

13/2018 Act of 31 May, on the Arbitral Tribunal of the Principality of Andorra (unofficial translation)

At its session on 31 May 2018, the Andorran Parliament (“*Consell General*”) passed the following 13/2018 Act of 31 May, on the Arbitral Tribunal of the Principality of Andorra.

Preamble

Historically, arbitration is deeply rooted in the Principality of Andorra as a mechanism for resolving disputes. However, the absence of legal rules governing this institution has meant that, in practice, this option has often been ruled out by the parties, even in cases where it had initially been envisaged. As a result, disputes have ended up being the subject of court proceedings.

The Arbitration Act of the Principality of Andorra came about in order to facilitate and promote arbitration, and also to respond to the needs of the business world, both national and international, offering alternative mechanisms for the resolution of commercial disputes in a dynamic, fast and efficient manner. At the same time, it placed the Principality of Andorra at the level of its surrounding countries, where arbitration is a practice well-recognized and considered by the business community when establishing commercial relationships. Andorra’s commitment to arbitration was reinforced with its accession to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted in New York on 10 June 1958, which came into force in the Principality of Andorra on 17 September 2015, pursuant to paragraph 2 of article XII of that Convention.

More than two years having passed since the Arbitration Act of the Principality of Andorra was enacted, it is necessary to give new impetus to arbitration by creating an arbitral institution which promotes arbitration as an alternative dispute-resolution mechanism in the Principality of Andorra and which administers the arbitration cases submitted to it.

Paragraph 1 of article 15 of the Act expressly provides that the parties to a procedure may entrust the organisation and administration of the arbitration and the appointment of the arbitrators to an arbitral institution. That arbitral institution may be the Andorran Chamber of Commerce, Industry and Services or any other public law corporation or public body which, in accordance with its governing regulations, is able to perform arbitral functions, as well as those non-profit associations and bodies which, in accordance with their by-laws, have arbitral functions.

In order to give effect to this legal prerogative, the Government, at the joint suggestion of the Andorran Chamber of Commerce, Industry and Services and the Andorran Bar Association, has believed appropriate, by enacting this Law, to create the Arbitral Tribunal of the Principality of Andorra, with the aim of implementing the objectives set out in the Arbitration Act of the Principality of Andorra. Indeed, it is a question of creating an institution which makes it possible to incentivise arbitration as an alternative dispute-resolution mechanism to the Court system.

The Act is structured into four chapters and seventeen articles, a transitional provision and two final provisions. The first chapter deals with general provisions, particularly, the purpose and name of the new arbitral institution, its nature and legal form, its composition and appointments, and its registered office. The second chapter relates to the functions of the Arbitral Tribunal of the Principality of Andorra. The third chapter then provides for its structure and operation. That structure is divided into the Assembly (“*Ple*”) and the General Secretariat of the Tribunal, and relevant rules are also established in relation to liability and confidentiality.



Finally, the fourth chapter sets out provisions relating to the financial and accounting regime. All the foregoing is without prejudice to the necessary implementation of the above provisions through the by-laws of the Tribunal and without prejudice to the rules applicable to the arbitration cases administered by the Tribunal.

Chapter one. General provisions

Article 1. Object and name

1. The purpose of this Act is the constitution of an arbitral institution, having its seat in the Principality of Andorra, which promotes arbitration as an alternative mechanism for the resolution of disputes, and administers the national and international arbitration cases entrusted to it.
2. The arbitral institution referred to in the preceding paragraph shall be known as the “Arbitral Tribunal of the Principality of Andorra”.

Article 2. Nature and legal form

1. The Arbitral Tribunal of the Principality of Andorra is a legally constituted entity with its own legal personality, financial autonomy and own assets, and with full capacity to carry its object.
2. The Arbitral Tribunal of the Principality of Andorra is wholly independent of the public authorities, in particular from the general State Administration and its bodies, and is subject to the private legal order, except where this Act provides otherwise.

Article 3. Composition and development

1. The Chamber of Commerce, Industry and Services of the Principality of Andorra and the Andorran Bar Association are full members of the Arbitral Tribunal of the Principality of Andorra.
2. New members may only join the Arbitral Tribunal of the Principality of Andorra where the requirements established for that purpose in its by-laws are satisfied.
3. The Chamber of Commerce, Industry and Services of the Principality of Andorra and the Andorran Bar Association must draw up the by-laws of the Arbitral Tribunal of the Principality of Andorra and deal with the composition and functioning of its governing body. They must also draw up the rules applicable to the arbitration cases administered by the Arbitral Tribunal of the Principality of Andorra and elaborate the rules relating to its financial and accounting regime, in accordance with the provisions of this Act and its implementing regulations.
4. The by-laws of the Arbitral Tribunal of the Principality of Andorra and the rules applicable to the arbitration cases which it administers must, in any event, be approved by the Assembly (“*Ple*”) of the Arbitral Tribunal of the Principality of Andorra.

Article 4. Registered office

The registered office of the Arbitral Tribunal of the Principality of Andorra must be located within the territory of the Principality of Andorra.



Chapter two. Functions

Article 5. Functions

The functions of the Arbitral Tribunal of the Principality of Andorra are those connected with taking any actions necessary for the development of arbitration in the Principality of Andorra, in conformity with the principles of this Act and of its by-laws. The functions of the Arbitral Tribunal of the Principality of Andorra shall include, but not limited to, the following:

- a) Administering any national and international arbitration cases entrusted to it, whether based on law or on equity.
- b) Maintaining the infrastructure as well as the human and technical resources necessary to provide the service of administering national and international arbitration cases, where the seat of the arbitration is the Principality of Andorra.
- c) Fostering the conditions necessary to put the Principality of Andorra in position to compete with other international arbitration institutions.
- d) Carrying out and encourage activities to study, research and promote arbitration, taking into consideration the relevant international standards.
- e) Coordinating with all public authorities to ensure that arbitration is implemented in the Principality of Andorra.
- f) Actively promoting the Arbitral Tribunal of the Principality of Andorra in international arbitration forums.
- g) Regulating the arbitration process and the procedure for appointing arbitrators, in accordance with the provisions of this Act and the rules of the Arbitral Tribunal of the Principality of Andorra.
- h) Ensuring that arbitrators satisfy the requirements relating to capacity and independence together with the transparency of their appointment.
- i) Preparing reports and opinions in relation to matters arising from the practice of arbitration, both national and international, which may be requested.
- j) Studying and analysing national and international arbitration law, making whatever proposals to the public authorities it deems appropriate in that regard.

Chapter three. Structure and functioning

Section one. Governing bodies and liability

Article 6. Governing bodies

The governing bodies of the Arbitral Tribunal of the Principality of Andorra are the Assembly (“*Ple*”) and the General Secretariat.

Article 7. Employees contractual regime

1. The professional relationship existing between the employees of the Arbitral Tribunal of the Principality of Andorra and the Arbitral Tribunal of the Principality of Andorra itself are governed by private contracts signed by the two parties.
2. The Assembly (“*Ple*”) of the Arbitral Tribunal of the Principality of Andorra shall determine the form and conditions of the contracts, in accordance with the human resources management and remuneration policies approved by the Assembly (“*Ple*”).



Article 8. Liability

1. The liability of the Arbitral Tribunal of the Principality of Andorra is limited to the amount of its assets and its members shall not be liable for its debts.
2. The Assembly (“*Ple*”), the General Secretariat and the employees under contract must comply faithfully with the legal, regulatory and contractual provisions which govern their duties.
3. The Arbitral Tribunal of the Principality of Andorra must take out a professional liability insurance policy covering any damage which may arise from the provision of the service of administering arbitration cases and which is proportionate to the nature and extent of the risk assumed in providing that service. In any case, however, the Government shall determine the minimum amount to be covered under that policy.
4. The Arbitral Tribunal of the Principality of Andorra shall require the arbitrators to take out a professional indemnity insurance, covering any damage which they may cause in the exercise of their duties as arbitrators, complying with the minimum amount determined by the Government.

Section two. The Assembly (“*Ple*”) of the Arbitral Tribunal of the Principality of Andorra

Article 9. Composition and operation

1. The Assembly (“*Ple*”) of the Arbitral Tribunal of the Principality of Andorra shall be composed of at least seven members with the right to vote. Each full member of the Arbitral Tribunal of the Principality of Andorra shall designate an equal number of members and those members shall in turn appoint another one who shall act as president. In all event, the total number of members of the Assembly (“*Ple*”) of the Arbitral Tribunal of the Principality of Andorra must be uneven. The composition of the Assembly (“*Ple*”) of the Arbitral Tribunal of the Principality of Andorra shall be determined under its by-laws.
2. The Assembly (“*Ple*”) of the Arbitral Tribunal of the Principality of Andorra shall designate the general secretary, who shall attend and speak at the Assembly (“*Ple*”), but with no voting rights and shall act as the Assembly’s (“*Ple*”) secretary.
3. The by-laws of the Arbitral Tribunal of the Principality of Andorra must establish the operating rules of the Assembly (“*Ple*”), the method of appointment of the members with voting rights and of the general secretary, their terms of office, the rules relating to incompatibilities and those relating to the disciplinary regime, as well as the procedures necessary to avoid deadlock in decision-making, given the parity in the composition of the Assembly (“*Ple*”).

Article 10. Requirements and incompatibility

1. The members of the Assembly (“*Ple*”) of the Arbitral Tribunal of the Principality of Andorra must have the necessary qualities of independence and impartiality and, first and foremost, must ensure the proper operation of the arbitral institution.
2. The members of the Assembly (“*Ple*”) of the Arbitral Tribunal of the Principality of Andorra must be persons of good business and professional repute, must have the appropriate



knowledge to carry out the duties inherent to their office and must have adequate professional experience.

3. Shall be considered as persons of good business and professional repute, persons with good personal and professional standing, whose public image is that of good administrators, and who, moreover:

- a) Have no record of willful crimes, particularly, offences of false statements, breach of trust in relation to the custody of documents, breach of confidentiality, misuse of public funds, disclosure and revelation of secrets or offences against property.
- b) Are not and have never been disqualified from holding public office or from being a company manager or director in the Principality of Andorra or abroad.

4. As soon as any member of the Assembly (“*Ple*”) of the Arbitral Tribunal of the Principality of Andorra ceases to be a person of good business and professional repute, on account of being convicted of, or prosecuted for, any criminal offence, he must inform the Assembly (“*Ple*”)

5. The by-laws of the Arbitral Tribunal of the Principality of Andorra must establish the requirements relating to adequate professional experience.

6. The members of the Assembly (“*Ple*”) of the Arbitral Tribunal of the Principality of Andorra shall preferably be of Andorran nationality, but resort can be made to non-Andorrans if their qualities, expertise or experience in the field justify it.

7. The status of member of the Assembly (“*Ple*”) of the Arbitral Tribunal of the Principality of Andorra shall be incompatible with any other public office or function within the Administration of justice, and any other activity which could jeopardize their independence and impartiality in carrying out their duties.

8. Members of the Assembly (“*Ple*”) of the Arbitral Tribunal of the Principality of Andorra wishing to act as arbitrators or as counsels to the parties in matters submitted to arbitration shall be subject to the provisions of the by-laws of the Arbitral Tribunal of the Principality of Andorra and to the rules applicable to the arbitration cases administered by the Arbitral Tribunal of the Principality of Andorra, in such event.

9. Where any member of the Assembly (“*Ple*”) of the Arbitral Tribunal of the Principality of Andorra is directly or indirectly involved, on any ground or basis, in a procedure pending before the Arbitral Tribunal of the Principality of Andorra, he must make that fact known to the general secretary as soon as he becomes aware of the situation. The person involved in these circumstances cannot take part in discussions or in the taking of decisions relating to this arbitration, nor can he access or receive any documentation or information of any kind relating to the arbitration in question.

Article 11. Cessation of activities and removal

The members of the Assembly (“*Ple*”) of the Arbitral Tribunal of the Principality of Andorra shall cease to hold office for any of the following reasons:

- a) The end of the period for which they have been appointed.
- b) The submission of their written resignation to whoever appointed them.
- c) By death.
- d) Incapacity declared by means of a final judicial decision.



- e) Conviction of committing a serious intentional crime.
- f) By decision of the Assembly (“Ple”) in case of conflict of interest or the loss of being a person of good business and professional repute, as provided in article 10.

Section three. The General Secretariat

Article 12. Regulation

The composition of the General Secretariat, headed by the general secretary, the method of appointment and selection of its members, and the rules relating to its operation, shall be agreed by the Assembly (“Ple”) of the Arbitral Tribunal of the Principality of Andorra and shall be laid down in the by-laws of the Arbitral Tribunal of the Principality of Andorra, in accordance with the provisions of this Act.

Section four. Confidentiality

Article 13. Confidential nature of the activities

1. The members of the Arbitral Tribunal of the Principality of Andorra and, in particular, the members of the Assembly and of the General Secretariat, as well as the staff under contract and the arbitrators, are subject to a duty of confidentiality by reason of their office or the function they assume.
2. All documents sent to the Arbitral Tribunal of the Principality of Andorra, or which proceed from the administration of the arbitration process, shall be communicated exclusively to the members of the Arbitral Tribunal of the Principality of Andorra, given their confidential nature.
3. The deliberations and decisions reached within the Arbitral Tribunal of the Principality of Andorra are confidential by nature.

Chapter four. Financial and accounting regime

Article 14. Nature

1. The Arbitral Tribunal of the Principality of Andorra is a non-profit and non-commercial organisation.
2. The by-laws of the Arbitral Tribunal of the Principality of Andorra must provide for its financial regime which, in any event, must respect the principle whereby the Arbitral Tribunal of the Principality of Andorra is to be financed by the fees resulting from for its participation in the arbitration cases which it administers, following the initial funding provided by the Chamber of Commerce, Industry and Services of the Principality of Andorra and the Andorran Bar Association.

Article 15. Budget

Each year, the General Secretariat shall prepare the budget for the Arbitral Tribunal of the Principality of Andorra, which must be approved by the Assembly (“Ple”).



Article 16. Management and administration

1. The Arbitral Tribunal of the Principality of Andorra shall administer its own resources with complete independence, in compliance with the principles of efficiency, efficacy and prudence and in assessing, in each case, the relevant circumstances.
2. The Arbitral Tribunal of the Principality of Andorra may also receive bequests, legacies and donations; it may possess, encumber and dispose of assets of any kind; it may receive payment for services provided to third parties and it may use its resources freely.

Article 17. Preparation and approval of the annual accounts and budget settlement

1. The General Secretariat of the Arbitral Tribunal of the Principality of Andorra shall prepare the proposal for the annual accounts and budget settlement. The proposal for the annual accounts, along with the proposed budget settlement, must be submitted to the Assembly (“*Ple*”) of the Arbitral Tribunal of the Principality of Andorra for presentation and approval no later than three months following the end of the financial year.
2. The Assembly (“*Ple*”) of the Arbitration Court of the Principality of Andorra may have the annual accounts audited.

Transitional provision

The authorisation to create the Arbitral Tribunal of the Principality of Andorra shall expire two years from the day on which this Act comes into force in the event that, during that time, authorisation has not been requested for the Tribunal to begin its activity.

First final provision

A new letter q is added to paragraph 2 of article 8 of the 95/2010 Act of 29 December, on Corporation Tax, worded as follows:

"q) The Arbitral Tribunal of the Principality of Andorra”.

Second final provision

This Act shall come into force on the day following its publication in the Official Gazette of the Principality of Andorra.

Casa de la Vall, 31 May 2018

Vicenç Mateu Zamora

President of the Parliament (“*Síndic General*”)

We the Co-princes adopt and enact this Act and order its publication in the Official Gazette of the Principality of Andorra.

Emmanuel Macron
President of the French Republic
Co-Prince of Andorra

Joan Enric Vives Sicília
Bishop of Urgell
Co-Prince of Andorra

