



Article 459. Where the parties to the transaction or agreement have undertaken to appoint their arbitrator(s), but have failed to do so; or where they are unwilling or unable to appoint their arbitrators when a dispute has arisen, or fail to agree on appointing the third arbitrator, or where the appointment of the arbitrator has not been assigned to the court or a third person, a party may appoint its arbitrator and communicate the matter to the other party by legal notice, and request that party to appoint its arbitrator, or to agree on the appointment of the third arbitrator; in which case the other party shall be obliged to appoint its arbitrator or agree on the appointment of the third arbitrator within ten (10) days of delivery of such legal notice. A party's failure to act before expiry of the specified period, shall entitle the other party to resort to the court for making the appointment as the case may be.

Article 460. Where it is provided that the resolution of dispute be referred to a sole arbitrator, and the parties prove unwilling or unable to agree on the appointment of such arbitrator; or where a party-appointed arbitrator dies or resigns, and the relevant party proves unwilling to appoint a successor; or where the appointment of a sole arbitrator has been assigned to a third person, who refuses to make such appointment; or where such appointment proves otherwise impossible, each party may communicate the name of his intended arbitrator to the other party by legal notice, requesting other party to declare, within ten (10) days of delivery of such legal notice, his opinion on the sole arbitrator, or make the necessary appointment in place of the dead arbitrator, or the arbitrator who has resigned, or the arbitrator who was to be appointed by a third person, but such person is unable to make the appointment. If no action has been taken on expiry of the specified period, provisions of the latter part of the foregoing Article shall apply.

Article 461. Where a dispute arises between the parties on the existence or validity of the transaction or the arbitration agreement, the court shall first examine the matter and opine thereon.

Article 462. In the absence of an agreement between the parties as to a specific court for the appointment of the arbitrator, the court competent to make such appointment shall be the one which possesses jurisdiction to decide the merits of the claim.

Article 463. Where the parties have undertaken that in case a dispute arises between them a specific individual act as arbitrator; and where such individual proves unwilling or unable to act as such, and the parties also fail to agree on some other arbitrator(s), the court shall be competent to decide the dispute.

Article 464. Where the arbitration agreement does not specify the number of arbitrators, and the parties fail to agree on the appointment of arbitrator(s), each party shall appoint his own arbitrator, and the parties together shall appoint an individual to act as the third arbitrator.

Article 465. Where one or several arbitrators are chosen by a party or parties, the party or parties making the choice shall be required to secure acceptance of the

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and the Assembly must be informed of these matters. In cases where one party to the dispute is a foreigner, as well as in important domestic cases, the approval of the Assembly must also be obtained. Law will specify the important cases intended here.”

arbitrator(s) thus chosen. Duration of arbitration shall commence on the day the arbitrators have accepted to act as such and the subject-matter of dispute, terms of arbitration and particulars of the parties and arbitrators have been communicated to them all.

Article 466. The following persons may not be appointed as arbitrator even though the parties agree on them:

- (1) persons who lack legal capacity;
- (2) persons who have been barred from acting as arbitrator pursuant to a court's binding judgment or as a consequence thereof.<sup>[3]</sup>

Article 467. Where the court acts for both or one of the parties in the appointment of arbitrators, it shall appoint the required number of arbitrators by drawing lots from a list of qualified candidates containing at least twice the number required for arbitration.

Article 468. After appointing the arbitrator or arbitrators and securing their acceptance, the court shall communicate to them in writing the full names and other particulars of the parties, as well as the subject-matter of the dispute, the full names of the arbitrator or arbitrators and duration of arbitration. Duration of arbitration shall commence on the date these particulars have been communicated to all the arbitrators.

Article 469. Unless otherwise agreed by the parties, the court may not appoint the following persons as arbitrator:

- (1) persons under the full age of 25;
- (2) persons who have an interest in the claim;
- (3) persons related to a party to the claim by virtue of marriage or kinship up to the second degree in the third category;<sup>[4]</sup>
- (4) persons related to a party to the claim by virtue of their position as guardian, surety, agent or administrator of the affairs of that party, or where a party to the claim acts as administrator of the affairs of such persons;
- (5) persons who themselves or their spouses are heirs to a party to the claim;
- (6) persons who have in the past been involved, or are currently involved, in a criminal proceeding with a party to the claim or with persons who are related to such a party by virtue of marriage or kinship up to the second degree in the third category;
- (7) persons who themselves or their spouses, or a relative thereof by virtue of marriage or kinship up to the second degree in the third category, are involved in a civil proceeding with a party to the claim, his/her spouse or a person related to that party by virtue of marriage or kinship up to the second degree in the third category;

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<sup>3</sup> Islamic Criminal Code of 2013, Arts. 23(c), 25 and 26(j).

<sup>4</sup> Civil Code, Art. 1032.

(8) government employees in the jurisdictional area of their assignment.

Article 470. All judges and administrative staff of courts are barred from acting as arbitrator, even if the parties agree to their appointment.

Article 471. Where an arbitrator has been appointed by drawing lots, either of the parties attending the meeting may challenge the appointed arbitrator after the appointment has been announced at the meeting; in case a party has been absent from such meeting, he may challenge the appointed arbitrator within ten [10] days after notification of the appointment, unless causes for challenge arise later, in which case the deadline for challenge shall run from the date the cause has arisen. The court shall examine the challenge after it has been received, and appoint a replacement if it finds the challenge to be valid.

Article 472. Once the arbitrator or arbitrators have been appointed, the parties shall have no right to remove them unless they mutually agree on the removal.

Article 473. If an arbitrator who has accepted his appointment, resigns, refuses to vote or fails to participate in the arbitration meetings without valid excuse, such as being away on a journey, ill or other reasons, he shall be banned from acting as arbitrator for five years in addition to paying damages.

Article 474. If in a case referred to arbitration by the court, an arbitrator resigns or refuses to vote or participate in two successive arbitration meetings, the other two arbitrators shall proceed with the case and make the award. Should a disagreement arise between them on making the award, the court shall within ten [10] days appoint a substitute arbitrator by drawing lots in place of the arbitrator who has resigned, or has refused to vote or participate in two successive arbitration meetings, unless the parties appoint a substitute arbitrator before the court has made the required appointment. In such cases the period of arbitration shall commence on the date the new arbitrator declares his acceptance.

If within the period specified in the arbitration agreement or specified by law, the arbitrators fail to make the award, and the parties fail to agree on arbitration by other individuals, the court shall examine the merits of the claim and issue a judgment in accordance with the rules of law.

Note. In the instances referred to above the votes of the majority of arbitrators shall be valid unless the arbitration agreement provides otherwise.

Article 475. A third party who has been summoned to enter the court proceedings in accordance with the law, or has joined the proceedings before or after referral of the dispute to arbitration, may agree with the parties to the original dispute to refer the dispute to arbitration and appoint the arbitrator or arbitrators, failing which his claim shall be decided independently in accordance with the rules of law.

Article 476. Parties shall submit their evidence and documents to the arbitrators. Arbitrators may also require the parties to provide the necessary explanations, and

appoint an expert, if they find it necessary to seek expert opinion in order to decide the claim.

Article 477. In the conduct of the proceedings and making of the award, arbitrators shall not be bound by the provisions of the Civil Procedure Code; however, they shall comply with the rules regarding arbitration.

Article 478. If in the course of the proceedings issues come to light that point to commission of a crime, affecting the award of the arbitrator and making it impossible to separate the civil from the criminal aspects of the dispute; furthermore, if the dispute in question relates to marriage, divorce or kinship; and where the resolution of the dispute referred to arbitration depends on examining the existence of the marriage, divorce or kinship dispute, arbitral proceedings shall be suspended pending issuance of the final judgment by the court competent to examine the criminal, marriage, divorce or kinship dispute in question.

Article 479. The foregoing article shall not apply to allegations of forgery and falsification of a document without identification of the perpetrator; or where prosecution of the perpetrator proves impossible for some legal reasons.

Article 480. The final judgment referred to in Article 478 issued by the court which has referred the dispute to arbitration, or the court which has appointed the arbitrator, shall be notified to the arbitrators. The remaining period of arbitration on the date the arbitral proceedings were suspended shall run from the date the judgment in question has been communicated. Where the arbitrator has been appointed without the court's intervention, the final judgment shall be communicated to him by one or both parties.

Arbitrators may not issue a ruling that would be in conflict with the terms of the judgment issued in a criminal case, or in a case involving marriage, divorce or kinship.

Article 481. Arbitration shall be discharged when:

- (1) the parties agree in writing to do so;
- (2) a party to the dispute dies or becomes incapacitated.

Article 482. The arbitrator's award shall state the reason and evidence upon which it is based and shall not be in conflict with the laws establishing rights.

Article 483. Where the arbitrators are authorized to act as *amiable compositeur*, they may terminate the claim by a compromise, in which case the compromise thus signed by the arbitrators shall be valid and enforceable.

Article 484. Arbitrators shall be notified before a meeting is to be held for the purpose of examining, deliberating or issuing the award. If an arbitrator refuses to attend a meeting, give his vote or sign the award, decision of the majority of members shall be considered valid, unless the arbitration agreement provides otherwise. The award shall state the reason for any omitted signature. Arrangements for holding a meeting, the manner of proceeding with the case and inviting the arbitrators to attend the meeting

shall be decided by the arbitrators. Where the dispute has been referred to arbitration by the court, invitation to attend the meeting shall be made by summons on the part of the court's registry.

Note. Where the parties have undertaken pursuant to an agreement that, in case a dispute arises between them, a specific individual or individuals act as arbitrators; and where the duration of arbitration has not been specified, such duration shall be three (3) months and will commence from the date on which the subject-matter of dispute is notified to the arbitrator or the arbitrators. The duration of arbitration may be extended by agreement of the parties.

Article 485. Where the parties have failed to foresee a specific manner in the arbitration agreement for notification of the arbitral award, the arbitrator shall be obliged to submit his award to the registry of the court which has referred the claim to the arbitrator, or to a court which has jurisdiction to decide the merits of the claim.

The court's registry shall keep the original copy of the award in its archive, and send a certified copy thereof to the parties by order of the court.

Article 486. Where the parties unanimously reject the arbitral award in whole or in part, the award shall be considered without effect in the part(s) rejected.

Article 487. Before the duration of arbitration has expired, the arbitrator or arbitrators may, on their own initiative, correct the award within the terms of Article 309.<sup>[5]</sup> After the end of such duration, and before the expiry of the deadline for challenging the arbitral award, the award may be corrected by the arbitrator(s) who have made the award, if one or both parties so request. The arbitrator(s) shall decide regarding correction within twenty (20) days after the correction has been requested. The corrected award shall be notified to the parties. In such a case the court's action to examine a challenge to the award shall be suspended pending the decision by the arbitrators or expiry of the specified deadline.

Article 488. If the losing party fails to comply with the arbitral award within twenty (20) days of notification thereof, the court which has referred the claim to arbitration, or the court which has jurisdiction to deal with merits of the claim, shall, upon the request of the interested party, issue an enforcement order in accordance with the arbitral award. Enforcement of the award shall be in accordance with the rules of law.

Article 489. An arbitral award shall be deemed null and void and unenforceable where:

- (1) the arbitral award is in conflict with the laws establishing rights;
- (2) the arbitrator has made a decision on a matter which has not been the subject of arbitration;

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<sup>5</sup> Article 309. "Where inadvertent writing errors, such as omission or addition of words or computational errors in preparation and writing of a court decision, occurs ..."

(3) the arbitrator has made a decision beyond the scope of his authority, in which case only that part of the award which is beyond the scope of the arbitrator's authority shall be deemed null and void;

(4) the arbitral award has been issued and delivered after expiry of the duration of arbitration;

(5) the arbitral award has been in conflict with the contents of the Register of Immovable Property or the contents of an instrument between the parties recorded in the Public Register of Deeds, which would accord it legal validity;

(6) the arbitral award has been issued by arbitrators who have not been authorized to do so;

(7) the agreement to submit to arbitration has been invalid.

Article 490. In instances referred to in the foregoing Article, either party may, within twenty (20) days of notification of the arbitral award, request the court which has referred the claim to arbitration, or the court which has jurisdiction to examine the merits of the claim, to issue a judgment pronouncing the award null and void. In such cases, the court shall examine the request and pronounce the award null and void should it relate to instances referred to in the above Article. The arbitral award shall then remain suspended pending examination of the merits of the claim and the judgment nullifying the award becoming binding.

Note. Deadlines specified in this Article and Article 488 shall be two (2) months in respect of persons residing abroad. Commencement date for the deadlines specified in this Article and Article 488 for persons who have had a valid excuse specified in Article 306 of this Code and the Note (1) thereof,<sup>[6]</sup> shall run upon lifting of the extenuating circumstances.

Article 491. Where the original claim was initially brought before a court, and later referred to arbitration through that court; and where the arbitral award has been challenged resulting in its annulment, court proceedings in relation to the original claim shall remain suspended pending issuance of the binding judgment annulling the arbitral award.

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<sup>6</sup> Article 306. "The period for objection to judgments *in absentia* shall be twenty days for persons residing within the country and two months from the date of personal service of process for persons residing abroad unless the objecting party proves that his failure to timely object was due to a valid excuse. [...] The following instances are considered valid excuse:

- (1) Illness which prevents movement.
- (2) Death of a parent, spouse or child.
- (3) Natural disasters such as flood, earthquake and fire as a consequence of which it is not possible to file the objection [...].
- (4) Arrest or imprisonment such that one cannot file the objection in the specified time period.

Note 1. In the event personal service of process on the judgment debtor is not possible, the statutory service of process shall be valid and the judgment *in absentia* shall become binding and enforceable with the expiry of the statutory time limit. [...]"

Note. Where the claim has been referred to arbitration through a channel other than the court and where the arbitral award has been nullified, examination of the claim by the court may be initiated by filing a statement of claim.

Article 492. Where the request to nullify an arbitral award has been made after expiry of the specified deadline, the court shall order dismissal of the request, which order shall be binding and not subject to appeal.

Article 493. Challenging an arbitral award may not preclude its enforcement, unless reasons on which the challenge are based are compelling; in which case the court shall issue an order suspending [or] barring enforcement of the award pending completion of examination of the challenge and making the binding judgment. Appropriate security shall be obtained from the challenging party if deemed necessary.

Article 494. Where a claim is at the stage of final appeal [before the Supreme Court] and the parties agree to refer it to arbitration, or where the case is deemed capable of being referred to arbitration, the Supreme Court shall send the case back to the court which has issued the appealed decision, instructing it to refer the claim to arbitration.

Article 495. An arbitral award shall be valid only in respect of the parties to the claim and other persons who have had a role or participated in the appointment of the arbitrator, and their successors, and shall not affect any other persons.

Article 496. The following claims may not be referred to arbitration:

(1) bankruptcy claims;

(2) claims relating to the existence or validity of marriage, its annulment, divorce and kinship.

Article 497. Arbitrators' fees shall be borne by the parties, unless agreed otherwise in the arbitration agreement.

Article 498. The level of arbitrators' fees shall be based on the regulations governing such fees, prepared once every three years by the Minister of Justice, and approved by the Chief of the Judiciary.

Article 499. In cases involving several arbitrators, arbitration fees shall be divided equally among them.

Article 500. Where an agreement has been concluded between the parties to the claim and the arbitrators regarding the level of arbitration fees, that agreement shall be applicable.

Article 501. Where a party or parties to the dispute have suffered financial loss resulting from an act of misrepresentation, fraud, or negligence on the part of the arbitrators, such arbitrators shall be liable to compensate the loss in accordance with the rules of law.

Passed by the Islamic Consultative Assembly

Date of enactment: 21<sup>st</sup> Farvardin 1379 [9th April 2000]

Date of confirmation by the Guardian Council: 28<sup>th</sup> Farvardin 1379 [16th April 2000]

Signed by I. R. President: 5<sup>th</sup> Ordibehesht 1379 [24 April 2000]

Date of publication, I.R. Official Journal 16070: 11<sup>th</sup> Ordibehesht 1379 [30th May 2000].