



## Overview of Moroccan Maritime Law: Procedure

### JURISDICTION

The grounds on which courts will accept jurisdiction

Under the 1974 reform of the Code of Civil Procedure (CCP), the Court of First Instance had jurisdiction in all contentious matters (i.e. civil, administrative and commercial).

This competence has, however, been reduced by the creation of an Administrative Court and a Commercial Court. Maritime cases, as being commercial matters, are from now on within the competence of the Commercial Courts (Law n° 53-95 published on 15 May 1997 (CCL)).

- **Domicile**

Moroccan courts have jurisdiction where the defendant is based or has its office in Morocco. The domicile or residence of the plaintiff may also create jurisdiction.

- **Defendant based in Morocco**

This rule, laid down in Article 27 of the CCP is the basic rule of jurisdiction. The same rule is established by the legal provisions of Art.10 of the CCL. Thus, the competence of the court *ratione loci* is based on the domicile or address for service of the defendant.

When the defendant has no domicile in Morocco, but an actual residence, the competence lies with the court of that residence.

Where there is more than one defendant, one of which is based in Morocco, the court of that defendant will hear the case against all defendants.

- **Plaintiff based in Morocco**

Moroccan law attributes jurisdiction to the court of the plaintiff where the defendant has neither his domicile nor his residence in Morocco. Where there is more than one plaintiff the court of the domicile or residence of one of them will hear the case on behalf of all other plaintiffs.

- **Place of business/ residential office**

Under Moroccan law (Art. 522 of the CCP) the domicile of a person or a company is the place of its registered address or registered office. The office of a person or company is also regarded as a domicile or residence.

The above described rules for jurisdiction are laid down also in Article 11 of the CCL.

- **Assets located within the jurisdiction**

Moroccan courts have exclusive competence with respect to claims relating to real estate within the jurisdiction (Art. 28 of the CCP).

This rule is applicable for claims relating to a petitionary or to a

possessory action.

With respect to a mixed action, the jurisdiction is the location of assets or the domicile or the residence of the defendant (Art. 28 of the CCP).

With regards to a personal action, the above described rules in (a) and (b) are applicable.

- **Act complained of within the jurisdiction**

Under Moroccan law the competence of a court *ratione materiae* is of law and order. In accordance with this rule the fact that the act complained of has been committed within the Moroccan territory does attribute jurisdiction to the Moroccan courts.

There is an exception, however: parties can submit their dispute to an arbitrator (Art. 306 of CCP and Art. 5 of CCL). The arbitration procedure is the one applicable in comparative law.

- **Contract governed by local law**

It depends on many situations:

- Where supplies of goods, building works, renting and industry are concerned, the competence of Moroccan courts is the place where the contract has been concluded or the place of its performance.

- In the matter of civil engineering, the competence is within the jurisdiction of the place where the work has been performed.

- In the matter of contracts concluded by a state or a public service, the competence is based on the place where these have been signed (Art. 28 of the CCP).

- **Conventions**

It is admitted, under Moroccan law that the competence of a court *ratione loci* is not of law and order. Indeed, Article 16 of the CCP provides that incompetence in respect of a matter may be pronounced automatically by the judge. This means a *contrario* that the incompetence *ratione loci* cannot be raised *ex officio* by the judge. Thus, parties are free to choose a territorial jurisdiction other than the ordinarily competent one.

- **Clause attributing jurisdiction**

This clause is valid under Moroccan law. Article 12 of the CCL provides that parties, in any case, may agree in writing a specific forum (court or arbitration). In Maritime law, this clause is not valid where the carriage of goods by sea under a bill of lading is concerned. The Supreme Court has pronounced the absolute nullity of the clause when it is not in accordance with the national rules of competence.

This jurisprudence is not in contradiction with the provisions of Article 21 (1) (c) of the Hamburg rules, to which Morocco is a contracting party.

This jurisprudence is, however, not applicable where charter parties are concerned. Indeed, a clause attributing jurisdiction is valid between owners and charterers.

- **Other (instruction)**

Under Moroccan law (Art. 524 of the CCP), the address for service prevails over the residence or the domicile assigned by law in case of a conflict.

The domicile, however, that is taken into account is the one which existed at the time of the registered claim.

- **Counterclaim/third-party proceedings**

Under Moroccan law (Art. 103 to Art. 118 of the CCP), a counterclaim is admitted when dealing with a claim. A court generally will accept jurisdiction for third-party proceedings.

## MARITIME CLAIMS

- **Jurisdiction through arrest of a ship**

The court whose president has given leave for an arrest to be made or prevented through the provision of a security is the competent one for the main claim. This principle is laid down in Article 110 of the Maritime Code of Commerce (MCC) and Article 148 of the CCP.

- **Specific maritime jurisdiction**

### Place of discharge in Morocco

Moroccan courts are competent to hear disputes between a carrier and a receiver, not being the shipper, and relating to contracts of carriage by sea. The receiver is the plaintiff who institutes a claim for non-delivery (Art. 21 of the Hamburg Rules).

### Collision

The following Moroccan courts will assume jurisdiction:

- the court of the place of the defendant or one of them;
- the court within whose territory the collision took place;
- the court within whose territory the ship has been arrested;
- if none of these applies, the court of the plaintiff.

### Salvage

If there is a salvage agreement, the forum can be chosen by the parties. In other cases of assistance, the following Moroccan courts will assume jurisdiction:

- the court of the place of the defendant or one of them;
- the court within whose territory the assistance took place;
- the court within whose territory an arrest has been made to secure the claim for assistance;
- if none of these applies, the court of the plaintiff.

- **The grounds for arrest**

No specific grounds are required. The allegation of a claim suffices. An ex parte application can be presented by a lawyer to the president of the local court, and be signed within the hour.

Arrests can be made after a judgment has been obtained.

- **Connection between arrested ship and claim**

Under Moroccan law, all claims against an owner can be secured by an arrest upon all ships. Arrests can be made for all claims.

Claims against a bareboat charterer can also be enforced against the ship to which the claim relates. It is not possible, however, to arrest a ship for claims against a time-charterer or a voyage charterer.

There is an exception: a seagoing ship can be arrested for claims against a carrier under a bill of lading. Such an arrest may create jurisdiction within Morocco.

- **Procedural differences applying to special maritime**

Under Moroccan law, there are few specific procedural differences which apply to maritime jurisdictions. There are special rules of procedure for the registration of ships, sale of cargo and appointment of court surveyors. There is no specific procedure for the limitation of liability.

- **Special rules as to limitation of liability**

The limit of liability is based on the tonnage of the ship in a Moroccan jurisdiction.

## SERVICE OF PROCEEDINGS

- **Rules applying to service of proceedings outside the jurisdiction**  
It is the bailiff who notifies the writ to the public prosecutor's office. The notification may be sent to a trustee. Where the defendant has no known place of establishment or office, it is required that an advertisement be placed in a local newspaper.

Where a convention applies, service is made in accordance with the rules of service in the defendant's jurisdiction.

## COSTS IMPLICATIONS OF STARTING PROCEEDINGS

- **Court fees**

Court fees are payable upon starting proceedings at the Court of First Instance. The amount of court fees depends on the amount claimed:

- From MAD 1,000 to MAD 5,000: 4 per cent with a minimum of MAD 50;
- From MAD 5,000 to MAD 20,000: 5 per cent with a minimum of MAD 200;
- If the amount claimed exceeds MAD 20,000: 1 per cent plus MAD 300.

In the case of proceedings before the Supreme Court there is a fixed fee of MAD 750.

- **Lawyers' fees**

There is no standard scale for lawyer's fees. Lawyers' fees are generally fixed by agreement. In case of a dispute between a lawyer and his/her client, the head of the Bar will review the fees.

- **Recovery of costs from an unsuccessful party**

The fees to be paid by the unsuccessful party are the costs of procedural activities including court fees and a legal rate of interest of 6 per cent of the amount claimed. In addition to the amount of the claim, damages can also be fixed by the judge according to effective loss of the plaintiff.

- **Security for costs**

The provision of a security for costs may be required by the court from the plaintiff before granting leave to arrest the ship. The release of the arrested ship is ipso jure when the defendant also provides a security (Art. 110 of the Maritime Code).

## INTERIM ARREST

- **For domestic proceedings in another jurisdiction**

As a general rule interim arrest/freezing of assets are possible, in case of unquestionable claims, unless there is a deposit of security.

- **Criteria applying**

The criteria are based on the urgency. In Maritime law, urgency is always presumed. Indeed, there is no distinction whether domestic proceedings or proceedings in another jurisdiction are involved.

- **Limit on jurisdictions whose proceedings are recognised for the purpose of arrests**

There is no such a limit. The only requirement will be that substantive proceedings before the competent court must be started within the fixed period by court upon granting a leave for arrest.

- **Counter-security**

The provision of counter-security is at discretion of the court (Art. 110 of the CCM).

- **Can applications be made ex parte?**

Applications are always made ex parte.

- **How quickly can an order be made?**

The order can be made within few hours and even during bank holidays, when the matter is urgent (Art. 150 of the CCP).

- **Will the order bind third parties?**

The order binds all parties.

- **The consequences of breaching an order**

The breach of an order is punishable by imprisonment up to a maximum of one year. Where a third party is concerned, that third party will also be personally liable for the claim involved.

- **Limit to types of asset**

All assets can be arrested.

- **What if third parties are affected?**

Third parties may apply for an immediate court order setting aside the arrests.

- **Other provisional measures to be ordered**

Appointment of a surveyor by a conciliator or by judge's order (Art. 148 of the CCP) or summary order injunction (Art. 149 of the CCP) can be made.

Also a trustee of sequestrated property may be appointed either by consent or by court order.

## RECOGNITION OF JUDGEMENTS/AWARDS

- **Treaty/convention-court judgments**

In case a judgment is taken outside of Morocco, either party may apply to a Moroccan court to enforce it through a procedure called of exequatur

- **Procedures**

The procedure is described in the various conventions that Morocco has signed with other countries with regards to enforcing foreign judgments in Morocco. Generally, the original or a certified copy of the judgment is required. This document is presented to the court where the decision will be enforced with a written petition to have the judgment declared enforceable in Morocco.

- **Foreign arbitral awards**

Morocco is a party to the New York Convention of 9 June 1958 on the (reciprocal) recognition of arbitral awards (Law of 19 February 1960).

Arbitral awards are enforceable by order of the President of the Court of First Instance through a procedure called of exequatur.

- **Free exportability of proceeds**

There are no limitations. The exportability of proceeds is possible in any currencies.

**Abderrahmane FRAIKECH**

24/09/2011