**

50. the Minister may issue the required regulations, rules and orders to execute the provisions of this Act. Without prejudice to the previous, the regulations may include the followings:

- a. Conditions and protocols granting and revoking approval to establish arbitration centres and specifying the approval fees.
- b. The basis and inspection protocols to arbitration centres

Issued under my signature in the twenty third of Abiee Altahni 1437 H the second of February 2016.

Omer H. A Al- BASHIR  
The President

## Annex -2

### The Schedule (Article 19)

<b>Dispute value in Sudanese Pounds or equivalent</b>	<b>Value or Percentage</b>
Less than 50,000 SDG	9,000 SDG
From 50,001-100,000 SDG	12,500 SDG
From 100,001 – 300,000 SDG	30,000 SDG
From 300,001 – 500,000 SDG	50,000 SDG
From 500,001- 1,000,000 SDG	75,000 SDG
From 1,000,001 – 5,000,000 SDG	150,000 SDG
From 5,000,001 – 10,000,000 SDG	180,000 SDG
From 10,000,001- 20,000,000 SDG	225,000 SDG
From 20,000,001- 50,000,000 SDG	300,000 SDG
500,000,000 SDG and above	500,000 SDG