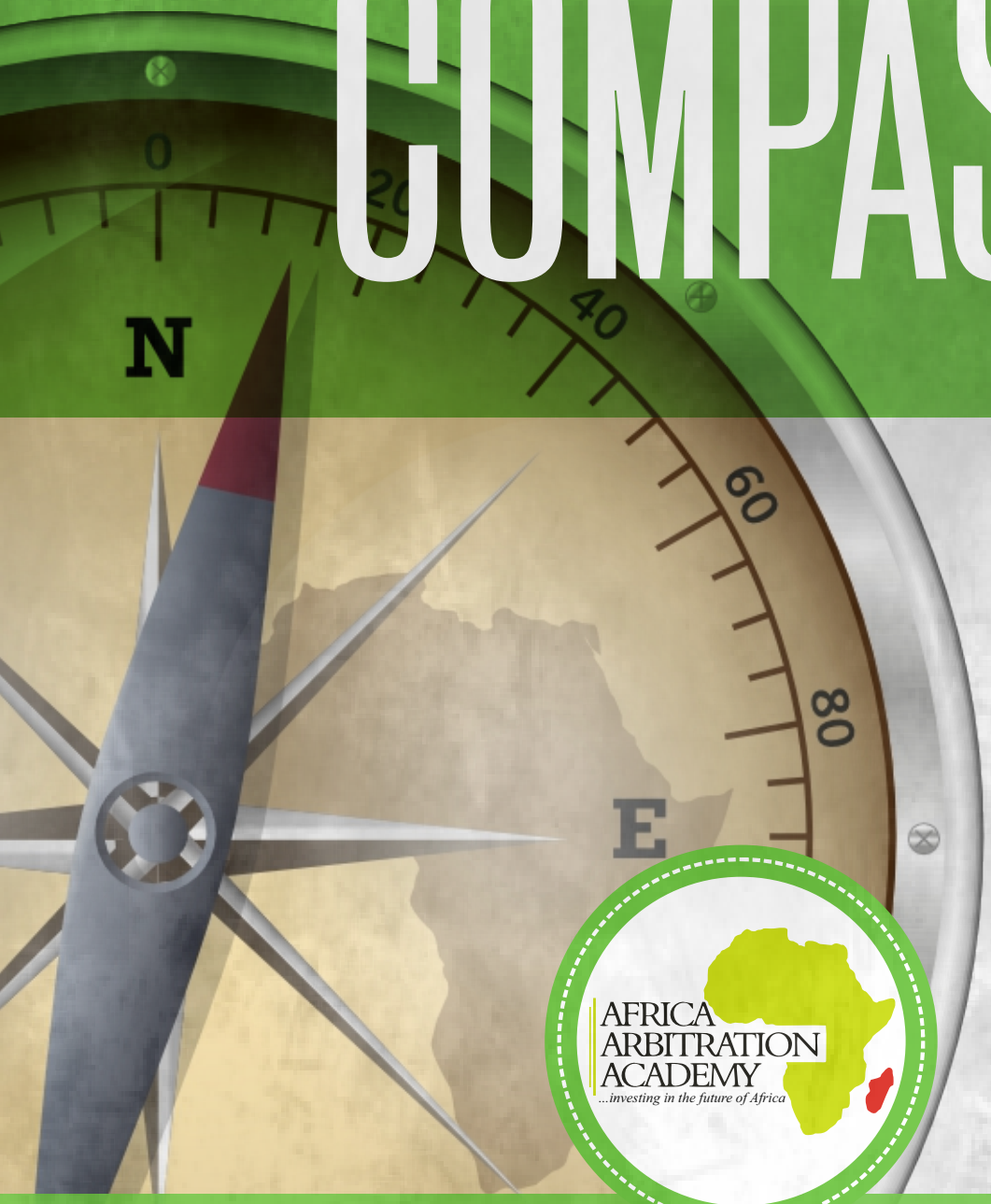
ARBITRATION COMPASS



AFRICA ARBITRATION ACADEMY
...investing in the future of Africa

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Editor's Note



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Africa has experienced a significant increase in commercial activities in recent years, leading to a rise in commercial disputes. As a result, arbitration has become the preferred method for resolving conflicts due to its flexibility, neutrality, and enforceability of awards. However, navigating the arbitration landscape in Africa presents unique challenges and opportunities.

The Arbitration Compass aims to be a comprehensive guide for individuals and entities involved or interested in arbitration proceedings on the African continent. Whether you are a legal practitioner, business owner, investor, or academic researcher, this compass offers essential insights and practical advice to navigate the diverse and evolving arbitration landscape across Africa's vibrant jurisdictions.

Some of the key features are –

1. Regional Perspectives: Africa is a vast continent with diverse legal systems and cultural backgrounds. This guide provides insights into arbitration practices across various regions, including North Africa, West Africa, East Africa, Central Africa, and Southern Africa.

2. Legal Framework: Understanding the legal framework governing arbitration is crucial for effective dispute resolution. This compass explores the legislative and regulatory frameworks governing arbitration in different African countries, highlighting key statutes, regulations, and international conventions.

3. Institutional Arbitration: Many arbitration proceedings in Africa are conducted through institutional arbitration bodies. This guide provides an overview of prominent arbitration institutions operating in Africa, their rules, procedures, and case studies illustrating their role in resolving disputes.

4. Emerging Trends and Developments: The arbitration landscape in Africa is dynamic, with new trends and developments shaping the practice. This Compass keeps you updated on emerging trends, recent case law, legislative reforms, and other developments impacting arbitration in Africa.

Arbitration is increasingly becoming the preferred method for resolving commercial disputes in Africa, as it offers parties a flexible, efficient, and neutral forum for dispute resolution. However, understanding the arbitration landscape in Africa requires insight into the region's legal, cultural, and institutional dynamics.

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Egypt



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Yous sef Al Saman



Nada Ha shim

1. What legislation applies to arbitration in your country? Are there any mandatory laws? What is their effect?

The legislation which Egypt applies to arbitration is the Egyptian Arbitration Law No. 27 of 1994 as last amended by Law No. 9 of 1997 ('EAL'). The EAL is based on the UNCITRAL Model Law. Most of the procedural rules set out in the EAL to govern the conduct of the proceedings are not mandatory and the parties may derogate from them by agreement. However, a few rules appear to be mandatory, such as; the inarbitrability of disputes that cannot be subject to a compromise and rights in rem (Art. 11 of EAL); witnesses and experts may not be heard under oath (Art. 33(4) of EAL); awards may not be rendered by truncated tribunals (Arts.15 and 53 of EAL); tribunals may not be formed of an even number of arbitrators (Art. 15 of EAL); and parties may not agree in advance to exclude the right to apply for setting aside the award (Art.54(1) of EAL).

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Yes. Egypt is a signatory of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). Egypt has consented to join the New York Convention on 2 February 1959, ratified it on 9 March 1959, and it entered into force as part of the Egyptian legal system on 7 June 1959 without any reservations or declarations.

3. What other arbitration-related treaties and conventions is your country a party to?

Egypt is a party to several arbitration-related treaties and conventions, amongst which are the following: (1) the Convention of the Arab League on the Enforcement of Judgments and Arbitral Awards of 1952 (the Arab League Convention) ratified on 28 August 1954; (2) the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (the ICSID Convention) ratified on 3 May 1972; (3) the Unified Agreement for Investment of Arab Capital in the Arab States (the Arab Investment Agreement") signed on 26 November 1980 in Amman and entered into force on 7 September 1981; (4) the Organisation of the Islamic Conference Investment Agreement of 1981 (the OIC Investment Agreement) ratified in February 1988; (5) the Convention establishing the Multilateral Investment Guarantee Agency (the MIGA Convention) of 1985; (6) the COMESA Investment Agreement signed on 23 May 2007; (7) the Riyadh Arab Agreement for Judicial4 Cooperation of 1983 signed in 2014; and (8) the Egypt-MERCOSUR Preferential Free Trade Agreement which has entered into force in September 2017. Egypt has signed 115 Bilateral Investment Treaties ('BITs') among which around 72 BITs entered into force in the following dates and with the following countries: Albania (6/4/1994); Algeria (3/5/2000); Argentina (3/12/1993); Armenia (1/3/2006); Australia (5/9/2002); Austria (29/4/2002); Bahrain (11/1/1999); Belarus (18/1/1999); Belgium– Luxembourg Economic Union (24/5/2002); Bosnia & Herzegovina (29/10/2001); Bulgaria (3/6/2000); Canada (3/11/1997); China (1/4/1996); Comoros (27/2/2000); Croatia (2/5/1999); Cyprus (9/6/1999); Czech Republic (4/6/1994); Denmark (29/10/2000); Ethiopia (27/5/2010); Finland (5/2/2005); France (1/10/1975); Germany (22/11/2009); Greece (6/4/1995); Hungary (21/8/1997); Iceland (15/6/2009); Italy (1/5/1994); Japan (14/1/1978); Jordan (11/4/1998); Kazakhstan (8/8/1996); Korean Democratic Peoples Republic (12/1/2000); Korean Republic (25/5/1997); Kuwait (26/4/2002); Latvia (3/6/1998); Lebanon (2/6/1997); Libya (4/7/1991); Malawi (7/9/1999); Malaysia (3/2/2000); Mali (7/7/2000); Malta (17/7/2000); Mauritius (17/10/2014); Mongolia (25/1/2005); Morocco (27/6/1998); Netherlands (1/3/1998); Oman (3/3/2000); Palestine (19/6/1999); Poland (17/1/1998); Portugal (23/12/2000); Qatar (14/7/2006); Romania (3/4/1997); Russia (12/6/2000); Serbia (20/3/2006); Singapore (20/3/2002); Slovakia (1/1/2000); Slovenia (7/2/2000); Somalia (16/4/1983); Spain (26/4/1994); Sri Lanka (10/3/1998); Sudan (1/4/2003); Sweden (29/1/1979); Switzerland (15/5/2012); Syria (5/10/1998); Thailand (4/3/2002); Tunisia (2/1/1991); Turkey (31/7/2002);

Turkmenistan (29/3/1996); United Arab Emirates (11/1/1999); Ukraine (10/10/1993); United Kingdom (24/2/1976); United States of America (27/6/1992); Uzbekistan (8/2/1994); Vietnam (4/3/2002); and Yemen (10/4/1998). (UNCTAD Investment Policy Hub, available at https://investmentpolicy.unctad.org/international-investment agreements/countries/62/egypt?type=bits)

Furthermore, Egypt has concluded several bilateral treaties on judicial cooperation which refer to mutual cooperation in the recognition and enforcement of arbitral awards, inter alia, the treaties Egypt concluded with the following countries: Tunisia (1976) ; Italy (1978) ; France (1982) ; Jordan (1987) ; Morocco (1989) ; Bahrain (1989) ; Libya (1993) ; China (1994) ; Hungary (1996) ; Syria (1998) ; United Arab Emirates (2000) ; Oman (2002) ; and Kuwait (2017)

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

Yes. The EAL is indeed based on the UNCITRAL Model Law (1985), however, there exist some differences between both, such as the following:

- the applicability of the EAL to both domestic and international arbitrations (Article 1);
- the possible extraterritorial application of the EAL to proceedings seated abroad only if the parties have agreed to such extraterritorial application (Article 1);
- the EAL includes a requirement that an arbitration agreement in an administrative contract is approved by the competent minister or whoever assumes his or her authority with respect to public entities, and delegation in this regard is prohibited (Article 1);
- the EAL introduces several criteria for characterizing the 'international' nature of an arbitration, including, inter alia; where the arbitration is institutional; where the arbitration involves parties whose principal places of business are in different States, or alternatively, based on the place determined by the arbitration agreement; where the place of performance of substantial obligations or the place with the closest connection to the dispute is abroad (Article 3);
- the EAL does not expressly address the possibility of entering into an arbitration agreement by way of electronic means, however, it does not exclude it and therefore, there is no prohibition in this respect, and insofar as the electronic communication fulfills the requirement of 'writing' set out in the EAL, the arbitration agreement should be valid. According to the EAL, an agreement is in writing if it is contained in a document signed by the parties or contained in an exchange of letters, telegrams or other means of communication. Absence of an arbitration agreement in writing results in the nullity of the arbitration agreement and the writing requirement under the EAL is stricter than the one under the UNCITRAL Model Law (Article 12);
- in the case of incorporation by reference, the EAL requires an explicit reference to the arbitration agreement (Article 10);
- the EAL does not provide for the 'referral exception' whereby a state court may accept to decide

[1] Presidential Decree No. 407 for the year 1976, published in the official gazette on 06 January 1977.
[2] Presidential Decree No. 80 for the year 1978, published in the official gazette on 05 November 1981.
[3] Presidential Decree No. 332 for the year 1982, published in the official gazette on 15 September 1982.
[4] Presidential Decree No. 103 for the year 1987, published in the official gazette on 20 August 1987
[5] Presidential Decree No. 81 for the year 1999, published in the official gazette on 26 August 1999.
[6] Presidential Decree No. 260 for the year 1989, published in the official gazette on 14 December 1989.
[7] Presidential Decree No. 4 for the year 1993, published in the official gazette on 05 August 1993.
[8] Presidential Decree No. 361 for the year 1994, published in the official gazette on 17 August 1995.
[9] Presidential Decree No. 251 for the year 1996, published in the official gazette on 5 August 1996
[10] Presidential Decree No. 417 for the year 2000, published in the official gazette on 24 August 2000.
[11] Presidential Decree No. 464 for the year 2000, published in the official gazette on 03 May 2001
[12] Presidential Decree No. 272 for the year 2002, published in the official gazette on 12 September 2002.
[13] Presidential Decree No. 185 for the year 1994, published in the official gazette on 30 July 1992

over jurisdiction if it finds that the arbitration agreement is null and void, inoperative or incapable of being performed (Article 13). However, in practice, some Egyptian courts have considered the validity and operability of the arbitration agreement before an arbitral tribunal rendered its award;

- the EAL requires an odd number of arbitrators for purposes of constitution of the arbitral tribunal, the violation of this requirement leads to the nullity of the award (Article 15);
- a preliminary arbitral award on jurisdiction cannot be subject to court review prior to the tribunal's rendering of the final award deciding on the entire dispute (Article 22);
- the parties may agree to empower the arbitral tribunal to issue - upon an application by a party orders on interim/provisional measures, and request submission of security sufficient to cover the costs of such measures (Article 24);
- absent an agreement by the parties, or a determination by the arbitral tribunal, on the language(s) of the arbitration, it shall be Arabic (Article 29);
- if the parties do not agree on the applicable law, the arbitral tribunal may apply the substantive rules of the law which the arbitral tribunal deems of closest connection to the dispute (Article 39);
- the threshold used in the EAL (Article 18) for the challenge of arbitrators is relatively higher than its UNCITRAL Model Law counterpart (Article 12); such that the doubts that may be relied on to challenge an arbitrator's impartiality and independence must be 'serious' under the EAL, not only 'justifiable' as is the case under the UNCITRAL Model Law;
- the EAL adds a ground for annulment where the award excludes the application of the law the parties agreed to apply to the merits of the dispute (lex causae) (Article 53); and
- the EAL introduces a further condition for purposes of granting an enforcement order (exequatur) that is not listed in the UNCITRAL Model Law, namely: the award does not contradict a prior judgment rendered by the Egyptian courts on the merits of the dispute (Article 58).

5. Are there any impending plans to reform the arbitration laws in your country?

Indeed, there are ongoing discussions for reform and possible amendments to the EAL. For that purpose, a committee was established by virtue of Decree No. 8 of 2022, issued on 22 March 2022 by the Deputy Minister of Justice for Arbitration and International Disputes, who presides the aforementioned committee, which includes members of the arbitration and international disputes' department at the Ministry of Justice, as well as other arbitration practitioners, including academics and lawyers. The said committee is in entrusted with preparing a proposal on possible amendments to the EAL to submit it to the Minister of Justice.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The leading arbitral institution situated in Cairo, Egypt is the Cairo Regional Centre for International Commercial Arbitration ('CRCICA') which is an independent non- profit international organisation that administers domestic and international arbitral proceedings. The CRCICA has its own set of arbitration rules, mediation rules and dispute board rules.

The CRCICA arbitration rules were amended in 1998, 2000, 2002, 2007 and 2011. The 2011 amendments, are in force since 1 March 2011 to-date. On 2 January 2024, CRCICA announced the launch of its new arbitration rules, which amended the 2011 arbitration rules, to enter into force, on 15 January 2024, as adopted by CRCICA's Board of Trustees on 20 December 2023. It is noteworthy that CRCICA's new arbitration rules introduced provisions addressing issues which were not addressed in the 2011 arbitration rules, such as provisions in relation to multi-party arbitration, multi-contract arbitration, consolidation of arbitrations, early dismissal of claims, online arbitration filing, third-party funding, emergency arbitrator rules and expedited arbitration rules. CRCICA's new 2023 draft arbitration rules is now available in Arabic, English and French. (CRCICA, available at: https://crcica.org/arbitration/crcica-arbitration-rules/)

The CRCICA mediation rules were amended in 2013 (CRCICA, available at: https://crcica.org/mediation/crcica-mediation-rules/). Also, in 2021, the CRCICA adopted for the first time its Dispute Board Rules to enter into force on August 1, 2021. (CRCICA, available at: https://crcica.org/dispute-board/crcica-dispute-board-rules/)

Furthermore, a specialised centre, the “Egyptian Centre for Arbitration and Settlement of Non-Banking Financial Disputes” ('ECAS'), offering dispute resolution services, was established within the Egyptian Financial Regulatory Authority (“FRA”), by virtue of Presidential Decree no. 335 of 2019 (11 July 2019). ECAS' statutes, as well as its arbitration and mediation rules, were issued on 10 December 2020 by virtue of Prime Ministerial Decree no. 2597 of 2020. It is noteworthy that according to the FRA's Board of Directors' Decision No. 273 of 2023 dated 13 December 2023 and published in the Official Gazette Issue No. 7 bis (a) on 9 January 2024, ECAS Board of Trustees' is presided by the chairman of the board of directors of the FRA, and includes his two deputies, and two deputies of the chief justice of the Egyptian court of cassation, as members.

7. Is there a specialist arbitration court in your country?

There is no 'specialist' arbitration court per se. For purposes of domestic arbitrations, Article (9) of the EAL refers to the court, which would have had jurisdiction to hear the dispute in the absence of an arbitration agreement, and there are certain circuits within a court's structure that normally handle arbitration-related judicial proceedings. As regards to international arbitrations, the competent court that is empowered to deal with arbitration-related matters is the Cairo Court of Appeal, unless the parties agree on a different Court of Appeal.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

According to the EAL, an arbitration agreement may be concluded prior to the existence of the dispute or after it has arisen. Whether the arbitration agreement is in the form of an arbitration clause (clause compromissoire), or a submission agreement (compromis d'arbitrage), the validity requirements of an arbitration agreement under the arbitration law may be summarized as follows:

- the parties must have capacity to enter into the arbitration agreement (Article 11);
- the subject matter of the arbitration must be arbitrable (Article 11);
- the subject of the dispute to be resolved by arbitration must be specified in the compromise, or in the statement of claim in case of a prior agreement to arbitrate (Article 10); and
- the arbitration agreement must be in writing or else it is null. The writing requirement includes

a document signed by the parties, an agreement by exchange of correspondences or other means of communication (Article 12), and/or an incorporation into the contract by reference to a document containing an arbitration agreement insofar as the reference is explicit in considering the arbitration agreement part of the parties' contract (Article 10(3)).

It is worth noting that in administrative contracts, the arbitration agreement must be approved by the competent minister, or whoever assumes his/her authority with respect to public entities, and delegation in this regard is prohibited (Article 1 of the EAL). This has been confirmed by a judgment of the Egyptian State Council where it ruled that the arbitration agreement is void when the competent minister, or whoever assumes his or her authority with respect to public entities, has not approved it and that such requirement is a matter of public policy. It also ruled that the arbitration agreement must deal only with matters that are arbitrable and in the case of a submission agreement (post-dispute), the parties must identify the dispute subjected to the arbitral proceedings or the agreement would be null and void. (State Council, challenge no. 8256 of JY 56, hearing session dated 5 March 2016)

Moreover, in April 2019, a new committee "High Committee for Arbitration and International Disputes" was established within the Council of Ministers, and entrusted with examining and opining on all arbitration related disputes involving the State or any of its organs or state-controlled entities. (Prime Ministerial Decree no. 1062 of 2019). The aforementioned Prime Ministerial Decree no. 1062 of 2019 was further amended on two occasions: Firstly, in December 2020 by virtue of Prime Ministerial Decree no. 2592 of 2020, which expressly entrusted the High Committee for Arbitration and International Disputes with, inter alia, opining on contracts concluded by the State or any of its organs or state-controlled entities with foreign investors, as well as the drafting of the governing terms of those contracts (Prime Ministerial Decree no. 2592 of 2020); and Secondly, in September 2022 by virtue of Prime Ministerial Decree no. 3218 of 2022, which added to the powers of High Committee for Arbitration and International Disputes, the approval of contracts concluded by the State or any of its organs or state-controlled entities with foreign investors, or including an arbitration agreement. The said amendment prohibited the addressed entities from amending such contracts, or taking any measure entailing the rescission or termination thereof without approval by the High Committee for Arbitration and International Disputes. (Prime Minister Decree no. 3218 of 2022).

9. Are arbitration clauses considered separable from the main contract?

Yes, Egypt recognizes the doctrine of separability/severability of the arbitration agreement. According to the EAL, the arbitration clause is considered separable from the main contract and is not affected by the latter's invalidity, termination and/or rescission insofar as the arbitration agreement itself is valid (Article 23). The principle of separability of the arbitration clause from the main contract has also been consistently confirmed by Egyptian courts as one of the fundamental principles of arbitration in Egypt. (Court of Cassation, challenge no. 824 of JY 71, hearing session dated 24 May 2007; and challenge no. 933 of JY 71, hearing session dated 24 May 2007)

10. Is there anything particular to note in your jurisdiction with regard to multi- party or multi contract arbitration?

There are no specific rules regarding that matter under the EAL. However, the applicable institutional rules may include pertinent provisions. Absent such regulation under institutional rules, if any are applicable, it is preferable that a multiparty arbitration agreement explicitly states whether several parties shall jointly appoint one or more arbitrators. In this regard, the arbitration clause must be clearly drafted in order to determine the mechanism for

appointment of the arbitrators. It is worth noting that recently in 2023, the CRCICA draft new arbitration rules (amending its 2011 arbitration rules) to enter into force on 15 January 2024, included – for the first time – provisions with regard to multi-party and multi-contract arbitration. (Articles 11 and 51 the CRCICA draft arbitration rules) (CRCICA, available at: https://crcica.org/arbitration/arbitration2023/)

11. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

The EAL does not expressly regulate the extension of the arbitration agreement to third parties or non-signatories. Also, generally, Egyptian court decisions do not portray a clear trend as to the doctrine and accord the ultimate weight to the parties' consent to arbitration as determined by arbitral tribunals. Egyptian courts are increasingly becoming more flexible in considering the extension of arbitration agreements to third parties and/or the joinder of third parties to arbitral proceedings and will usually defer to the arbitral tribunal's findings in this regard, unless there is no agreement in writing or principles of public policy are contravened.

The Egyptian Court of Cassation ruled that an arbitration agreement included in a contract does not automatically extend to a company that forms part of a larger group of companies entering into the contract. The court has set a threshold for extension of the arbitration agreement where it required active contribution in performance accompanied by confusion in the intents of the two relevant companies (Egyptian Court of Cassation, Challenge no. 4729 of JY 72, hearing session dated 22 June 2004). In other words, the doctrine of group of companies is accepted by Egyptian courts for purposes of extension of the arbitration agreement in the presence of an implication in the performance process of the contract.

The doctrine of economic unity, in and of itself, is not sufficient for purposes of extension of the arbitration agreement if the third party has not demonstrated consent to arbitration. (Cairo Court of Appeal, commercial circuit no. 62, case no. 83 of JY 118, hearing session dated 5 August 2002, in Fat-hi Waly, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p. 195-196) However, Egyptian courts have shown flexibility regarding extension to third parties and would normally defer to the tribunal's reasoning in this respect, unless public policy is compromised.

With respect to the extension of the arbitration clause to third parties or non- signatories, the Egyptian Court of Cassation held that an arbitration agreement cannot exist without consent of the parties, but added that an arbitration agreement may extend to third parties and to other contracts connected to the principal contract on the basis of several doctrines and principles including: group of companies, group of contracts, universal succession, mergers or assignment if their conditions are met. (Court of Cassation, challenges nos. 2698, 3100 and 3299 of JY 86, hearing session dated 13 March 2018)

12 Are any types of disputes considered non-arbitrable? Has there been any jurisprudence in this regard in recent years?

Yes, as a matter of principle, the EAL provides that any matter that is not capable of settlement is non-arbitrable (Article 11). Non-arbitrable matters principally pertain to matters of personal or family status, public policy, criminal matters, or rights in rem relating to immovables such as registration of real estate mortgages. Otherwise, the EAL requires that the right subject to arbitration be of an economic nature (Article 2).

13. Are there any recent court decisions in your country concerning the choice of law applicable to

an arbitration agreement where no such law has been specified by the Parties?

There is no recently reported court decision concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the parties. In this regard, it is worth mentioning that in determining the law applicable to the arbitration agreement, Egyptian courts have a tendency towards the law of the seat as selected by the parties, provided that the provisions of such law do not contravene Egyptian public policy rules. (Egyptian Court of Cassation, challenge no. 453 of JY 42, hearing session dated 9 February 1981; and challenge no. 1259 of JY 49, hearing session dated 13 June 1983) This position is based on the assumption that the arbitration agreement constitutes the first step of the arbitral proceedings and should therefore be subject to the law applicable to the arbitral proceedings, i.e. the law of the seat.

However, the above interpretation is strongly rejected by scholars who view the arbitration agreement as a step preceding the arbitral proceedings and should therefore be subject to the parties' substantive choice of law, which, in turn may be implicit. According to some scholars, absent a choice of law, the applicable law is that of the State where the award is rendered independently from the choice of law by the parties with respect to the subject matter to the dispute. As far as capacity to conclude the contract is concerned, the applicable law is that applicable to each party independently from the other, be it the law governing nationality, domicile for natural persons or effective principal place of management for juridical persons. (Fat-hi12 Waly, Arbitration in Local and International Commercial Disputes, Munsha'at Al Ma'aref, 2014 ed., p. 121-123)

14. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

At the outset, the EAL recognises the principle of 'party autonomy' acknowledging that the parties are free to determine the law applicable to the substance of the dispute, subject to exceptional legislative constraints (e.g. technology transfer contracts and remuneration of Egyptian commercial agents, where application of Egyptian law is mandatory according to the applicable Egyptian laws). This is confirmed by Article 39.1 of the EAL, which provides that the arbitral tribunal shall apply the rules chosen by the parties, and that if the parties agreed on the applicability of the law of a given state, only the substantive rules thereof shall be applicable excluding its rules of conflict of laws, unless otherwise agreed by the parties.

However, if the parties have not agreed on specific rules or law applicable to the substance of their dispute, the EAL provides that the arbitral tribunal shall apply the substantive rules of the law it considers having the closest connection to the dispute. (Article 39.2)

The EAL does not provide a specific set of connecting factors that the arbitrators shall follow in determining the substantive rules having the closest connection with the dispute. The choice of the applicable substantive rules will be dependent on the nature of the dispute and shall be determined on a case by case basis. For example, if the validity of a contract is disputed, hence the law having the closest connection with the dispute will be the law of the state where the contract has been concluded. Also, if the dispute is related to the performance of an obligation, then the law having the closest connection with the dispute is the law of the state where the obligation has been performed or that of the agreed place of performance of this obligation. It is also submitted that Egyptian law is considered having the closest connection with a dispute when all the elements of the legal relationship forming the dispute are Egyptian. (Fat-hi Waly, Arbitration in Local and International Commercial Disputes, Munsha'at Al Ma'aref, 2014 ed., p. 537)

Furthermore, in an arbitration case administered by the CRCICA, an arbitral tribunal has listed how it determined the law applicable to the substance of the dispute as follows: the law of the place of arbitration; the law of the place of signing of the original contract; the law of residency of the parties to the contract; the law of the state where the contract is performed; the law of the language of the contract; and the law of the language of arbitration if it was different from the language of the contract. (Arbitration case no. 95 of 1997, hearing held on 12/3/1998 cited in Fathi Waly, Arbitration in Local and International Commercial Disputes, Munsha'at Al Ma'aref, 2014 ed., p. 537)

15. In your country, are there any restrictions in the appointment of arbitrators? Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?

No. According to the EAL, there are no specific restrictions in the appointment of arbitrators other than having attained the age of majority, enjoying full legal capacity and capable of disposing of his or her own rights. The arbitrator shall accept his or her appointment in writing and shall disclose any circumstances giving rise to 'doubts' as to his or her impartiality and independence. (Article 16)

According to the EAL, where the parties agree on its constitution, the arbitral tribunal may consist of one or more (odd number) arbitrators. In the absence of an agreement on the number of arbitrators, three arbitrators is the default. In any event, the tribunal must consist of an odd number of arbitrators, otherwise, the arbitration shall be considered null. (Article 15)

In addition, the EAL does not require a certain gender or nationality for an arbitrator, unless otherwise agreed upon by the parties or provided for by the law. (Article 16)

It is worth noting that judges or members of the judiciary may sit as arbitrators, but they are required to obtain an administrative permission from the Supreme Judicial Council to sit as arbitrators in a specific case. In this regard, in a recent judgment of the Egyptian Court of Cassation ruled that the absence of the Supreme Judicial Council authorisation for a sitting judge to sit as an arbitrator in a specific case – despite being in breach of the Judicial Authority Law – does not affect the validity of the arbitral award. (Egyptian Court of Cassation, commercial circuit, challenge no. 9968 of JY 81, hearing session dated 9 January 2018)

16. Are there any default requirements as to the selection of a tribunal?

In this respect, there is a difference between ad hoc and institutional arbitration. In institutional arbitration, the applicable institutional rules shall apply, while in ad hoc arbitration where there is no agreement between the parties on the number of arbitrators, the EAL provides that the default number of arbitrators is three (Article 15).

17. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

Yes, according to the EAL, the local courts can assist in the appointment of arbitrators in ad hoc proceedings. (Article 17) However, once the arbitral tribunal is constituted, absent an agreement between the parties, the arbitral tribunal may, subject to the provisions of the law, adopt the arbitration procedures it considers appropriate. (Article 25) Furthermore, if the arbitral award is not rendered within the timeframe prescribed by the law or the parties' agreement, the competent local court is entitled to issue an order either extending the period of time or terminating the arbitral proceedings upon the request of either of the parties to the

arbitral proceedings. (Article 45(2))

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Yes, local courts can intervene in the selection of arbitrators in ad hoc proceedings. The EAL provides that in absence of agreement between the parties on the selection of the tribunal, the competent Egyptian court shall undertake the appointment of the arbitrator(s), upon the request of one of the parties. If the tribunal is composed of a sole arbitrator, the competent court shall undertake the appointment of the sole arbitrator, upon the request of one of the parties. However, if the tribunal is composed of three arbitrators, the default mechanism under the EAL is that each party shall appoint an arbitrator and both co-arbitrators shall appoint the presiding arbitrator. If either party fails to appoint the arbitrator within thirty days from a request to do so by the other party, or if the two appointed co-arbitrators fail to agree on the third arbitrator (chairman) within thirty days of the date of the latest appointment, the competent court shall appoint the missing arbitrator, upon request, and the court decision in this respect is final and not subject to any appeal or challenge. (Article 17)

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Yes, the appointment of arbitrators can be challenged. The EAL provides that an arbitrator may only be challenged if there exist circumstances that give rise to 'serious' doubts as to his or her impartiality or independence. (Article 18)

According to the EAL, the party requesting to challenge an arbitrator shall submit to the arbitral tribunal a challenge request, incorporating the reasons for such challenge, within 15 days from the date it becomes aware of the constitution of the arbitral tribunal or of the circumstances justifying such challenge. If the challenged arbitrator does not step down within 15 days from the date of submitting the challenge request, the request shall be referred to the competent Egyptian court and its decision in this regard is not subject to appeal. Moreover, a party may not challenge the same arbitrator more than once in the same proceedings. (Article 19)

In case of institutional arbitration, the applicable rules would include specific provisions on the regulation of challenges. For example, the current rules and practice of CRCICA is that challenges must be submitted within 15 days after the challenging party has been notified of the appointment of the challenged arbitrator, or within 15 days from the date the challenging party became aware of the circumstances giving rise to serious doubts as to the arbitrator's impartiality and independence. If the challenged arbitrator does not resign, the challenge shall be decided by an ad hoc legal committee of three members selected from members of the CRCICA's Advisory Committee.

20. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

According to the EAL, the applications submitted by the parties before the local court to take an interim or provisional measure, may be made whether before the commencement of the arbitral proceedings or during the proceedings. (Article 14)

In ad hoc proceedings, and in the event the local court intervenes in the selection of arbitrators, the EAL requires that the court's decision shall be issued expeditiously and is subject to no appeal. (Article 17.3) Moreover, in the event a challenge of an arbitrator after their appointment is referred to the local competent court, the arbitral proceedings shall not be suspended until

the court decides on the said challenge, and the court's decision in this regard is not subject to appeal. (Article 19)

It is noteworthy that in cases where a matter is raised before the arbitral tribunal falling beyond its jurisdiction, or a document submitted to the arbitral tribunal is challenged for forgery, or criminal proceedings are initiated with respect to such forgery or with respect to another criminal act, the arbitral tribunal is permitted to either (i) keep reviewing the dispute if it considers that the determination of the dispute is not hinging on a decision of the cross-cutting matter, forgery, or criminal act; or otherwise (ii) stay the arbitral proceedings until a final judicial decision is rendered. (Article 46)

Accordingly, generally, the intervention of local courts should not frustrate or delay the arbitral proceedings.

21. Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?

Impartiality and independence remain hallmarks and fundamental obligations under the EAL, and there is a wealth of judgments rendered by Egyptian courts on challenges against arbitrators and arbitral awards on grounds pertaining to duties of disclosure, impartiality and independence.

The EAL provides that an arbitrator shall accept his/her appointment in writing and shall disclose any circumstances giving rise to 'doubts' as to his/her impartiality and independence. (Article 16(3)) Therefore, an arbitrator is not bound to only disclose circumstances influencing his/her impartiality or independence, and which may lead to his/her disqualification as an arbitrator, but also to disclose any circumstances which may give in abstracto rise to doubts - from a reasonable person's point of view - as to the arbitrator's impartiality or independence. An arbitrator must disclose any direct relationship with any of the parties to the dispute, their representatives, employees, relatives or friends, regardless of whether this relationship is physical, professional or social or whether it is a past or current relationship, and which – from a reasonable person's point of view - give rise to doubts as to the arbitrator's impartiality or independence. (Fat-hi Waly, Arbitration in Local and International Commercial Disputes, Munsha'at Al Ma'aref, 2014 ed., p. 286)

22. Has there been any recent decisions in your country concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

The Cairo Court of Appeal has set the definitions of the duties of independence and impartiality of arbitrators as follows: “The independence of the arbitrator is the absence of his connection to or dependency on the parties to the dispute, the state or the third party, and the absence of any financial or psychological relation that is contradictory to his independence, whereas such [circumstances] constitute a definite danger resulting in the inclination to one of the parties of the arbitration.” (Cairo Court of Appeal, 91 Commercial Circuit, challenge no. 1 of JY 120, hearing session dated 29 April 2003)

“Impartialité is any psychological or mental inclination of the arbitrator towards or against any of the parties to the dispute, a third party, or the state, which is likely to result in the arbitrator's inability to rule without inclination towards or against any of the parties mentioned above.” (Cairo Court of Appeal, 91 Commercial Circuit, challenge no. 78 of JY 120, hearing session dated 30 March 2004)

Furthermore, the arbitrator's duty of disclosure remains throughout the course of the arbitration proceedings. (Cairo Court of Appeal, challenge no. 75 of JY 125, hearing session dated 18 May 2009)

As to recent court decisions addressing the duty of independence and impartiality of arbitrators, it is worth mentioning the following decisions.

On 22 February 2022, the Egyptian Court of Cassation addressed the duty of disclosure of arbitrators and affirmed that the Egyptian judiciary warrants and ensures the independence and impartiality of arbitrators, which is among the reasons that prove the increased trust by parties to international arbitration in choosing Egypt as the seat of arbitration. The Court expressly quoted Clause 3.3.5 of the Orange list of the IBA Guidelines on Conflict of Interest in International Arbitration (2014) while addressing the arbitrators' duty of disclosure. The facts revolved around the non-disclosure by the chairman of the arbitral tribunal that a partner of the law firm representing the claimant in the arbitral proceedings, whom was not involved with any counsel work in the case, was a family relative to the chairman. The Court explained that the simple non-disclosure does not lead to set aside the award, such that the Court shall assess whether the undisclosed circumstance leads in a reasonable manner to infer a real danger of bias, to set aside the award. (Court of Cassation, Commercial and Economic Circuit, challenge no. 13892 of JY 81, hearing session dated 22 February 2022)

The Court of Cassation and the Cairo Court of Appeal maintained the definition of independence and impartiality of an arbitrator, set by earlier court decisions, and held that they mean the absence of a connection of dependency or a financial or a psychological relation that is contradictory to the arbitrator's independence and constitutes a real danger of bias or creates justifiable doubts in this regard. The Cairo Court of Appeal explained that an arbitrator and respondent's counsel who were sitting in the same CRCICA Advisory Committee – noting that CRCICA is an independent international non-profit organisation – and being speakers in the same panel in an event held by the CRCICA, where the law firm of the respondent's counsel was a golden sponsor to such event, does not constitute a “real danger of bias” nor create “justifiable doubts” as to the independence or impartiality of the arbitrator, due to the absence of a connection of dependency, or a financial or psychological relation between the arbitrator and any of the parties, hence there is no breach of his duty of disclosure. (Egyptian Court of Cassation, Commercial and Economic Circuit, challenges nos. 7913 and 13996 of JY 91, hearing session dated 9 May 2023 and the Cairo Court of Appeal, challenge no. 42 of JY 136, hearing session dated 8 March 2021)

Moreover, the Cairo Court of Appeal ended the mandate of the chairman of an arbitral tribunal for his inability to manage the procedural hearings/meetings and suspend the arbitral proceedings where the circumstances so warranted. (Cairo Court of Appeal, 50th Commercial Circuit, challenge no. 3 of JY 132, hearing session dated 30 January 2019).

In another interesting decision, after the issuance of the arbitral award, it came to the knowledge of the respondent that the chairman of the arbitral tribunal is a client of the co-arbitrator appointed by the claimant, and that neither has disclosed the existence of this relationship during the arbitral proceedings. However, the other-co- arbitrator appointed by the respondent had disclosed at the time of his appointment that he is the lawyer of the respondent and confirmed to be impartial in this arbitral proceeding, and the claimant accepted his appointment after such disclosure. In this regard, the Cairo Court of Appeal held that the non-disclosure of the relationship existing between the chairman and the co-arbitrator appointed by the claimant creates doubts as to their impartiality and independence, which constitute fundamental requirements for the appointment of any arbitrator. Therefore,

the Cairo Court of Appeal annulled the arbitral award on the ground of non-disclosure by the chairman and the co-arbitrator appointed by the claimant of their existing relationship prior to the commencement of the arbitral proceedings. (Cairo Court of Appeal, 18th Commercial Circuit, challenge no. 92 of JY 135, hearing session dated 12 January 2019).

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

In cases involving truncated tribunals, the constitution of the tribunal may be reinstated either in the manner provided by the applicable institutional rules, if any, or through local courts assistance according to the EAL.

In cases not involving a sole arbitrator, the EAL requires that an arbitral award is issued by the majority of the members of the arbitral tribunal after deliberation in the manner set by the tribunal or otherwise agreed by the parties. (Article 40)

Also, the EAL requires that the arbitral award is issued in writing, and it suffices if it is signed by the majority of the members of the arbitral tribunal provided that the award includes the reasons why the minority did not sign (Article 43(1)).

24. Are arbitrators immune from liability under local laws?

Despite the absence of any legal text providing for the arbitrator's immunity, such immunity is presumed and applied by analogy to the legislative immunity accorded to state courts judges by Article 94 of the 2014 Egyptian Constitution and Article 96 of the Law No. 46 of 1972 regarding the Judicial Authority. However, the immunity does not apply in cases of fraud, deceit or gross fault (gross negligence), in which cases the arbitrator's civil liability can be exceptionally invoked before the courts. (Fat-hi Waly, Arbitration in Local and International Commercial Disputes, Munsha'at Al Ma'aref, 2014 ed., p. 369-371)19

In January and May 2019, the Egyptian courts passed and confirmed imprisonment sentences against certain arbitrators and members of a purported local arbitration institution who were engaged in the rendering of an arbitral award in sham arbitral proceedings. Charges of misappropriation by fraudulent means and forgery were made against the convicted individuals. (Al-Nozha Misdemeanor Court in Cairo, case no. 12648 of JY 2018; Cairo Court of Appeal, appeal no. 695 of JY 2019 (East Cairo Appeals)) This was an exceptional case that involved a flagrant criminal scheme that resulted in the issuance of a US$18 billion award against Chevron and enforcement petitions were also declined by US courts in California and Houston in relation to the award that was an outcome of the sham proceedings in Cairo, Egypt.

Furthermore, in the context of institutional arbitration, it should be noted that the 2011 CRCICA arbitration rules (Article 16) provide that save for intentional wrongdoing, there is an exclusion of liability of the CRCICA, arbitrators, CRCICA employees and members of its Board or Advisory Committee thereof, or any one appointed by the arbitral tribunal, based '[...] any act or omission in connection with the arbitration.' While the exclusion of liability is maintained in the new CRCICA Arbitration Rules entering into force in 2024 (Article 55), it now excludes the liability based on "[...] any act or omission in performing their functions under the Rules."

25. Is the principle of competence-competence recognized in your country?

Yes. The principle of competence-competence is generally recognised in Egypt. The EAL provides that the arbitral tribunal shall decide over its jurisdiction-related claims. (Article 22(1))

However, in practice, there exist instances where Egyptian courts, in relation to administrative contracts and beyond, have decided over the existence and validity of an arbitration agreement prior to or while arbitral proceedings were still pending and irrespective of the arbitral tribunal's jurisdiction.

26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

According to the EAL, Egyptian courts are under a legal obligation to dismiss litigation with respect to disputes subject to an arbitration agreement if the defendant, before addressing the merits, advances invokes the existence of an arbitration agreement. (Article 13(1)) In this respect, it is worth noting that Article 13(1) of the EAL, which partially reproduces Article 8 of the UNCITRAL Model law, has excluded the 'referral exception' whereby the state court may accept to decide over jurisdiction if it finds that the arbitration agreement is null and void, inoperative or incapable of being performed. This entails that the arbitral tribunal has the priority to decide its competence over state courts.

However, the court is not under an obligation to reject the case ex officio for the mere existence of an arbitration agreement; the defendant must raise its objection at the before addressing the merits. This is principally due to the fact that an arbitration agreement is not constitutive of public policy. If the defendant in litigation does not invoke the existence of the arbitration agreement, parallel proceedings may occur before arbitral tribunals and state courts and decisions will be rendered irrespective of the parties' prior agreement to arbitrate. In case conflicting decisions though, the issue may be referred to the Supreme Constitutional Court in accordance with the law.

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

According to the EAL, unless otherwise agreed by the parties, the proceedings commence on the day the respondent receives the request for arbitration. (Article 27) In addition, the arbitral tribunal shall issue its award within the period agreed upon by the parties. In the absence of such agreement, the award must be issued within twelve months of the date of commencement of the arbitral proceedings. The arbitral tribunal may decide to extend the said period of time, provided that the extension shall not exceed six months, unless otherwise agreed upon between the parties. (Article 45)

28. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?

According to Articles 52 and 54 of the EAL, the only remedy against arbitral awards is an action for annulment before the competent local court within ninety days from the date of the notification of the arbitral award to the party against whom it was rendered.

29. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

Normally, state immunity cannot be invoked, so long as the concerned public body has validly consented to resolving the dispute through arbitration following the required procedure (i.e. obtained the required prior approvals) and that the matter in dispute is arbitrable.

30. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

In principle, local courts cannot compel participation of a respondent who failed to participate in the arbitration. However, If a respondent fails to participate in the arbitration/to submit its statement of defence without a valid excuse, the EAL enables the arbitral tribunal to continue with the proceedings and objectively assess the claimant's case, without however, treating such failure as an admission by the respondent of the claimant's allegations (Article 34). Also, the arbitral tribunal may render the arbitral award based on the submitted elements of evidence. Nevertheless, a non-participating or absent party should be duly notified of all the documents submitted and orders issued, and must be given a proper and adequate opportunity to present its case and defences at every stage of the proceedings. (Article 35)

Furthermore, according to the EAL if the submitted evidence is not sufficient for the arbitral tribunal to make an award, the proceedings may be terminated by a decision of the arbitral tribunal. (Article 48(1)(c))

31. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

The EAL does not expressly regulate issues of joinder, intervention and extension of the arbitration agreement to third parties. As a general rule, the arbitration agreement is binding on the parties who consented to it. However, third parties can be bound by the arbitration agreement in circumstances so justifying under the law or by consent. In recent years, Egyptian courts have become more acquainted with concepts of extension of arbitration agreements to third parties and non-signatories; and joinder of third parties to arbitral proceedings. Courts usually defer to the arbitral tribunal's findings in this regard, unless there is no agreement in writing or overriding principles of public policy have been contravened. In this regard, the Egyptian Court of Cassation held that the arbitration agreement may extend to third parties and to other contracts connected to the principal contract on the basis of several doctrines and principles which include by way of example: group of companies, group of contracts, universal succession, mergers or assignment. (Court of Cassation, challenges nos. 2698, 3100 and 3299 of JY 86, hearing session dated 13 March 2018)

Moreover, the new draft CRCICA arbitration rules, entering into force in 2024, briefly address the issue of joinder of a third party in Article 17.5 which reads in pertinent part: “The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. Where a joinder is allowed, the constitution of the arbitral tribunal shall not be affected. The22 arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.”

That said, intervention of a third party in arbitral proceedings remains not prohibited as a matter of Egyptian law. If requested though, it is for the arbitral tribunal to decide on such matter after seeking the views of the parties to the proceedings.(Court of Cassation, challenge no. 7595 of JY 81, hearing session dated 13 February 2014)

32. Can local courts order third parties to participate in arbitration proceedings in your country?

No. Egyptian law recognizes that arbitration is consensual by nature and definition. Compulsory arbitration was held unconstitutional.

33. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

There is not an exhaustive list of the interim and provisional measures available, which remains for arbitral tribunals or courts to determine on case-by-case basis according to the applicable laws.

According to Article (14) of the EAL, the competent court under Article (9) of the EAL may order interim or provisional measures before or during the arbitral proceedings, upon request by a party to the arbitration.

Article (24/1) of the EAL permits the parties to agree on empowering the arbitral tribunal to award provisional or interim relief upon request by a party. Also, Article (24/2) of the EAL addresses the case where a party fails to comply with the tribunal's order, and empowers the arbitral tribunal, upon the request by the other party, to permit the latter to seek an court order in this respect through an application to the chief justice of the competent l court under Article 9 of the EAL. (Article 24)

Furthermore, under the EAL, arbitral tribunals may issue interim (preliminary) and partial awards (Article 42) which makes it subject to the ordinary procedures for the enforcement and recognition of arbitral awards. Nonetheless, interim awards do not have res judicata effect, and cannot be subject to nullity except with the award dispensing with the dispute in its entirety.

34. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

No. The EAL does not prohibit or regulate anti-suit and/or anti-arbitration injunctions. However, the standard court practice in Egypt is that courts do not normally issue anti-suit or anti-arbitration injunctions or recognize those issued elsewhere.

35. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

The EAL does not regulate the arbitrators' powers with respect to evidence. It merely gives the arbitrators the right to request the originals of the documents submitted in support of the parties' claims. (Article 30(3)) However, it is unequivocal that the arbitral tribunal enjoys the power to admit and weigh evidence. The arbitral tribunal's powers include: undertaking any evidentiary procedure it deems appropriate, reversing a procedure it had previously ordered and the discretion to decide on the evidence on record. Arbitrators also have the right to accept or deny a party's request for an order on evidentiary procedures without prejudice to the party's defence rights. The evidence that may be admitted in arbitral proceedings in Egypt are documentary evidence, witness testimony, expert reports and/or site inspection by the arbitral tribunal. If a party does not submit to, and comply with, the orders of the arbitral tribunal, the latter may draw negative inferences that could adversely affect the non-complying party's position, especially if no adequate or reasonable justification is provided for a failure to comply.

[14] Egyptian Supreme Constitutional Court, Challenge No. 104 of the Judicial Year 20, Hearing session dated 30 July 1999.

An arbitral tribunal is entitled to seek an Egyptian court's assistance in this respect, especially in cases of penalising witnesses who do not comply or ordering third parties to produce documents in their possession and/or undertake certain actions as properly and legally ordered by the arbitral tribunal insofar as the tribunal has jurisdiction to order same. In this regard, the EAL grants the local competent court, upon the request of the arbitral tribunal, the authority to penalise and compel witnesses who decline to appear at the hearing for testimony. (Article 37.1)

36. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

Legal counsel are bound by the ethical code of the Bar Association and standard professional code of ethics. While the EAL does not include a specific set of ethical standards applicable to arbitrators and counsel, they are generally expected to adhere to the acceptable ethical standards prevailing in practice, unless they are specifically and extraterritorially bound by certain standards prevailing in their own jurisdiction. In this respect, it is worth mentioning the Egyptian Court of Cassation's findings in relation to party representation in arbitration. In 2020, the Egyptian Court of Cassation held that the rules relating to party representation are not part of Egyptian public policy, such that there are no limitations or restrictions thereon, despite the requirement under Article 3 of the Advocacy Law no. 17 of year 1983 exclusively reserving representation of parties before courts and arbitral tribunals to lawyers admitted to the Egyptian Bar Association. The court recognised that the parties to an arbitration can elect to be represented by persons of their choice, whether lawyers or non- lawyers, Egyptians or foreigners in domestic or international arbitration. Furthermore, the court added that the EAL (Article 16) does not impose any requirements with regard to the gender, nationality or profession of arbitrators to be appointed by parties, hence, a fortiori, there should be no requirement applicable to party representatives. (Egyptian Court of Cassation, Economic and Commercial Circuit, challenge no. 18309 of JY 89, hearing session dated 27 October 2020).

The IBA Guidelines on Party Representation in International Arbitration (2013) are not yet commonly used in the jurisdiction, but are increasingly offering guidance in international proceedings seated in Egypt. However, the Court of Cassation started to expressly refer to the IBA Guidelines on Conflict of Interest in International Arbitration (2014). In a recent judgment addressing the duty of disclosure of arbitrators, the Egyptian Court of Cassation expressly referred to the IBA Guidelines on Conflict of Interest in International Arbitration (2014) by quoting Clause 3.3.5 of the Orange list which reads 'a close family member of the arbitrator is a partner or employee of the law firm representing one of the parties, but is not assisting with the dispute'. In the said case, the chairman failed to disclose that one of the partners of the law firm representing the claimant in the arbitral proceedings was a family relative, however, this partner was not involved with any counsel work related to the arbitration case. The Court considered that this shall be assessed on a case-by-case basis, such that in the given circumstances, the non-disclosure by the chairman does not justify or lead in a reasonable manner to infer a real danger of bias, which in turn does not lead to setting aside the arbitral award. (Egyptian Court of Cassation, Commercial and Economic Circuit, challenge no. 13892 of JY 81, hearing session dated 22 February 2022).

In another judgment the Egyptian Court of Cassation expressly referred to the IBA Guidelines on Conflict of Interest in International Arbitration (2014) Clauses 4.3.1 and 4.3.4 of the Green list, which read consecutively 'The arbitrator has a relationship with another arbitrator, or with the counsel for one of the parties, through membership in the same professional association, or social or charitable organisation, or through a social media network' and ' The arbitrator was a

speaker, moderator or organiser in one or more conferences, or participated in seminars or working parties of a professional, social or charitable organisation, with another arbitrator or counsel to the parties'. In the said case the chairman and one appointed arbitrator failed to disclose that they are both members of the advisory committee at the Cairo Regional Centre for International Commercial Arbitration ('CRCICA'), in addition the legal counsel of one of the parties is also a member of the same committee. The Court considered that the membership of each the arbitrators and the legal counsel is published among their biography on the CRCICA's website and is a public information. Moreover the chairman participated in an event wherein the legal counsel of one of the parties was a speaker. The Court established that the chairman disclosed his participation in said event and the parties did not raise any concerns during the arbitral proceedings which shall be considered as a waiver of their right in this respect. The Court further relied on the IBA Guidelines and confirmed that said events do not raise doubts about the impartiality and independence of arbitrators. (Egyptian Court of Cassation, Commercial and Economic Circuit, challenges nos. 7913 and 13996 of JY 91, hearing session dated 9May 2023)

37. In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

The principle of confidentiality of the arbitral proceedings is inferred from the rule prohibiting the publication of the arbitral award and is confirmed by the Explanatory Note of EAL, which explains that the confidentiality of the arbitration is of significant importance to the parties in order to preserve inter-commercial relations. There is no explicit reference in the EAL providing for the confidentiality of the proceedings, however, the EAL provides that an arbitral award may not be published, in whole or in part, unless agreed by the parties. In any event, when an award is subject to nullity or enforcement proceedings, its content will likely fall in the public domain, unless otherwise ordered by the court.

38. How are the costs of arbitration proceedings estimated and allocated?

The EAL does not include any provision relating to the allocation of costs which accords the tribunal a broad discretion in assessing the reasonableness of the fees and allocating the fees and costs between the parties, unless otherwise agreed between the parties. In practice, it is not uncommon for arbitral tribunals seated in Egypt to follow international practice as to costs' allocation by adopting the 'costs follow the event' rule insofar as winning party is able to justify and substantiate its fees and costs.

39. Can pre- and post-award interest be included on the principal claim and costs incurred?

It is a standard practice that arbitral awards include an award of interest insofar as claimed by the parties, either pre- or post-award interest, such that the arbitral tribunal has the ultimate power to decide on issues of compensation and interest. In this regard, the EAL does not limit the arbitral tribunal's power as to awarding interest. Generally, a legal cap of 7% interest rate exists and is characterized as a public policy rule by Egyptian courts. (Court of Cassation, challenge no. 3778 of JY 64, hearing session dated 17 February 2004)

There are however, certain exceptions to the cap on interest rate exists, amongst which is the award of interest in banking transactions which can and do exceed the 7% cap. Similarly, interest may be payable at the rate set by the Central Bank of Egypt ('CBE') which in fact may exceed 7% at the CBE's annual decision, in relation to (i) commercial loans; and (ii) amounts/expenses pertinent to the trader's trade (Article 50 of the Egyptian Commercial Code).

Furthermore, it is worth noting that compounded interest is generally perceived to be contrary to public policy, unless a trade usage on compounded interest is established in the pertinent transaction.

40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

The EAL sets the requirements for recognition and enforcement of an award as follows: the award must; be in writing and signed by the arbitrators (and include the reasons why the minority did not sign, if so is the case); be reasoned unless the parties have agreed otherwise, or the applicable procedural law does not mandate such reasoning; include the names and addresses of the parties; include the names, addresses, nationalities, and title of arbitrators; include a copy of the arbitration agreement (an explicit citation of the arbitration agreement would suffice); include a summary of the parties' claims, statements, and relevant documents; have an operative part (dispositive) ordering specific remedies; include the date and place of issuing the award. (Article 43)

At the time of the deposit of the award for enforcement, and if the award is a language other than Arabic (the official language in Egypt) a certified Arabic translation of the award must accompany its original or certified copy. (Article 47)

The Egyptian Court of Cassation expressly held that the Egyptian judiciary adopts a 'pro-arbitration policy' with respect to the recognition and enforcement of arbitral awards by limiting the grounds for setting aside an arbitral award to those specifically provided under the EAL. In the said judgment, the Court defined concepts like 'deliberations' and 'dissenting opinions' by explaining, on the one hand, that deliberations constitute the exchange of views between the arbitrators regarding the facts of the case, the claims put forward by the parties and their relief sought. Also, the Court held that it is well-established in international arbitration that arbitrators who refuse to sign an arbitral award render a dissenting opinion explaining that this is derived from the judicial duty upon arbitrators to issue a reasoned award. The Court added that in the absence of a dissenting opinion stating the reasons why an arbitrator did not sign the award, the chairman of the tribunal shall state in the award that the minority arbitrator refused to sign due to his/her disagreement with the opinion of the majority. On this occasion, the Court reaffirmed that an arbitral award's erroneous reasoning does not lead to its setting aside. (Court of Cassation, Commercial and Economic Circuit, challenge no. 8199 of JY 80, hearing session dated 22 March 2022)
In another judgment, the Cairo Court of Appeal addressed the issue of whether there is a requirement for the award to be reasoned and held that this is not a public policy requirement, given that Article 43 of the EAL enables the parties to agree on exempting/releasing the arbitral tribunal from its duty to render a reasoned award. (Cairo Court of Appeal, 4th Commercial Circuit, challenge no. 53 of JY 138, hearing session dated 30 May 2022) In this regard, under the EAL (Article 43.2), in principle, an award must be reasoned unless the parties have agreed otherwise, or the applicable procedural law does not mandate such reasoning.

With respect to enforcement procedures, the EAL sets the following requirements: the deposit of an original or a signed copy of the award and its Arabic translation if the award is in another language than Arabic; the deposit of a copy of the arbitration agreement; and a copy of the minutes indicating the deposit of the award at the competent court. (Article 56)

As a requirement for enforcement, the award creditor shall submit an application for depositing the award with the registry of the competent court. That deposit application will be

sent to the Arbitration Technical Bureau within the Ministry of Justice to render its27 opinion on the application, noting that the opinion of the Technical Bureau is advisory and non-binding on the court, which ultimately decides whether to accept or reject the application for enforcement (Decree No. 8310 of 2008, as amended by Decree No. 6570 of 2009, Decree no. 9739 of 2011, and Decree No. 1096 of 2017) Following the deposit of the award with the registry of the competent court, the Chief Justice of the court issues the decision whether to accept or reject the application for enforcement.

The application for enforcement of an arbitral award will not be accepted unless the limitation period for filing a nullity action has lapsed, i.e. 90 days from the date of notification of the award to the party against which it was rendered. However, for foreign arbitral awards seated outside Egypt and which are not governed by the EAL, the applicant must submit evidence concerning the status of the nullity action in the country where the award was rendered, as Egyptian courts do not generally have jurisdiction to entertain a setting aside action where the seat of arbitration is abroad.

According to the EAL, enforcement may be refused in the following cases: contradiction with a previous judgment by the Egyptian courts on the merits of the dispute; contravention of rules of public policy in Egypt; and improper or lack of notification to the losing party. (Article 58.2) Orders granting or refusing exequatur may be challenged before the competent court within 30 days from the date of issuance of such orders. (Article 58.3)

41. What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

According to the EAL, the application for the enforcement of an award shall not be admissible prior to filing an action for annulment or expiry of the 90 days limitation period for filing the said action (Article 58). However, an action for annulment does not stay the enforcement of the arbitral award, unless the application to court includes a request to that effect based on serious grounds, and the competent court has to decide on the request for stay of enforcement within 60 days from the date of the first hearing fixed in relation thereto. Finally, if the court orders a stay of enforcement, it is expected to rule on the action for annulment within 6 months from the date it issued the order for stay of enforcement. (Article 57)

Furthermore, according the EAL, a party may bring a motion for recognition and enforcement of an arbitral award on an ex parte basis as provided by the EAL, such that the application for enforcement of an arbitral award shall be accompanied by the following: (1) the original award or a signed copy thereof; (2) a copy of the arbitration agreement; (3) a certified Arabic translation of the award, if it was not in Arabic language; and (4) a copy of the procès-verbal attesting the deposit of the award at the court. (Article 56)

It is worth noting that generally, tracing assets of the losing party and collection of the awarded amounts remains a daunting and lengthy process which can last for few years.

42. To what extent is a foreign arbitration award enforceable?

Foreign arbitral awards are enforceable in Egypt, as it is a signatory to the "New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958". Egypt has consented to join on 2 February 1959 the "New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958", ratified same on 9 March 1959 by virtue of Presidential Decree No. 171/1959, and it entered into force as part of the Egyptian legal system on 7 June 1959 without

any reservations or declarations.

Therefore, foreign arbitral awards are subject to the New York Convention, including Article VII thereof, which entitles a party to avail itself of more favourable local conditions for enforcement, if any.

43. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

The EAL does not provide for a different standard of review for recognition and enforcement of a foreign award compared to a domestic award. However, Egypt is a signatory to the New York Convention on the recognition and enforcement of foreign arbitral awards (1958) and so foreign arbitral awards are subject to the New York Convention, including Article VII thereof, which entitles a party to avail itself of more favourable local conditions for enforcement, if any. Thus, enforcement of domestic awards is subject to the requirements set forth under the EAL and foreign awards are subject to the enforcement requirements of the New York Convention, without prejudice to the applicant's right to invoke local conditions/grounds for enforcement if more beneficial thereto.

The Cairo Court of Appeal reaffirmed the importance of the New York Convention on the recognition and enforcement of foreign arbitral awards, which forms part of the Egyptian legal system and which extends the applicability of the EAL provisions to the enforcement of foreign arbitral awards, given that the EAL provisions are less onerous than the default provisions for enforcement of foreign court judgments. (Cairo Court of Appeal, (First) Commercial Circuit, petition no. 2 of JY 139, hearing session dated 9 March 2022)

44. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

There are no specific limits imposed on remedies, other than issues related to public policy. Generally, an arbitral tribunal enjoys a broad authority and power to order any declaratory relief, monetary compensation, specific performance, interest, and costs. However, an arbitral tribunal is not generally entitled to award punitive damages.

In this regard, it is worth mentioning that the Court of Cassation annulled for the first time in its history an ICC arbitral award without remanding same to the Court of Appeal, for violating a fundamental principle of Egyptian public policy by ruling over the legality of an administrative decision. The Court of Cassation explained that the judicial control on the legality of an administrative decision – its validity and fulfillment of formal requirements – falls within the exclusive jurisdiction of the Egyptian State Council (Conseil d'Etat) courts, and this is a fundamental public policy principle. Hence, the Court shall, on its own initiative, annul the arbitral award as per Article 53.2 of the EAL. However, the Court of Cassation added that courts adjudicating nullity actions in Egypt are bound not to re-examine the subject matter of the dispute or even delve into the arbitral tribunal's findings, unless a matter of public policy is in play. The Court of Cassation made it clear that courts shall strictly abide by the grounds for nullity of awards as stipulated in Article 53 of the EAL. (Court of Cassation, Civil and Commercial Circuit, challenges nos. 1964 and 1968 of JY 91, hearing session dated 8 July 2021)

45. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

An award is not subject of an appeal before the Egyptian courts, but can be subject only to an

action for setting aside. Save for setting aside (annulment), any other form of challenge of or recourse against the arbitral award is strictly prohibited by the EAL. (Article 52)

Accordingly, the EAL expressly provides in Article 53 thereof for an exhaustive list of the grounds according to which an award may be set aside or annulled, and reads:

' **1. an arbitral award may be annulled only:**

a) If there is no arbitration agreement, if it was void, voidable or its duration had elapsed;

b) If either party to the arbitration agreement was at the time of the conclusion of the arbitration agreement fully or partially incapacitated according to the law governing its legal capacity;

c) If either party to the arbitration was unable to present its case as a result of not being given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or for any other reason beyond its control;

d) If the arbitral award excluded the application of the law agreed upon by the parties to govern the merits of the dispute;

e) If the composition of the arbitral tribunal or the appointment of the arbitrators was in conflict with the EAL or the parties' agreement;

f) If the arbitral award dealt with matters not falling within the scope of the arbitration agreement or exceeding the limits of this agreement. However, in the case when matters falling within the scope of the arbitration can be separated from the part of the award which contains matters not included within the scope of the arbitration, the nullity affects exclusively the latter parts only;

g) If the arbitral award itself or the arbitration procedures affecting the award contain a legal violation that causes nullity.

2. The court adjudicating the action for annulment shall ipso jure annul the arbitral award if it is in conflict with the public policy in the Arab Republic of Egypt.'

In addition, the EAL provides that the nullity action shall be brought before the competent court within 90 days from the date of notification of the arbitral award to the party against which it was rendered. (Article 54.1)

In the context of annulment of arbitral awards, as a matter of principle, Egyptian courts review is limited to examining the nullity of an arbitral award strictly based on the grounds set forth under Article 53 of the EAL, and does not extend to conducting a de novo review of the merits. As such, if the arbitral tribunal errs in assessment, this does not qualify as a ground for annulment given that a nullity action is not an appeal.

The foregoing principle has been reaffirmed by Egyptian Courts on many occasions. For example, the Cairo Court of Appeal held that to challenge the correctness of the arbitral tribunal's findings and its understanding of the facts related to the subject matter of the dispute as well as challenging the tribunal's erroneous interpretation and application of the law, does not constitute a ground for setting aside an arbitral award, given that

the nullity action is not an appeal. (Cairo Court of Appeal, 4th Commercial Circuit, challenge no. 53 of JY 138, hearing session dated 30 May 2022) This well-established principle has also been confirmed by the Egyptian Court of Cassation, which dismissed for good the nullity action against the famous Kharafi vs. Libya arbitral award, after almost a decade of debates before Egyptian courts, and reversed the ruling of the Cairo Court of Appeal, which had annulled the arbitral award in 2020. (Cairo Court of Appeal First Commercial Circuit, challenge no. 39 of JY 130, hearing session dated 3 June 2020; and Court of Cassation, Civil and Commercial Circuit, challenge no. 12262 of JY 90, hearing session dated 24 June 2021).

In the same vein, the Egyptian Court of Cassation upheld the well-established principle that in the context of annulment, courts are bound not to re-examine the subject matter of the dispute or even delve into the arbitral tribunal's findings, unless a matter of public policy is in play. (Egyptian Court of Cassation, Civil and Commercial Circuit, challenges nos. 1964 and 1968 of JY 91, hearing session dated 8 July 2021) However, as alluded to above [See Question 44 above] in this case, the Egyptian Court of Cassation annulled, on its own initiative, the arbitral award for its violation of Egyptian public policy.

46. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

No. As per the EAL, a party cannot waive its right to apply for annulment of the award prior to rendering the award. (Article 54.1)

47. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

A defence of state or sovereign immunity at the enforcement stage will not normally be successful, unless enforcement is sought against publicly owned assets that may not be subject to enforcement, such as a public utility or public interest funds. In this respect, Article 87 of the Egyptian Civil Code provides that public assets of the Egyptian state are immune against enforcement and attachment procedures.

48. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

In principle, only the parties who consented to the arbitration agreement shall be bound by the arbitral award. Non-signatories can only be bound by the arbitral award if the arbitration agreement has been extended to them during the arbitral proceedings. No third party can be bound by the award, if it was not joined as a party to the arbitral proceedings.

49. Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

There are no recently reported judgments with respect to third-party funding, as the Egyptian law generally, and the EAL, more specifically, do not expressly address the issue of third- party funding in arbitration. Thus, it may not be argued that third party funding is prohibited per se under Egyptian law, insofar as the funding arrangement is not a 'gambling contract' and counsel funding is not in the form of 'champerty'. It is expected that, in due course, the matter will be subject to clear regulation to determine the legally permissible practices in this increasingly important area of arbitration practice, which may then lead Egyptian courts to consider it. It is worth noting that the CRCICA new draft arbitration rules (amending the 2011 CRCICA arbitration

rules) entering into force in 2024, include a provision in relation to third-party funding, which reads: "The party that is funded by a third party in relation to the proceedings and its outcome shall disclose the existence of the funding and the identity of the funder at the commencement of and throughout the arbitral proceedings". (Article 53 of the CRCICA draft arbitration rules)

In the same vein, the latest version of the Egyptian model bilateral investment treaty (2022) include provisions related to third-party funding which were initially added by the 2019 model bilateral investment treaty. The model bilateral investment treaty recognises the recourse to third-party funding under a strict duty of disclosure of the funding agreement, which remains a continuous duty throughout the proceedings. The funder would not qualify as a party to the arbitral proceedings, and would not be entitled to any rights under the treaty. The failure of disclosure of the funding agreement shall be deemed a manifest contravention of a fundamental rule of procedure. Also, the existence of a third-party funding agreement shall be considered in the probable existence of a conflict of interests with an arbitrator, an expert, or a legal representative. (Article 17.8 of the 2022 Egyptian model bilateral investment treaty)

50. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?32

The EAL does not provide for emergency arbitrator. However, the CRCICA new draft arbitration rules (amending the 2011 CRCICA arbitration rules) entering into force in 2024, included – for the first time – in Annex 2 thereof emergency arbitrator rules. Decisions made by emergency arbitrators will be subject to the ordinary procedures for enforcement of arbitral awards, as it is the case for interim awards.

51. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

There are no simplified or expedited (i.e. small claims/fast track) procedures in the EAL. However, the CRCICA new draft arbitration rules (amending the 2011 CRCICA arbitration rules) entering into force in 2024, included – for the first time – in Annex 3 thereof 'expedited arbitration rules'

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52. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

According to the EAL, there are no restrictions on the choice of arbitrators, as to their gender, nationality, age (provided that he or she has attained the age of majority). (Article 16)
In addition, diversity initiatives have been actively promoted in Egypt and the CRCICA has signed the Pledge for Equal Representation in Arbitration in 2017. (Ismail Selim, Interviews with our Editors: Cairo in the Spotlight with Dr Ismail Selim, Director of CRCICA, Kluwer Arbitration Blog, published on 17 July 2019, available at: http://arbitrationblog.kluwerarbitration.com/2019/07/17/interviews-with-our-editors-cairo-in-the-spotlight-with-dr-ismail-selim-director-at-crcica/

Rising Arbitrators Initiative "interview the institution" Series: Dr. Ismail Selim (CRCICA) in conversation with Alexander Leventhal, available at https://risingarbitratorsinitiative.com/content/rai-interview-the-institution-series-dr-ismail-selim-crcica-in-conversation-with-alexander-leventhal.a7ae9524d33347f590401587f2991e30.htm)

According to the CRCICA statistics for the first quarter of 2023, 4 female arbitrators were

appointed representing 8% of the appointments, and six arbitrators under the age of 40 were appointed representing 12.5% of the appointments. (CRCICA Caseload Report 1st Quarter 2023, An Increase in the Sum in Dispute, available online at https://crcica.org/news/crcica-caseload-report-1st-quarter-2023/ last visited 27 November 2023)

As to counsel/party representatives, as alluded to before (See Question 36 above), the same applies, and there are no restrictions as to the gender, age or origin. This has33 been confirmed by the Egyptian Court of Cassation stating that the parties to an arbitration can elect to be represented by persons of their choice, whether lawyers or non-lawyers, Egyptians or foreigners, in domestic or international arbitration. In the reasoning, the Court referred to Article 16 of the EAL which does not impose any requirements with regard to the gender, nationality or profession of arbitrators to be appointed by parties, hence, a fortiori, there should be no requirement applicable to party representatives as well. (Egyptian Court of Cassation, Economic and Commercial Circuit, challenge no. 18309 of JY 89, hearing session dated 27 October 2020).

53. Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

The EAL provides for the supremacy of international conventions. (Article 1), thus, Egyptian courts shall apply the New York Convention. Generally, the EAL does not contain a provision similar to the New York Convention with respect to the possibility of enforcing annulled awards or refusing enforcement based on the setting aside of the award by the courts of the seat. Egyptian courts have not directly addressed the said issue and there is no judicial trend in this respect.

However, with respect to arbitral awards set aside in Egypt and enforced in another jurisdiction, in Chromalloy Aeroservices v. Air Force of the Arab Republic of Egypt, the Cairo Court of Appeal set aside the award rendered in said case (Cairo Court of Appeal, case no. 8 of JY 115, hearing session dated 5 December 1995), then the same award, after being set aside in Egypt, was enforced in the US. (US District Court, District of Columbia, case no. 94-2339, 31 July 1996)

54. Has there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

Corruption is not an issue that is raised frequently before Egyptian courts with respect to arbitration proceedings, but, since 2011, it has been increasingly invoked and pleaded in cases involving the State and state entities whether in international or local proceedings. That said, it is worth noting that Egypt has ratified the United Nations Convention against Corruption in 2005, which aims at eliminating corruption as a major impediment to development in poor countries and regions, and obliges member states to implement a wide and detailed range of anti-corruption measures affecting their laws, institutions and practices. Before national courts, the standards for proving corruption is quite high and it must be proven beyond reasonable doubt. The burden of proof lies within the party invoking corruption.

Also, it is worth noting that, as alluded to before (See Question 24 above), sometimes arbitral proceedings may be seriously abused to conceal sham dealings. For example, in a sham arbitration case, in January and May 2019 the Egyptian courts passed and confirmed imprisonment sentences against certain individuals and members of a purported local arbitration institution who were engaged in sham arbitral proceedings. The convicted individuals faced criminal charges of misappropriation by fraudulent means and forgery. (Al-

Nozha Misdemeanor Court in Cairo, case no. 12648 of JY 2018; Cairo Court of Appeal, appeal no. 695 of JY 2019 (East Cairo Appeals)). This was an exceptional case that involved a criminal scheme that resulted in the issuance of a US$18 billion award against Chevron and enforcement petitions were also declined by US courts in California and Houston in relation to the award resulting from the said proceedings in Cairo, Egypt.

55. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

On 29 May 2020, the CRCICA concluded a Memorandum of Understanding ('MoU') with China Guangzhou Arbitration Commission ('GZAC'), an online arbitration institution founded in response to the rapid growth of electronic business in China, with focus on mutual cooperation to promote online arbitration. The scope of this MoU includes organizing joint arbitration and mediation activities, and mutual recommendation of arbitrators. In principle, the CRCICA 2011 Arbitration Rules grant the arbitral tribunal the liberty to decide on the manner to conduct the arbitral proceedings as the tribunal deems appropriate. (Article 17.1 of the 2011 CRCICA Arbitration Rules). Also, Article 28.4 of the CRCICA 2011 Arbitration Rules expressly provides for the possibility to examine witnesses and experts via videoconference. Moreover, the CRCICA new draft arbitration rules (amending the 2011 CRCICA arbitration rules) entering into force in 2024, include express provisions allowing online arbitration filings for the notice of arbitration and the response to the notice of arbitration. (Articles 3.6 and 4.4 of the CRCICA draft arbitration rules)

Moreover, the statutes of the Egyptian Centre for Arbitration and Settlement of Non-Banking Financial Disputes ('ECAS') which undergoes the Egyptian Financial Regulatory Authority (See Question 6 above), provides through its arbitration and mediation rules issued by virtue of the Prime Ministerial Decree no. 2597 of 2020 on 10 December 2020 provide for use of technology, including, establishment of an official website, as well as an electronic registry for all data related to arbitration or mediation procedures under the auspices of ECAS, inter alia, the names of the parties, their addresses, their contact details, their legal representatives and contact details thereof, the case numbers of the arbitration or mediation cases, a summary of the claims/relief sought, the names of the arbitrators or mediators and the date of issuance of the arbitral award or the settlement. (Articles 20 and 21 of the Prime Ministerial Decree no. 2597 of 2020).

Moreover, the arbitration rules of ECAS empower the arbitral tribunal to examine witnesses and experts through means of telecommunications. (Article 48 of the Prime Ministerial Decree no. 2597 of 2020), Also, the said rules recognise electronic submissions and considers that notices and correspondence sent to the elected electronic address (email) of a party are deemed delivered and produce their legal effect. (Articles 89 and 91 of the Prime Ministerial Decree no. 2597 of 2020)

Furthermore, the EAL does not prohibit the conduct of virtual (online) hearings and leaves it to the discretion of the arbitral tribunal, subject to the parties' agreement or the applicable institutional rules. In practice, virtual hearings have been in place prior to the COVID-19 outbreak, however, their use globally has increased exponentially owing to COVID-19. In 2020,

[15] CRCICA's press release titled "Cooperation Agreement between CRCICA and China Guangzhou Arbitration Commission" dated May 2020 < https://crcica.org/news/cooperation-agreement-between-crcica-and-china-guangzhou-arbitration-commission/> (Last accessed 18 Dec 2023).

the Court of Cassation expressly acknowledged the increased use of virtual hearings in arbitrations across the globe owing to COVID-19, and was keen on incorporating an express reference to the expression "virtual hearings" in English language in its decision, explaining that the concept of 'delocalisation' (i.e. distinction between the legal seat and geographical venue) includes conducting virtual hearings due to the increased reliance and use of modern means of communication.

In the said decision, the Court referred to Article 28 of the EAL, which distinguishes (i) the legal seat, which determines the procedural law applicable to the arbitral proceedings, i.e. lex arbitri, from (ii) the geographical venue for holding meetings, hearings or deliberations. (Court of Cassation, Economic and Commercial Circuit, challenge no. 18309 of JY 89, hearing session dated 27 October 2020).

Similarly, the Cairo Court of Appeal upheld this distinction between the legal seat and geographical venue explaining that the hearings may take place at different places/venues, however the legal seat remains one. (Cairo Court of Appeal, challenge no. 42 of JY 136, hearing session dated 8 March 2021; and Cairo Court of Appeal, 4th Commercial Circuit, challenge no. 53 of JY 138, hearing session dated 30 May 2022)

Also, virtual hearings have been recognised by other recent court decisions, referring to their widespread use, encouraging arbitration practitioners to resort to such method in conducting arbitration hearings. (Cairo Court of Appeal, 4th Commercial Circuit, challenge no. 53 of JY 138, hearing session dated 30 May 2022)36

56. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

Conceptually, Egyptian law does not recognize "insolvency" as such for businesses but rather "bankruptcy". The EAL does not include any explicit provisions regulating the effect of insolvency/bankruptcy on the enforceability of an arbitration agreement or the arbitration process. However, Article 11 of the EAL provides that "Arbitration agreements may only be concluded by natural or judicial persons having capacity to dispose of their rights."

Moreover, according to the Egyptian Law no. 11 of year 2018 regulating restructuring, preventive reconciliation, and bankruptcy ('Bankruptcy Law'), upon the issuance of a bankruptcy judgment, the person/entity declared bankrupt:

I. is precluded from managing the business and/or disposing of any properties and/or assets (Article 112);

II. is precluded from paying any financial obligations or directly receiving any financial dues (Article 113);

III. loses their capacity to litigate. No legal actions or claims may be brought by or against the bankrupt, nor any ongoing actions may be continued against the bankrupt, with certain exceptions, which are (a) actions relating to property, assets and or transactions that do not form part of the bankruptcy estate and are not subject to non-disposal restriction; (b) actions and claims relating to the bankruptcy proceedings that the law permits the Bankrupt to pursue directly; and (c) criminal proceedings (Article 117).

In addition, all unsecured creditors are prohibited by law from; initiating any individual claims and/or proceedings; or undertaking any other form of judicial proceedings against the

bankruptcy estate. Any ongoing individual proceedings yet to be adjudicated or any execution proceedings by the said creditors shall be suspended, and only the secured creditors are allowed to initiate or continue individual proceedings; however, such proceedings must be initiated against the Bankruptcy Trustee (i.e. liquidator or administrator). In case of enforcement proceedings by the secured creditors, they must notify the Bankruptcy Judge of such execution, and the proceeding should be against the Bankruptcy Trustee. (Article 128 of the Bankruptcy Law)

That said, given that the insolvent/bankrupt lose their capacity to dispose of their rights and consequently, lose their capacity to sue and to be sued, they cannot enter into an arbitration agreement, or commence arbitration proceedings. Upon declaring the status of bankruptcy, the said capacity is transferred to the Bankruptcy Trustee. Moreover, it should be noted that the Bankruptcy Trustee's participation in arbitral proceedings remains subject to the approval of the Bankruptcy Judge as per Article 162 of the Bankruptcy Law.

57. Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

While such topics usually involve state authorities and entities, it should be noted that the Egyptian Ministry of Environment is in charge of the climate change file, and is actively promoting the preservation of the environment and is participating in international conferences discussing the impact of climate change worldwide. More specifically, the Ministry of Environment is putting forward a new plan aiming at achieving 30% of investment projects in the state's policy for environmental sustainability and a green economy. Recently, Egypt hosted the 27th Conference of the Parties of the United Nations Framework Convention on Climate Change, known as the 'COP 27', in Sharm el Sheikh, from 6 to 18 November 2022. On the said of COP 27, Egypt signed agreements worth USD 83 billion in the renewable energy sector moving forward towards green economy. (Egyptian State Information Service, available at: https://www.sis.gov.eg/Story/172778/On-COP-27-sidelines%2C-gypt-signs-agreements-worth-%2483-billion-in-renewable-energy-sector?lang=en-us)

As regards to human rights, the Egyptian Constitution guarantees considerable rights to Egyptians, and there are human rights NGOs operating in Egypt.

Generally, disputes related to climate change and/or human rights are brought before national courts, and there is no particular recent developments worth mentioning as far as such disputes are concerned.

58. Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?

Such topics usually involve state authorities and entities, such as the Ministry of Environment entrusted with issues related to carbon trade and carbon credits. In this respect, it is worth mentioning that Egypt has ratified the United Nations Framework Convention on Climate Change (UNFCCC) in 1994, the Kyoto Protocol on 12 January 2005 and the Paris Agreement on 29 June 2017.

In the 27th Conference of the Parties of the United Nations Framework Convention on Climate Change 'COP 27', which Egypt hosted in Sharm el Sheikh late 2022, multiple agreements and initiatives were announced to put the Paris Agreement's carbon market framework into practice.

Furthermore, on 25 December 2022 and after the COP 27, a Prime Ministerial Decree under no. 4664 of 2022 was issued incorporating new provisions to the executive regulations of the Capital Markets Law No. 95 of 1992. (Articles 35 bis 7 and 35 bis 8 of the executive regulation) Said Decree provides for the establishment of a voluntary carbon market platform within the Egyptian Stock Exchange (EGX) for the trading of carbon emissions reduction certificates (CERs). The CERs are tradeable financial instruments for greenhouse gases (GHG) and are to be issued in favor of entities establishing projects reducing GHG emissions after obtaining the approval of the relevant authorities which are not currently specified. However, no particular recent developments worth mentioning as far as disputes related to carbon trade and carbon credits are concerned.

59. Is consolidation allowed under local laws?

The EAL does not expressly regulate the issue of consolidation, however, consolidation of separate arbitral proceedings under one or more contracts is possible, but conditional upon the parties' agreement, whether directly, or indirectly through the choice of institutional rules that permit consolidation of proceedings.

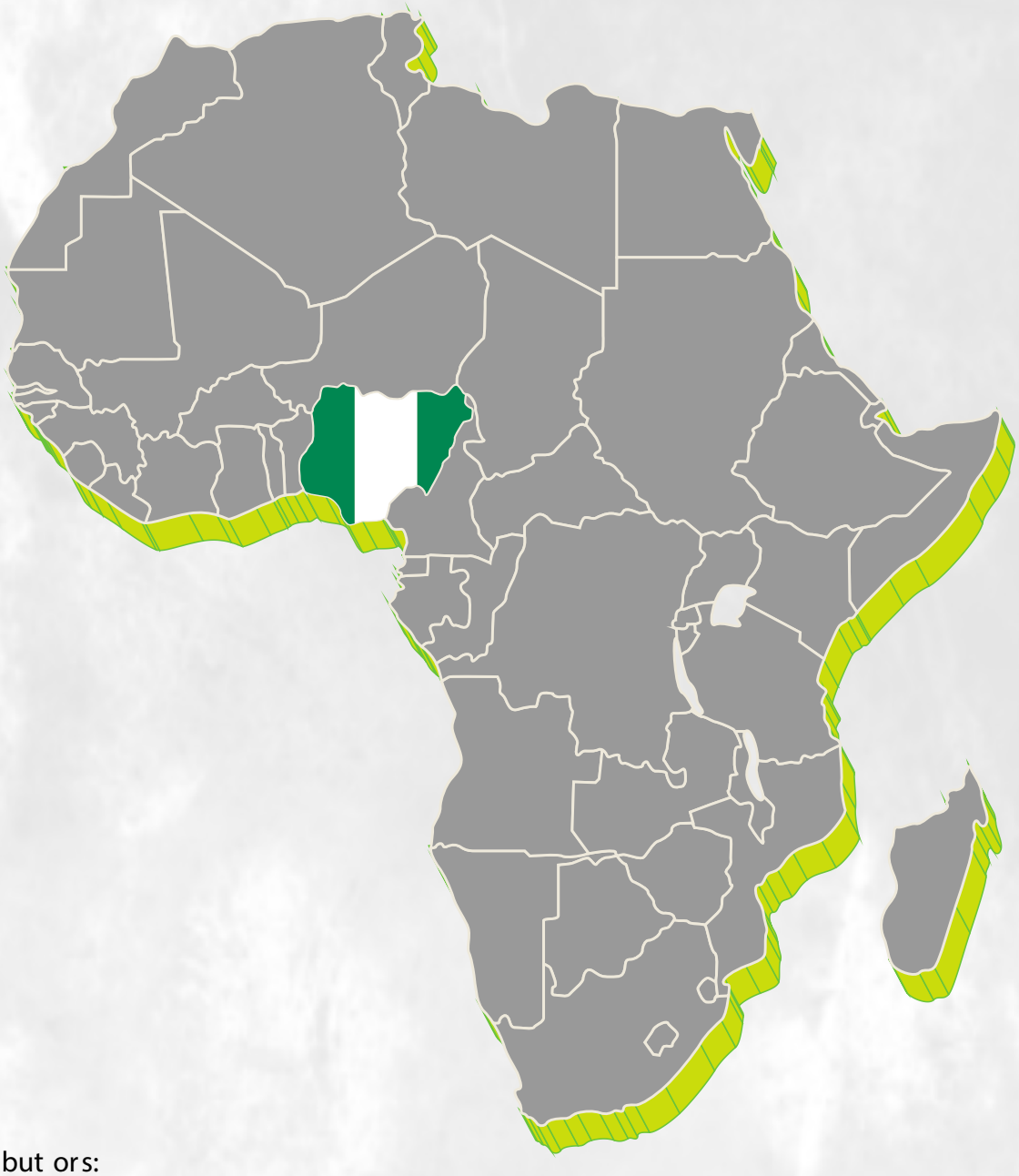
It is worth noting that recently in 2023, the CRCICA new draft arbitration rules (amending its 2011 arbitration rules) entering into force in 2024, included – for the first time – provisions with regard to consolidation. (Article 50)

(The Cairo Regional Centre for International Commercial Arbitration, available at: https://crcica.org/arbitration/arbitration2023/)

60. What is the regime for enforcement of ICSID awards in your country?

ICSID awards are enforceable in Egypt, as a signatory to the ICSID Convention. Egypt has consented to become party to the ICSID Convention on 11 February 1972, ratified it on 3 May 1972 to become part of the Egyptian legal system on 2 June 1972. The obligation to recognize and enforce an ICSID award is incumbent upon all States parties to the ICSID Convention. The procedure for enforcement is governed by the laws of the country where enforcement is sought, as the award is treated like a final decision of a local court.

Nigeria



Contribut ors:



Is aiah Bo zimo S AN



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1. What legislation applies to arbitration in your country? Are there any mandatory laws? What is their effect?

The Arbitration and Mediation Act 2023 (AMA) is the primary legislation governing arbitration in Nigeria. The Act replaces the former Arbitration and Conciliation Act 1988, creating a contemporary framework for international and inter-state (i.e., transactions with connecting factors in more than one Federating State within Nigeria) arbitration.

There are mandatory provisions within the AMA, which have effect notwithstanding any contrary agreement by the parties. These include:

a. Duty of Participants (Section 1(4)): Parties, arbitrators, arbitral institutions, appointing authorities, and the court must act to ensure the proper and expeditious conduct of arbitral proceedings.

b. Arbitration agreement in writing (Section 2): The arbitration agreement must be in writing to be considered valid. The agreement is deemed in writing if its content is recorded in any form, regardless of whether the agreement or contract was concluded orally, by conduct, or other means.

c. Validity Despite Death (Section 4(1)): The arbitration agreement remains valid despite the death of any party involved.

d. Arbitrator Impartiality and Independence (Section 8): Arbitrators must disclose any circumstances likely to raise justifiable doubts about their impartiality or independence.

e. Arbitrator and Institution Liability (Section 13(1)): Arbitrators, appointing authorities, or arbitral institutions are not liable for actions taken to discharge their functions, barring instances of bad faith.

f. Tribunal's Jurisdiction and Independence of Arbitration Clause (Section 14(1)-(4)): The arbitral tribunal has the authority to rule on its jurisdiction, including any objections to the arbitration agreement's validity. The arbitration clause is treated as independent of the contract's other terms.

g. Court's Power to Issue Interim Measures (Section 19): The court is vested with the power to issue interim measures of protection concerning arbitration proceedings, whether the seat of the arbitration is within Nigeria or another country.

h. Equal treatment of the parties (Section 30): An arbitral tribunal must treat the parties equally, ensuring they have a reasonable opportunity to present their case without unnecessary delay or expense.

i. Application of Limitation Statutes (Section 34(1)-(4)): Arbitral proceedings are subject to the same statutes of limitation as judicial proceedings, with specific provisions for computing time limits related to arbitral awards.

j. Liability for Fees and Expenses (Sections 53(1) and 54(1)): Parties are jointly and severally liable for reasonable fees and expenses of the arbitrator or arbitral institution, which may withhold awards pending full payment.

k. Recourse Against Award (Sections 55(1)-(6)): Parties can apply to set aside an arbitral award based on specific grounds, such as incapacity, invalidity, improper notice, matters beyond the scope of arbitration, and issues contrary to Nigerian public policy.

l. Recognition and Enforcement of Awards (Sections 57(1)-(3) and 58(1)-(2)): Arbitral awards, irrespective of the country of origin, are recognised as binding in Nigeria and can be enforced by courts, with provisions for refusing recognition or enforcement on specific grounds.

m. Limited Court Intervention (Section 64): A court shall not intervene in arbitral matters except in the circumstances explicitly provided in the Act.

n. Waiver of Right to Object (Section 63): Parties who proceed with arbitration without timely objection to non-compliance with the Act or the arbitration agreement are deemed to have waived their right to object.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Yes, Nigeria is a signatory to the New York Convention. It acceded to the Convention on 17 March 1970.

Regarding reservations to the general obligations of the Convention, Nigeria made a commercial reservation, which means that it applies the Convention only to differences arising out of legal relationships, whether contractual or not, that are considered commercial under Nigerian law.

Nigeria also declared that it would apply the New York Convention on a reciprocal basis. This means that Nigeria will only apply the Convention to the recognition and enforcement of arbitral awards made in the territory of another contracting state. See Section 60 AMA.

3. What other arbitration-related treaties and conventions is your country a party to?

Nigeria is a signatory to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, commonly known as the ICSID Convention. This convention, established under the auspices of the World Bank in 1965, facilitates arbitration and conciliation of investment disputes between countries and foreign investors.

Additionally, Nigeria has entered numerous Bilateral Investment Treaties (BITs) with various countries. These treaties typically include arbitration provisions to resolve disputes between investors and states, often referencing international arbitration rules or institutions.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

The Arbitration and Mediation Act draws substantial inspiration from, but does not entirely replicate, the UNCITRAL Model Law. Significant differences include:

a. Multi-party Arbitration Appointment Procedure (Section 7(3)©): The AMA addresses the default appointment of arbitrators in multi-party arbitrations. If parties fail to agree on representing two separate sides for the tribunal's formation, the appointing authority or court can appoint the tribunal without considering any party's nomination.

b. Emergency Arbitrator Provision (Sections 16, 17, 18): The AMA includes comprehensive rules for the appointment and functioning of emergency arbitrators, a concept not explicitly covered in the UNCITRAL Model Law. These provisions allow for urgent interim relief before the constitution of the arbitral tribunal and set procedures for challenging and replacing emergency arbitrators.

c. Consolidation and Concurrent Hearings (Section 39): The AMA allows parties to consolidate different arbitral proceedings and hold concurrent hearings, subject to agreement.

d. Joinder of Additional Parties (Section 40): The AMA empowers the arbitral tribunal to allow the addition of new parties to the arbitration, subject to a binding arbitration agreement.

e. Award Review Tribunal (Section 56): The AMA introduces the concept of an Award Review Tribunal as an alternative mechanism to the court to review arbitral awards. This mechanism provides an internal review within the arbitration framework.

5. Are there any impending plans to reform the arbitration laws in your country?

Yes, there are impending plans to reform the arbitration laws in Nigeria, particularly by implementing the Arbitration Proceedings Rules outlined in the Third Schedule of the Arbitration and Mediation Act. These Rules enhance procedural clarity and efficiency in arbitration-related legal proceedings before Nigerian courts.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

Several arbitral institutions exist in Nigeria, each with rules and procedures for resolving commercial disputes. These are the key arbitral institutions:

a. Regional Centre for International Commercial Arbitration – Lagos (RCICAL): Established in 1989 under the Asian African Legal Consultative Organisation (AALCO), RCICAL is a significant institution in Nigeria for international commercial arbitration. The RCICAL Rules for Arbitration were last amended in 2019.

b. Lagos Court of Arbitration (LCA): Established under the Lagos Court of Arbitration Law, 2009, the LCA is an independent, private-sector-driven international centre. The LCA Arbitration Rules were last amended in 2018.

c. Lagos Chamber of Commerce International Arbitration Centre (LACIAC): Affiliated with the Lagos Chamber of Commerce and Industry, LACIAC is an independent full-service ADR centre that administers arbitrations following the LACIAC Arbitration Rules of 2016.

d. Nigerian Chambers of Commerce and Industry Dispute Resolution Centre (NCCDRC): This institution is based in Abuja and last amended its rules in 2019.

e. Janada International Centre for Arbitration and Mediation (JICAM): Established in 2015, JICAM is a dispute resolution centre in Abuja and operates under the JICAM Arbitration Rules 2020.

7. **Is there a specialist arbitration court in your country?**

There isn't a specialist arbitration court in Nigeria. The term 'court' as defined in Section 91(1) of the Arbitration and Mediation Act refers to the High Court of a State, the High Court of the Federal Capital Territory, Abuja, or the Federal High Court. However, some Nigerian States have designated ADR Judges specifically for handling arbitration-related matters, although these are not separate courts but are part of the existing judicial system.

8. **What are the validity requirements for an arbitration agreement under the laws of your country?**

Section 2 of the Arbitration and Mediation Act specifies the validity requirements for an arbitration agreement as follows:

a. Form of Agreement: An arbitration agreement can either be a clause within a contract or a separate complete agreement.

b. Writing Requirement: The arbitration agreement must be in writing. This requirement is deemed satisfied if the agreement is recorded in any form, regardless of whether it was concluded orally, by conduct, or by other means.

c. Electronic Communication: The written form requirement is met if the arbitration agreement is made by electronic communication (as defined in Section 91 of the Act) and the information is accessible for future reference.

d. Exchange of Statements: An arbitration agreement is considered in writing if it is contained in an exchange of points of claim and defence, where one party alleges the agreement's existence and the other party does not deny it.

e. Reference to a Document: If a contract or a separate arbitration agreement refers to a document containing an arbitration clause, it constitutes an arbitration agreement in writing, provided the reference incorporates the clause into the contract or arbitration agreement.

9. **Are arbitration clauses considered separable from the main contract?**

Yes, in Nigeria, arbitration clauses are considered separable from the main contract as provided in Section 14(2) of the Arbitration and Mediation Act. According to this provision, an arbitration clause forming part of a contract is treated as an agreement independent of the other terms of the contract. Consequently, if the arbitral tribunal determines that the contract is void, this does not automatically invalidate the arbitration clause.

10. **Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?**

Multi-party and multi-contract arbitration are subject to specific considerations under the Arbitration and Mediation Act (AMA):

a. Multi-Party Arbitration: Section 7(3)© of the AMA addresses the appointment of arbitrators in multi-party disputes. If the parties to the dispute are more than two, and the arbitration agreement entitles each party to nominate an arbitrator, but they fail to agree on the formation of the arbitral tribunal within 30 days of a request for

arbitration, the appointing authority or, in its absence, a competent court or arbitral institution in Nigeria, has the power to appoint the tribunal. This provision prevents deadlock in forming the arbitral tribunal in multi-party scenarios.

b. Multi-Contract Arbitration: Section 39 of the AMA permits parties to agree on consolidating separate arbitral proceedings. This can include arbitrations under different but related contracts or involving different parties, subject to their agreement. The arbitral tribunal can only order consolidation if the parties consent to such an order.

c. Joinder of Additional Parties: Section 40(1) of the AMA empowers the arbitral tribunal to permit the addition of a party, provided there is a prima facie basis to conclude that the party being added is bound by the arbitration agreement.

11. **In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?**

Third parties or non-signatories can be bound by an arbitration agreement under certain circumstances, as indicated in Section 91(1) of the Arbitration and Mediation Act. This section defines a party as "a party to the arbitration agreement [...] or any person claiming through or under him." This broad definition allows for the inclusion of non-signatories who seek to enforce or resist the enforcement of an alleged contractual right on behalf of a signatory.

Recent court decisions have further clarified these situations. In "Statoil Nigeria Limited v. Federal Inland Revenue Service" (2014) LPELR-23144(CA), the Court of Appeal recognised the right of third parties to challenge an arbitral tribunal's jurisdiction, especially in instances where constitutional or statutory powers are in question.

Additionally, Nigerian law acknowledges the extension of arbitration agreements to closely related non-signatories. A notable case is "Metroline Nigeria Limited v. Dikko" (2018) LPELR-46853(CA), where the Court of Appeal upheld an arbitration award that included a non-signatory due to its close relationship with the signatories and its integral role in the Joint Venture Agreement in question.

12. **Are any types of disputes considered non-arbitrable? Has there been any jurisprudence in this regard in recent years?**

The general criterion for determining arbitrability is whether the dispute or difference can be lawfully resolved through accord and satisfaction. This principle has been established in cases such as "Kano State Urban Development Board v. Fanz Construction Ltd." (1990) 4 NWLR (Pt. 142) 1 and "United World Ltd Inc. v. MTS" (1998) 10 NWLR (Pt. 568) 106).

Recent jurisprudence has further clarified the scope of non-arbitrable disputes in Nigeria. In "Esso Petroleum & Production Nigeria Ltd. & Anor. v. Nigeria National Petroleum Corporation" (2016) 6 CLRN 25, the Nigerian Court of Appeal held that disputes solely concerning the operation of tax legislation and not based on contract are not subject to arbitration.

Criminal cases are inherently non-arbitrable due to their public interest nature and the involvement of the state's prosecutorial powers. Likewise, disputes relating to marital status, such as divorce or custody, are not arbitrable, as they often involve judgments that require changes in personal status, which only a court can grant.

13. **Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?**

Yes, there have been recent court decisions in Nigeria concerning the choice of law applicable to an arbitration agreement where no specific law has been chosen by the parties.

A notable example is the case of "North Pole Navigation Co. Limited v. Milan Nigeria Limited" (2015) LPELR-25865(CA), where the Court of Appeal stated that the law governing the arbitration agreement is to be determined in accordance with Nigerian general principles on conflict of laws. These principles provide that the applicable law is either the law expressly impliedly chosen by the parties or, in the absence of such a choice, the law of the country with which the agreement is most closely connected.

14. **How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?**

Section 15 of the Arbitration and Mediation Act (AMA) determines the law applicable to the substance of a dispute as follows:

a. Party Choice: The arbitral tribunal decides the dispute based on the law chosen by the parties (AMA, Section 15(1)).

b. Substantive Law Reference: If the parties designate a particular jurisdiction's law or legal system, this is understood to refer directly to the substantive law of that jurisdiction, not its conflict of law rules, unless stated otherwise (Section 15(2)).

c. Tribunal's Discretion: If the parties don't choose a law, the tribunal applies the law determined by the conflict of law rules it considers applicable (AMA, Section 15(3)).

d. Decision-making Limitations: The tribunal cannot decide ex aequo et bono or as amiable compositeur unless expressly authorised by the parties (AMA, Section 15(4)).

e. Contract and Trade Usages: Regardless of the chosen law, the tribunal must always decide in accordance with the contract terms and take account of the trade usages applicable to the transaction, where these are established by credible evidence (AMA, Section 15(5)).

15. **In your country, are there any restrictions in the appointment of arbitrators? Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?**

The appointment of arbitrators is subject to specific regulations, but there are generally no stringent nationality or licensing restrictions. The relevant provisions from the Arbitration and Mediation Act (AMA) regarding the appointment of arbitrators are:

a. Number of Arbitrators: Parties may agree on the number of arbitrators (AMA, Section 6(1)). Without an agreement, a sole arbitrator will be appointed (AMA, Section 6(2)).

b. Qualifications: While the AMA does not explicitly prescribe specific qualifications for arbitrators, it is common practice to appoint individuals who are experienced and

knowledgeable in arbitration and the relevant field of the dispute.

c. Nationality: The AMA does not impose nationality requirements on arbitrators. Arbitrators in Nigerian-seated arbitrations do not need to be Nigerian nationals or licensed to practice in Nigeria.

d. Impartiality and Independence: Arbitrators must be impartial and independent and disclose any circumstances likely to raise justifiable doubts about their impartiality or independence (AMA, Section 8).

e. Challenge and Removal: The AMA provides procedures for challenging and removing an arbitrator based on circumstances affecting their impartiality, independence, or ability to perform their duties (AMA, Sections 8 and 9).

16. **Are there any default requirements as to the selection of a tribunal?**

Section 7(3) of the Arbitration and Mediation Act outlines the default requirements for the selection of an arbitral. The key aspects are as follows:

a. Three Arbitrators: When the tribunal consists of three arbitrators, each party appoints one arbitrator, and these two arbitrators then appoint the third. If a party fails to appoint an arbitrator within 30 days of a request, or if the two appointed arbitrators cannot agree on the third within 30 days of their appointment, an appointing authority designated by the parties, an arbitral institution in Nigeria, or the Court will make the appointment upon a party's request.

b. Sole Arbitrator: If a sole arbitrator is to be appointed and the parties cannot agree on one within 30 days after a written request for arbitration, the appointing authority designated by the parties, an arbitral institution in Nigeria, or the Court will appoint the arbitrator upon a party's request.

c. Multi-party Arbitrations: In disputes involving more than two parties where each party is entitled to nominate an arbitrator, if the parties do not agree within 30 days of a request for arbitration that they represent two sides (claimant and respondent), then, upon a party's request, the designated appointing authority, an arbitral institution in Nigeria, or the Court can appoint the arbitral tribunal without regard to any party's nomination.

d. Request for Appointment: When requesting the appointment of an arbitrator, the requesting party must provide the appointing authority, arbitral institution, or Court with a copy of the arbitration request, the contract involved, and the arbitration agreement (if separate from the contract). The appointing authority, institution, or Court may request additional information.

e. Qualifications of Arbitrators: If a party proposes one or more persons for appointment as arbitrators, it must provide full details, including names, addresses, nationalities, and qualifications.

17. **Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?**

Local courts in Nigeria can intervene to assist arbitration proceedings seated in their jurisdiction. The Arbitration and Mediation Act (AMA) provides various instances where court

intervention is permissible to support and facilitate the smooth functioning of arbitration proceedings. These include:

a. Appointment of Arbitrators: Courts can intervene to appoint arbitrators when parties fail to do so according to the agreed procedure or when an appointing authority or institution fails to act (AMA Section 7).

b. Challenge to Arbitrators: Courts may be involved in challenges to arbitrators when parties believe an arbitrator is not impartial or independent or does not possess the qualifications agreed upon (AMA Section 8).

c. Interim Measures: Courts can grant interim measures of protection related to arbitration proceedings, such as preserving assets or maintaining the status quo pending the outcome of the arbitration (AMA Section 19).

d. Assistance in Taking Evidence: Courts may assist in taking evidence for arbitration proceedings, including compelling the attendance of witnesses or the production of documents (AMA Section 43).

e. Setting Aside Awards: A party can apply to the court to set aside an arbitral award under specific grounds outlined in the AMA (Section 55).

f. Enforcement of Arbitral Awards: Courts play a crucial role in recognising and enforcing arbitral awards (AMA Sections 57 and 58).

18. **Can the local courts intervene in the selection of arbitrators? If so, how?**

Nigerian courts can intervene in selecting arbitrators under certain circumstances as outlined in section 7 of the Arbitration and Mediation Act. The court's intervention is typically reserved for situations where the parties to an arbitration agreement cannot agree on an arbitrator or if the agreed upon procedure for appointing arbitrators fails. These are the key provisions under which the courts can intervene:

a. Appointment in Case of Party Failure: If one party fails to appoint an arbitrator within the stipulated time or in accordance with the agreed procedure, the local court can make the appointment upon request by the other party.

b. Appointment in impasse between Appointed Arbitrators: In arbitrations requiring a panel of arbitrators, if the arbitrators already appointed by the parties cannot agree on the third arbitrator, the court can intervene to make the appointment.

c. Multi-party Arbitration: When multiple parties fail to agree on forming the arbitral tribunal, the court can appoint the tribunal. This is particularly relevant when the arbitration agreement entitles each party to nominate an arbitrator, and the parties cannot reach an agreement within a specified period.

d. Appointment in the absence of Agreed Procedure: If there is no agreed procedure for appointing an arbitrator, or the parties have failed to specify an appointing authority, the court can make the appointment.

e. Failure of Appointing Authority or Institution: If the appointing authority or institution designated in the arbitration agreement fails to act as required, a party can request the

court to take the necessary measures to ensure the appointment of an arbitrator.

The court's intervention in these scenarios is guided by the need to facilitate the smooth commencement and continuation of arbitration proceedings.

19. **Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge**?

A party can challenge an arbitrator's appointment in Nigeria. The grounds and procedure for such a challenge are outlined in Sections 8 and 9 of the Arbitration and Mediation Act (AMA).

Grounds for Challenge (Section 8):

a. Impartiality or Independence (Section 8(3)): An arbitrator can be challenged if circumstances give rise to justifiable doubts about their impartiality or independence.

b. Lack of Qualifications (Section 8(3)): If the arbitrator does not possess the qualifications agreed upon by the parties, they can be challenged.

c. Disclosure Requirement (Sections 8(1) and 8(2)): An arbitrator is required to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence, both before appointment and throughout the arbitral proceedings.

Procedure for Challenge (Section 9):

a. Agreed Procedure (Section 9(1)): Parties may agree on a procedure for challenging an arbitrator. If they do, this agreed procedure must be followed.

b. Default Procedure (Section 9(2)): If there is no agreed procedure, a party intending to challenge an arbitrator must send a written statement of the reasons for the challenge to the arbitral tribunal within 14 days of becoming aware of the tribunal's constitution or of any circumstance that justifies the challenge.

c. Tribunal's Decision (Section 9(2)): Unless the challenged arbitrator withdraws or the other party agrees to the challenge, the arbitral tribunal will decide on the challenge.

d. Further Challenge (Section 9(3)): If the challenge is not successful under the tribunal or agreed procedure, the challenging party may request either the appointing authority, arbitral institution, or the Court (depending on who appointed the arbitrator) to decide on the challenge. This must be done within 30 days of receiving notice of the decision rejecting the challenge.

20. **What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?**

The risk of local court intervention potentially frustrating an arbitration seated in Nigeria can vary, but there are important factors and legal provisions that help mitigate such risks.

a. Limited Grounds for Court Intervention: The court's intervention in arbitration matters is limited under section 64(1) of the Arbitration and Mediation Act (AMA). The AMA is based on the UNCITRAL Model Law, which emphasises minimal court involvement in arbitration proceedings. This reduces the likelihood of courts unnecessarily intervening in arbitrations.

b. Risk of Delay through Court Applications: While there is a possibility that a party may attempt to delay arbitration proceedings by frequent court applications, Nigerian courts generally respect the autonomy of the arbitration process. The courts are inclined to uphold valid arbitration agreements and are likely to dismiss applications that are seen as obstructive or dilatory.

c. Provisions to Discourage Frivolous Applications: The AMA and the rules of various arbitral institutions in Nigeria often contain provisions aimed at discouraging frivolous court applications. For instance, the rules may allow for the continuation of arbitration proceedings notwithstanding certain types of court applications.

d. Enforcement of Awards: Nigerian courts have a history of enforcing domestic and international arbitral awards, which indicates a pro-arbitration stance. This enforcement regime acts as a deterrent against parties seeking to frustrate the arbitration process through the courts.

e. Judicial Attitude: The Nigerian judiciary has shown a growing understanding and support for arbitration. An increasing number of judges with specialised knowledge in arbitration helps ensure that court interventions are appropriate and do not undermine the arbitration process.

f. Designated ADR Judges: In some Nigerian States, specialised judges are designated to handle arbitration-related matters. These judges are more likely to have expertise in arbitration and are less inclined to intervene unnecessarily in the arbitration process.

g. CJN Practice Directions: The Honourable Justice Walter Onnoghen, a former Chief Justice of Nigeria, issued practice directions in May 2017 mandating courts to enforce arbitration clauses by declining jurisdiction with the option of awarding substantial costs against parties who circumvent arbitration clauses.

21. **Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?**

The independence and impartiality of arbitrators is a fundamental aspect of arbitration proceedings in Nigeria. This duty is enshrined in Sections 8(1) and (2) of the Arbitration and Mediation Act, which outline the standards expected of arbitrators.

The provisions impose strict obligations on arbitrators to disclose any circumstances likely to give rise to justifiable doubts about their impartiality or independence. This disclosure must occur during the arbitrator's appointment and throughout the arbitration proceedings. A failure to maintain these standards can lead to the challenge and possible removal of an arbitrator.

In terms of jurisprudence, Nigerian courts have consistently upheld the principles of independence and impartiality in their rulings. They have demonstrated a willingness to intervene in cases where the conduct of an arbitrator gives rise to concerns about bias or a lack of independence.

In practice, the arbitration community in Nigeria, including arbitral institutions, continue to emphasise the importance of these principles. Regular training and updates are conducted to ensure arbitrators know their duties and the evolving standards in international arbitration

practice.

22. **Has there been any recent decision in your country concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?**

In "Global Gas & Refinery Limited v. Shell Petroleum Development Company" (Unreported judgment of the High Court of Lagos State in Suit No. LD/1910GCM/2017 (25 February 2020)), the court emphasised that an arbitrator must not only be impartial and independent but must also appear to be so. The court took a strict stance, suggesting that an arbitrator faced with a challenge based on alleged bias should resign rather than resist the challenge.

While not binding outside its jurisdiction, the court's decision is influential and sets a persuasive precedent within Nigeria. It reflects a rigorous approach to upholding the principles of impartiality and independence in arbitration, resonating with global trends as exemplified in the Halliburton v Chubb case.

23. **What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?**

According to Section 11 of the Arbitration and Mediation Act (AMA), a substitute arbitrator must be appointed when an arbitrator's mandate terminates for any reason, including under Sections 9 or 10, or due to a withdrawal or revocation. The appointment of this substitute arbitrator follows the same rules that applied to the appointment of the original arbitrator being replaced.

However, the parties to an arbitration agreement have considerable autonomy. They may agree on various procedural aspects of their arbitration, including how to proceed in the event of a truncated tribunal. If the parties mutually agree to continue the proceedings with a truncated tribunal, such an agreement could be considered valid, provided it does not contravene any mandatory provisions of the AMA or public policy.

24. **Are arbitrators immune from liability under local laws?**

Under section 13 of the Arbitration and Mediation Act (AMA), arbitrators, along with appointing authorities and arbitral institutions, are generally granted immunity from liability for actions or omissions made in the discharge or purported discharge of their functions, provided these actions are not carried out in bad faith.

This immunity extends to employees of arbitrators, appointing authorities, or arbitral institutions.

However, subsection (3) of Section 13 clarifies that the immunity provided does not affect any liability an arbitrator may incur due to their withdrawal from the arbitration process, as outlined in Section 12 of the AMA. This implies that an arbitrator who withdraws from their role in certain circumstances could still be held liable, depending on the specifics of the situation and the manner of their withdrawal.

25. **Is the principle of competence-competence recognised in your country?**

Section 14 of the Arbitration and Mediation Act empowers the arbitral tribunal to rule on its jurisdiction and any objections regarding the existence or validity of the arbitration agreement. According to this provision, an arbitration clause that forms part of a contract is

treated as an agreement independent of the other terms of the contract. Consequently, a decision by the arbitral tribunal that the contract is void does not automatically invalidate the arbitration clause.

26. **What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?**

According to Section 5 of the Arbitration and Mediation Act, if a party brings an action in a matter subject to an arbitration agreement, the court, upon request of any of the parties and not later than the submission of the first statement on the substance of the dispute, must refer the parties to arbitration. This applies unless the court finds the arbitration agreement is void, inoperative, or incapable of being performed.

Further reinforcing this stance, the Chief Justice of Nigeria issued a Practice Direction mandating courts not to entertain actions brought to enforce contracts or claim damages arising from their breach if the contracts contain an arbitration clause. Instead, the courts must enforce the arbitration clause. The Direction also emphasises that initiating court proceedings in contravention of an arbitration clause can be construed as a breach of the contract itself, and courts are directed to award substantial costs against parties who engage in such practices.

27. **How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?**

Commencement of Arbitral Proceedings:

Article 3 of the Arbitration Rules in the First Schedule to the Arbitration and Mediation Act (AMA) outlines the procedure for initiating arbitration. The party initiating arbitration (the "claimant") must send the other party (the "respondent") a written communication requesting the dispute be referred to arbitration.

his communication must include a demand for arbitration, parties' details, the arbitration clause or agreement invoked, the context of the dispute, a description of the claim, the relief or remedy sought, and proposals regarding the number of arbitrators, language, and seat of arbitration.
Arbitral proceedings are deemed to commence on the date the respondent receives this written communication.

Key Provisions on Limitation Periods:

Section 34 of the AMA addresses the applicability of statutes of limitation to arbitral proceedings. It aligns the time limits for commencing arbitral proceedings with those applicable to judicial proceedings.

The time between the start of arbitration and a court's decision to set aside or declare an award of no effect is excluded from the computation of any limitation period.

In determining when a cause of action accrued for the purposes of a statute of limitation, any provision stating that an award is a condition precedent to legal proceedings is disregarded.

For proceedings to enforce an arbitral award, the period between the start of arbitration and

the date of the award is excluded from the limitation period computation.

28. **What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?**

Section 55(4) of the Arbitration and Mediation Act (AMA) stipulates that a party must apply to set aside an arbitration award within three months of receiving the award.

If a request was made under Section 49 of the AMA (concerning the correction, interpretation, or an additional award by the arbitral tribunal), the three-month period begins from the date on which the arbitral tribunal disposed of that request.

29. **In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?**

In the context of arbitration proceedings, a state or state entity can invoke state immunity under certain circumstances:

a. No Waiver of Immunity: If a state or state entity has not expressly waived its immunity in the arbitration agreement, it can invoke state immunity to challenge the arbitral tribunal's jurisdiction. The waiver of immunity must be clear and explicit. Absent such a waiver, the principle of state immunity can be a barrier to initiating arbitration proceedings against the state or state entity.

b. Scope of Waiver: Even if there is a waiver of immunity in the arbitration agreement, its scope is critical. The waiver might be limited to specific issues or types of disputes. The state may invoke its immunity if the dispute falls outside the waiver's scope.

c. Sovereign vs. Commercial Activities: The distinction between a state's sovereign (jure imperii) and commercial (jure gestionis) activities plays a crucial role. Generally, state immunity is more readily invoked in matters pertaining to a state's sovereign activities. In contrast, when a state engages in commercial activities, many legal systems are more inclined to uphold jurisdiction over disputes arising from such activities.

d. Enforcement of Arbitral Awards: Even if a state participates in arbitration and a tribunal renders an award against it, enforcing this award, particularly against state assets, can be complicated due to state immunity. States often retain immunity from the enforcement of judgments or awards against their assets, especially those assets used for sovereign purposes.

e. International Treaties and Domestic Legislation: The applicability of state immunity in arbitration can also be influenced by international treaties to which the state is a party and the domestic legislation of the jurisdiction where the arbitration is seated or where enforcement is sought. These legal instruments may contain specific provisions regarding the extent and manner of state immunity in arbitration contexts.

30. **What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?**

Under the Arbitration and Mediation Act (AMA), if a respondent fails to participate in the arbitration, the following provisions apply:

a. Continuation of Proceedings: Per Section 41(b) of the AMA, if a respondent fails to state their defence as required, the arbitral tribunal is authorised to continue the proceedings without treating this failure as an admission of the claimant's allegations. The tribunal must still evaluate the evidence and claims presented by the claimant.

b. Award Based on Evidence: As per Section 41© of the AMA, if any party, including the respondent, fails to appear at a hearing or produce documentary evidence, the tribunal may continue the proceedings and make an award based on the evidence before it.

c. Peremptory Orders: Section 41(4)-(6) authorises the arbitral tribunal to issue peremptory orders if a party fails to comply with its directives. This could include orders for a party in default not to rely upon specific allegations or materials, drawing adverse inferences, or making awards based on the materials provided.

Local courts cannot compel participation in the arbitration. However, they can enforce arbitral awards once rendered, even if one party did not participate in the arbitration process.

31. **Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?**

The Arbitration and Mediation Act (AMA) and the accompanying Arbitration Rules outline the possibility of third-party intervention in a Nigerian-seated arbitration. This is a summary of the relevant provisions:

a. Power to Join Additional Parties (AMA Section 40(1)): The arbitral tribunal has the authority to allow an additional party to join the arbitration, provided that, prima facie, the additional party is bound by the arbitration agreement that initiated the arbitration. This suggests that the tribunal has discretion in deciding whether to allow a third party to join based on its apparent connection to the arbitration agreement.

b. Decision on Jurisdiction (AMA Section 40(2)): The tribunal's decision to allow a third party to join is without prejudice to its subsequent jurisdictional decisions. This means that even after allowing a party to join, the tribunal can reassess its jurisdiction concerning the newly joined party.

c. Procedure for Joining Existing Proceedings (Arbitration Rules Article 34): An existing party wishing to join an additional party must submit a Request for Joinder to the tribunal. This request must include detailed information about the parties, the basis for the request, and the legal arguments supporting it. The tribunal may set a deadline for such requests.

d. Third Party's Request for Joinder (Arbitration Rules Article 36): A third party desiring to join the arbitration independently must also submit a Request for Joinder, following the same process as outlined in Article 34.

e. Comments by Other Parties (Arbitration Rules Article 37): Upon receiving a Request for Joinder, other parties in the arbitration have 15 days to submit their comments. These comments can address jurisdictional issues, respond to the relief sought in the Request for Joinder, detail any claims against the additional party, and confirm the simultaneous service of these comments to all parties and the tribunal. This provision ensures that all parties have the opportunity to present their views on the potential joinder.

f. Consent of Parties: While the AMA and the Arbitration Rules provide mechanisms for joining additional parties, they do not explicitly state whether all existing parties must agree to the joinder. The tribunal's power to allow joinder suggests that it may do so even without unanimous consent from the existing parties, provided the joining party is prima facie bound by the arbitration agreement. However, the tribunal would likely consider the views of the existing parties as part of its decision-making process.

g. Tribunal's Discretion: Ultimately, the decision to allow a third party to join the arbitration lies with the tribunal, which will consider the relevance and impact of such a joinder on the proceedings, including issues of jurisdiction and the implications for the existing parties.

32. **Can local courts order third parties to participate in arbitration proceedings in your country?**

Nigerian courts do not typically compel third parties to participate in arbitration proceedings. Arbitration is fundamentally a consensual process rooted in the parties' agreement. This principle is reflected in the Arbitration and Mediation Act (AMA) and its associated rules.

The key points to note are:

a. Voluntary Nature of Arbitration: Arbitration agreements and proceedings rely on the voluntary participation of the parties. A third party who has not consented to the arbitration agreement generally cannot be forced by a court to participate in arbitration proceedings.

b. Role of Courts in Arbitration: Nigerian courts typically intervene in arbitration proceedings only in specific circumstances, such as appointing arbitrators, assisting with evidence, or enforcing arbitral awards. Ordering non-consenting third parties to participate in arbitration falls outside the usual scope of court intervention in arbitration matters.

c. Joinder of Additional Parties: While the AMA and the Arbitration Rules allow for the joinder of additional parties in arbitration (as previously discussed), this process is contingent upon the existing arbitration agreement and the arbitral tribunal's decision. The courts' role would be to support the tribunal's decisions rather than independently compelling third-party participation.

d. Enforcement and Recognition: Nigerian courts may enforce arbitration agreements and awards against parties to the arbitration. However, enforcing such agreements or awards against third parties who have not consented to arbitration would be inconsistent with the principles of arbitration and contractual consent.

33. **What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?**

The arbitral tribunal and local courts have the authority to issue interim measures supporting arbitration proceedings under the Arbitration and Mediation Act (AMA). The relevant provisions are as follows:

a. Court-issued Interim Measures (Section 19): Nigerian courts have the power to issue interim measures for arbitration proceedings seated in Nigeria or abroad, akin to their

power concerning court proceedings. These interim measures are to be granted within 15 days of an application, ensuring timely support for the arbitral process.

b. Tribunal-issued Interim Measures (Section 20): Unless otherwise agreed by the parties, the arbitral tribunal may grant interim measures before issuing a final award. These measures can include:

   i. Maintaining or restoring the status quo.
   ii. Taking or refraining from actions that could harm the arbitration process.
   iii. Preserving assets for satisfying future awards.
   iv. Preserving evidence or the subject matter of the arbitration.

c. Requirements for Tribunal-issued Interim Measures (Section 21): To obtain an interim measure from the tribunal, the requesting party must demonstrate:

   i. Likelihood of significant harm that damages cannot adequately redress and that this harm outweighs any harm to the opposing party.
   ii. A reasonable possibility of success on the merits of the claim (this determination does not bind the tribunal in its final decision).

d. Role of Local Courts: Local courts can issue interim measures before the tribunal's constitution, providing essential support in the early stages of the arbitration or in situations where urgent relief is needed. This role is particularly crucial when immediate action is necessary to prevent irreparable harm or to preserve the subject matter of the dispute.

34. **Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?**

In Nigeria, many State High Court Laws explicitly grant local High Courts powers akin to those of the High Court of England and Wales. Accordingly, Nigerian courts recognise both anti-suit and anti-arbitration injunctions, albeit with certain constraints, particularly in the context of arbitration.

Anti-Arbitration Injunctions:

Nigerian courts generally respect the autonomy of the arbitration process. This is evident in the Court of Appeal's decision in Nigerian Agip Exploration Limited & Anor. v. N.N.P.C. & Anor. (2014) 6 CLRN 150, where the court delineated the limits of judicial intervention in arbitration proceedings. The ruling, made under the Arbitration and Conciliation Act (ACA), remains pertinent under the AMA.

The court emphasised that the legislature's intention in enacting Section 34 of the ACA (now Section 64 of the AMA) was to protect the arbitration mechanism and limit court intervention to specific circumstances outlined in the Act. This approach aims to establish arbitration as an alternative to court adjudication, not as an extension of it. Consequently, issuing an ex parte order of interim injunction that interferes with the arbitral process is generally not permissible under the AMA.

Anti-Suit Injunctions:

Regarding anti-suit injunctions, Nigerian courts have the authority to issue injunctions to restrain parties from initiating or continuing proceedings in foreign courts where such

proceedings are contrary to an arbitration agreement. These injunctions are enforceable, provided they are necessary to protect the arbitration agreement and prevent parallel proceedings or conflicting judgments.

Enforceability:

While Nigerian courts can issue these injunctions, enforceability hinges on several factors:

a. Consistency with the arbitration agreement.
b. Absence of undue infringement on parties' rights to access the courts.
c. Necessity to prevent injustice or abuse of process.

35. **Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?**

The Arbitration and Mediation Act (AMA) and the Arbitration Rules provide a comprehensive framework for managing evidence in arbitration proceedings. Additionally, Section 43 of the AMA outlines the role of local courts in assisting with the procurement of evidence. This is an overview of the key provisions:

a. Procedural Freedom and Arbitral Tribunal's Discretion (AMA Section 31): Parties have the liberty to agree on the procedure to be followed in the arbitration (Section 31(1)). In the absence of an agreement, the Arbitration Rules in the First Schedule to the AMA govern the process. The arbitral tribunal has the authority to determine the admissibility, relevance, materiality, and weight of evidence (Section 31(3)).

b. Party Responsibility and Witness Testimony (Arbitration Rules Article 28): Each party is responsible for proving the facts it relies on. Witnesses, including experts, can be presented by the parties, and their statements may be in writing. The arbitral tribunal can also request summaries of evidence and determine the admissibility and weight of the evidence offered.

c. Role of Local Courts in Evidence Gathering (AMA Section 43): Local courts can assist in arbitration by compelling the attendance of witnesses and the production of documents. At the request of a party to the arbitration, a court or judge may issue a subpoena ad testificandum (for witness testimony) or subpoena duces tecum (for document production) to compel a witness's attendance before the arbitral tribunal.

d. Exclusion from the Evidence Act 2011: The Evidence Act 2011 governs judicial proceedings in Nigerian courts but does not apply to arbitration proceedings (Section 256(1) of the Evidence Act 2011).

36. **What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?**

In Nigeria, a combination of ethical codes and professional standards govern the conduct of counsel and arbitrators in arbitration proceedings. This is an overview of the relevant ethical codes and standards:

a. Legal Practitioners and Counsel:

Rules of Professional Conduct for Legal Practitioners: Counsel participating in arbitration in Nigeria are subject to the Rules of Professional Conduct for Legal Practitioners. These rules govern the conduct of legal practitioners in Nigeria and include provisions on integrity, confidentiality, conflict of interest, and diligence.

b. Arbitrators:

i. Chartered Institute of Arbitrators (CIArb): Many arbitrators in Nigeria are members of the CIArb, which provides detailed ethical guidelines and codes of conduct for arbitrators. These guidelines cover independence, impartiality, fairness, competence, and confidentiality.

ii. Arbitration Institutions' Codes: Arbitrators may also be subject to the ethical codes of the specific arbitration institutions under which they operate.

c. Customary and International Standards:

i. International Bar Association (IBA) Guidelines: While not legally binding in Nigeria, the IBA Guidelines on Conflicts of Interest in International Arbitration and the IBA Guidelines on Party Representation in International Arbitration are often referenced and respected in the Nigerian arbitration community.

ii. General Ethical Principles: Arbitrators and counsel in Nigeria are expected to adhere to general ethical principles such as integrity, objectivity, professional competence, and due care.

d. Judicial Oversight:

The Nigerian judiciary can intervene in cases of evident ethical violations in arbitration, as the courts have the authority to set aside arbitration awards or remove arbitrators in certain circumstances under the Arbitration and Mediation Act.

37. **In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?**

The rules regarding the confidentiality of arbitration proceedings are primarily governed by the Arbitration and Mediation Act (AMA), institutional rules, and common law principles.

a. Arbitration and Mediation Act (AMA): The AMA does not explicitly address the issue of confidentiality in arbitration proceedings. As a result, the scope of confidentiality in arbitrations under the AMA is typically determined by the parties' agreement or the arbitral tribunal's discretion.

b. Institutional Rules: Some arbitral institutions in Nigeria have rules that address confidentiality. For instance, Article 4 of the Regional Centre for International Commercial Arbitration Lagos (RCICAL) Rules explicitly addresses confidentiality. It obligates parties, their counsel, experts, and the Centre's staff to keep awards, materials created for the arbitration, and documents produced during proceedings confidential. This obligation remains unless disclosure is legally required, necessary to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings.

c. Common Law Principles: In the absence of statutory provisions or institutional rules, the common law principles of confidentiality in arbitration apply. These principles generally require that arbitration proceedings and related documents are kept confidential by the parties, arbitrators, and any institution involved in the arbitration process.

d. Scope of Confidentiality:

i. Parties: The parties to the arbitration are typically bound to maintain confidentiality concerning the existence of the arbitration, the proceedings, the evidence, and the award unless they agree otherwise or disclosure is required by law.

ii. Arbitrators and Administrative Staff: Arbitrators and administrative staff of arbitral institutions are generally obliged to maintain the confidentiality of the arbitration process and the award.

iii. Exceptions: Confidentiality may not extend to certain circumstances, such as where disclosure is necessary for implementing or enforcing an award or where disclosure is required by law or court order.

e. Agreements on Confidentiality: Parties to an arbitration in Nigeria can include specific confidentiality clauses or agree to confidentiality terms at the commencement of the arbitration proceedings. These agreements can define the scope and extent of confidentiality obligations.

38. **How are the costs of arbitration proceedings estimated and allocated?**

The costs of arbitration proceedings are estimated and allocated per the Arbitration and Mediation Act (AMA) provisions and the Arbitration Rules in the First Schedule to the AMA. The key elements include:

a. Fixation of Costs by the Arbitral Tribunal (AMA Section 50(1)): The arbitral tribunal is responsible for fixing the costs of arbitration in its award. These costs include:

- Fees of the arbitrators.
- Travel and other expenses incurred by the arbitrators.
- Cost of expert advice and assistance required by the tribunal.
- Reasonable travel and other expenses of parties, witnesses, and experts, as approved by the tribunal.
- Legal representation and assistance costs - subject to reasonableness and claim during the proceedings.
- Administrative costs, such as those of the arbitral institution or appointing authority, venue, sitting, and correspondence.
- Costs of obtaining Third-Party Funding, if applicable.
- Other costs as approved by the tribunal.

b. Reasonableness of Tribunal Fees (AMA Section 50(2)): The fees of the arbitral tribunal must be reasonable, considering factors like the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators, and other relevant case circumstances.

c. Allocation of Costs (Arbitration Rules Article 50):

i. Principle of Costs Allocation: Generally, the unsuccessful party or parties bear the costs of the arbitration. However, considering the case's circumstances, the tribunal may apportion costs between the parties if it deems such apportionment reasonable.

ii. Determination of Costs in Award: The final award or another appropriate award will detail each party's exact financial obligations concerning the arbitration costs based on the tribunal's determination.

39. **Can pre- and post-award interest be included on the principal claim and costs incurred?**

Pre- and post-award interest can be included on the principal claim and costs incurred in a Nigerian-seated arbitration. The specific provisions are outlined in Section 46 of the AMA:

1. Parties' Agreement on Interest (Section 46(1)): The parties can agree on the arbitral tribunal's power regarding the awarding of interest. This agreement can define the rate, type (simple or compound), and period for which interest is applicable.

2. Default Provisions (Section 46(2)): In the absence of an agreement between the parties regarding interest, the arbitral tribunal has specific powers:

i. Pre-Award Interest (Section 46(2)(a)): The tribunal may award simple or compound interest on the whole or part of any amount. This interest can be for the period leading up to the award and applies to amounts claimed and outstanding at the start of the arbitration but paid before the award is made.

ii. Post-Award Interest (Section 46(2)(b)): The tribunal may also award simple or compound interest from the date of the award (or any later date) until the payment is made. This interest applies to the outstanding amount of the award, including any interest awarded and costs.

iii. Declaratory Awards (Section 46(2)©): The term' amount awarded' includes amounts payable due to a declaratory award by the tribunal.

3. Tribunal's Discretion: The tribunal has the discretion to determine the dates from which interest runs, the interest rates, and whether the interest should be simple or compound. The tribunal considers what is just and equitable based on the circumstances of the case.

40. **What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?**

The Arbitration and Mediation Act (AMA) outlines the legal requirements for recognising and enforcing an arbitral award. The key provisions are as follows:

a. Written and Signed Award (Section 47(1)): The arbitral award must be in writing and signed by the arbitrator or arbitrators.

b. Signatures in Multi-Arbitrator Tribunals (Section 47(2)): In proceedings with more than one arbitrator, the signatures of a majority of the members of the arbitral tribunal are

sufficient. If any signature is omitted, the award must state the reason for its absence.

c. Content Requirements (Section 47(3)):

   i. Reasoned Award: The award must state the reasons on which it is based unless the parties have agreed that no reasons are to be given or the award is based on agreed terms.

   ii. Date and Place: The award must also state the date it was made and the seat of the arbitration. The seat is deemed to be the place where the award was made, which can be relevant for challenge or enforcement purposes.

d. Delivery of the Award (Section 47(4)): A copy of the award, signed as required, must be delivered to each party.

e. Recognition and Enforcement (Section 57):

   i. Recognition as Binding: An arbitral award, regardless of the country it was made, is recognised as binding in Nigeria.

   ii. Application for Enforcement: A party must apply to the Court in writing to enforce an award. The application must include the original award or a certified copy, the original arbitration agreement or a certified copy, and a certified translation into English if the award or agreement is not in English.

   iii. Enforcement as a Court Judgment: The award can be enforced similarly to a court judgment or order.

41. **What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?**

In Nigeria, the timeframe for recognising and enforcing an arbitration award has historically been lengthy, as evidenced by the analysis of arbitration-related decisions conducted by Broderick Bozimo and Company. On average, the duration from the date of an arbitration award to the conclusion of court proceedings has been:

- At the High Court level: Approximately 2 years.
- At the Court of Appeal level: Around 3 years and 1 month.
- At the Supreme Court level: About 3 years and 9 months.

These durations, analysed under the old Arbitration and Conciliation Act, highlight the protracted nature of the enforcement process, especially in cases that advance through the higher judicial levels.

However, with the enactment of the Arbitration and Mediation Act (AMA) and the introduction of the Arbitration Proceedings Rules, there is an expectation of more structured and potentially expedited court proceedings in arbitration-related cases.

Key features of these rules include:

a. Arbitration claims must start with an Originating Motion, to be served within one month

of issuance (Rule 3).

b. Arbitration claims are listed for their first hearing no later than 30 days after service, aiming for quicker commencement of proceedings (Rule 8).

c. The rules emphasise efficient management, with specified timeframes for filing documents and briefs.

While these new rules under the AMA aim to streamline and possibly expedite the arbitration process, they do not explicitly mention a fast-track mechanism for the recognition and enforcement of awards. Therefore, the actual impact of these rules on reducing the timeframes identified in the earlier analysis remains to be seen.

Regarding ex parte motions for the recognition and enforcement of awards, the AMA and the Arbitration Proceedings Rules do not expressly provide for this. The general approach under Nigerian law emphasises the involvement of all parties in arbitration-related proceedings, adhering to principles of fairness and due process.

42. **To what extent is a foreign arbitration award enforceable?**

The Arbitration and Mediation Act (AMA) outlines the extent to which a foreign arbitration award is enforceable in Nigeria:

a. Recognition as Binding (Section 57(1)): An arbitral award is recognised as binding irrespective of the country or state in which it was made. For enforcement, an application in writing must be made to the Court.

b. Requirements for Enforcement (Section 57(2)): The party seeking enforcement must supply the original award or a certified copy, the original arbitration agreement or a certified copy, and a certified translation into English if necessary.

c. Enforcement as a Court Judgment (Section 57(3)): With the Court's leave, an award can be enforced in the same manner as a judgment or order.

d. Grounds for Refusal (Section 58): Enforcement of a foreign award may be refused on specific grounds, such as incapacity of a party to the arbitration agreement, invalidity of the arbitration agreement, improper notice or inability to present a case, the award dealing with matters not submitted to arbitration, improper composition of the tribunal, the award not being binding, or being set aside or suspended, and if the subject matter is not arbitrable under Nigerian law or is against Nigerian public policy.

e. Application of the New York Convention (Section 60): The New York Convention applies to the recognition and enforcement of foreign awards made in countries that are parties to it, provided the differences arise from a legal relationship considered commercial under Nigerian law.

43. **Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?**

The AMA applies to both international and inter-state commercial arbitration. This implies that the standards and principles outlined in the AMA are relevant to arbitrations that cross international borders and those between parties in different states within Nigeria. Accordingly,

the same legal framework applies to foreign and domestic awards.

44. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

Section 37 of the Arbitration and Mediation Act (AMA) specifies the remedies that an arbitral tribunal can grant and, consequently, that the local courts can enforce:

a. Agreement on Powers Regarding Remedies (Section 37(1)): Parties to an arbitration agreement have the flexibility to agree on the arbitral tribunal's powers concerning the remedies it can award. This means that the scope of remedies can be tailored to the specific needs or agreements of the parties involved in the arbitration.

b. General Powers of the Arbitral Tribunal (Section 37(2)): In the absence of a specific agreement between the parties regarding remedies, the AMA grants the arbitral tribunal certain general powers. These include:

   i. Making Declarations: The tribunal can make declarations on matters that must be determined in the proceedings.

   ii. Ordering Payment of Money: The tribunal can order the payment of a sum of money in any currency.

   iii. Orders Similar to Court Orders: The tribunal can order a party to perform or refrain from specific actions. It can also order specific performance of a contract (except those relating to land) and order the rectification, setting aside, or cancellation of deeds or other documents.

c. Enforceability by Local Courts: Nigerian courts will typically uphold the remedies awarded by the tribunal, provided they fall within the scope of the tribunal's powers as defined by the AMA and the parties' agreement.

45. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedures?

A party may challenge an arbitration award in local courts subject to specific grounds and procedures set out in the Arbitration and Mediation Act (AMA). The relevant provisions are as follows:

a. Recourse Against Arbitral Award (Section 55(1)): The primary recourse to a court against an arbitral award is an application for setting aside the award, as per the stipulations in subsections (3) and (4) of Section 55.

b. Grounds for Setting Aside an Award (Section 55(3)): The AMA specifies several grounds for a court to set aside an arbitral award. These include incapacity of a party to the arbitration agreement, invalidity of the arbitration agreement under applicable law, improper notice or inability to present a case, the award addressing disputes not contemplated by the arbitration agreement, and issues related to the composition of the arbitral tribunal or the arbitral procedure. Additionally, the award can be set aside if the subject matter of the dispute is not arbitrable under Nigerian law or if the award is against Nigeria's public policy.

c. Time Frame for Application (Section 55(4)): An application to set aside an award must be made within three months from the date the party making the application received the award or from the date a request under Section 49 was disposed of by the arbitral tribunal.

d. Court's options upon Setting Aside Application (Section 55(5)): If the court finds that one or more of the grounds for setting aside the award are met and substantial injustice has occurred, it may either remit the award to the tribunal for reconsideration or set the award aside in whole or in part.

e. Suspension of Setting Aside Proceedings (Section 55(6)): When asked to set aside an award, the court may suspend the proceedings to allow the arbitral tribunal to resume the proceedings or eliminate the grounds for setting aside.

46. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

In Nigeria, parties to an arbitration agreement generally cannot waive their right to appeal or challenge an arbitration award before a dispute arises, such as through a clause in the arbitration agreement. This principle aligns with the constitutional right to access courts, which is a fundamental aspect of the Nigerian legal system.

An agreement that attempts to waive the right to access courts in advance would likely be considered contrary to public policy and unconstitutional. This is because it would deprive parties of their right to seek judicial intervention in cases where the arbitration process might have been fundamentally flawed, or the arbitral award may conflict with mandatory legal provisions or public policy.

47. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

A state or state entity may attempt to raise a defence of state or sovereign immunity at the enforcement stage of an arbitration award. However, the success of such a defence depends on the specific circumstances and the nature of the entity's engagement in the commercial activity that gave rise to the arbitration.

State or sovereign immunity, a principle of international law, protects states and their instrumentalities from being sued in foreign courts without their consent. However, this immunity is not absolute, especially in cases involving commercial activities. The doctrine of "restrictive immunity" has gained widespread acceptance, differentiating between acts jure imperii (sovereign acts) and acts jure gestionis (commercial acts). States and state entities generally do not enjoy immunity from legal proceedings arising from their commercial activities.

In the context of Nigeria:

a. Commercial Activity Exception: If the state or state entity engaged in commercial activities akin to a private party, it might not successfully claim sovereign immunity at the enforcement stage. This principle aligns with international trends and practices.

b. Explicit Waiver of Immunity: If the state or state entity explicitly waived immunity in the arbitration agreement or related contracts, invoking immunity successfully at the

enforcement stage would be challenging.

c. Nature of the State Entity and Transaction: The specific nature of the state entity (whether it's an arm of the government or a separate commercial entity) and the transaction involved (whether it's a commercial transaction or a sovereign act) will also play a crucial role in determining the applicability of sovereign immunity.

48. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

The specific circumstances under which third parties can be bound by an arbitration award or challenge its recognition are nuanced and often hinge on the relationship between the parties and the subject matter of the dispute.

a. Binding Third Parties or Non-Signatories:

i. Statutory Provisions: Section 91(1) of the Arbitration and Mediation Act defines a party as "a party to the arbitration agreement [...] or any person claiming through or under him." This provision allows the inclusion of non-signatories who enforce or resist enforcement of rights derived from a signatory.

ii. Case Law: In "Metroline Nigeria Limited v. Dikko" (2018) LPELR-46853(CA), the inclusion of a non-signatory was upheld due to its close association with the signatories and its significant role in the underlying Joint Venture Agreement.

b. Challenging the Recognition of an Award by Third Parties:

i. Jurisdictional Grounds: In "Statoil Nigeria Limited v. Federal Inland Revenue Service" (2014) LPELR-23144(CA), the Court of Appeal recognised the right of third parties to challenge an arbitral tribunal's jurisdiction under specific circumstances, mainly when constitutional or statutory powers are involved.

ii. Public Policy Arguments: Third parties could arguably use public policy considerations to challenge the recognition of an award, especially if enforcement contradicts fundamental legal principles in Nigeria.

Although public policy is a recognised ground for refusing the enforcement of arbitration awards under Nigerian law, its specific application by third parties who were not signatories to the arbitration agreement remains unexplored in Nigerian judicial practice.

Therefore, while third parties might theoretically invoke public policy arguments to challenge an award, the efficacy and acceptance of such challenges would be contingent on how Nigerian courts interpret and apply these principles in future cases.

49. Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

While there have not been any court decisions specifically addressing third-party funding in arbitration proceedings, the Arbitration and Mediation Act (AMA) provides a legal framework for such funding. Key provisions under the AMA relevant to third-party funding include:

a. Inclusion of Third-Party Funding Costs in Arbitration Costs (Section 50(1)(g)): The AMA

acknowledges third-party funding as a legitimate component of arbitration costs. It permits the arbitral tribunal to include the costs of obtaining third-party funding as part of the overall costs of arbitration.

b. Non-Application of Maintenance and Champerty (Section 61): The AMA explicitly states that the torts of maintenance and champerty do not apply to third-party funding in arbitration. This provision effectively removes legal barriers that could historically prevent third parties from financially supporting a party in arbitration.

c. Disclosure Requirements (Section 62(1)): There is an obligation for a party benefiting from third-party funding to disclose the existence of such an arrangement. This disclosure must include the name and address of the third-party funder and should be made to the other parties, the arbitral tribunal, and, where applicable, the arbitral institution.

d. Timing of Disclosure (Section 62(2)): The Act specifies when third-party funding should be disclosed. If the funding agreement is made on or before the commencement of arbitration, the disclosure must occur at the commencement. If the agreement is made after the start of arbitration, the disclosure must be made without delay as soon as the agreement is concluded.

e. Consideration in Applications for Security for Costs (Section 62(3)): The AMA allows a respondent who has applied for security for costs based on the disclosure of third-party funding to receive an affidavit from the funded party or their counsel. This affidavit can state whether the funder has agreed to cover adverse costs orders, and it can be a relevant consideration for the arbitral tribunal when deciding whether to grant security for costs.

50. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Emergency arbitrator relief is available and is governed by the Arbitration and Mediation Act (AMA) and the accompanying Arbitration Rules. This mechanism allows parties to seek urgent interim relief before the constitution of the main arbitral tribunal. The key provisions and procedures are as follows:

a. Application for Emergency Arbitrator (Section 16 AMA): A party requiring emergency relief can apply for the appointment of an emergency arbitrator to an arbitral institution or, in its absence, to the Court. The application should include details of the relief sought, the parties' information, a description of the circumstances and the reasons justifying the need for urgent relief.

b. Appointment and Notification (Section 16(5)-(6) AMA): The arbitral institution or Court is required to appoint an emergency arbitrator within two business days of receiving the application. The parties are then immediately notified of the appointment.

c. Impartiality and Independence (Section 16(7)-(8) AMA): The emergency arbitrator must remain impartial and independent, and they must provide a statement of acceptance, availability, impartiality, and independence.

d. Procedure for Emergency Relief (Article 27 Arbitration Rules): The emergency arbitrator may conduct the proceedings in a manner they consider appropriate, respecting the

urgency of the situation. They have the power to rule on their jurisdiction.

e. Decisions by Emergency Arbitrator (Article 27(2)-(4) Arbitration Rules): The emergency arbitrator's decision, termed an "Emergency Decision," is made within 14 days of receiving the file and should be in writing, stating the reasons and signed by the arbitrator.

f. Costs and Enforcement (Article 27(5)-(6) Arbitration Rules): The Emergency Decision fixes the costs of the proceedings and is recognised and enforceable as an interim measure under Section 28 AMA. Parties are obliged to comply with the decision without delay.

g. Modification and Termination (Article 27(8)-(9) Arbitration Rules): The Emergency Decision can be modified, suspended, or terminated by the emergency arbitrator or the arbitral tribunal once constituted.

h. Non-Binding Nature on Arbitral Tribunal (Article 27(10)-(11) Arbitration Rules): The Emergency Decision does not bind the arbitral tribunal regarding any question, issue, or dispute determined in the decision.

i. Expiration of the Emergency Decision (Article 27(9) Arbitration Rules): The decision ceases to be binding in various circumstances, including when the arbitral tribunal is constituted or renders a final award unless otherwise decided.

j. Additional Interim Measures (Section 16(10)-(11) and Article 27(13)-(14) AMA): Parties can still seek urgent interim measures from a Court, and the emergency arbitrator's procedures do not prevent this.

51. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

Several arbitration institutions have established rules for expedited procedures:

a. Lagos Court of Arbitration (LCA) Med/Arb Expedited Rules 2018:

- Claim Threshold: The LCA does not specify a particular monetary threshold for expedited procedures in its rules.

- Procedure: These rules provide a just, efficient, and cost-effective process with features like limited discovery, timed hearings, and the possibility of proceeding on a documents-only basis.

- Award Timeline: The rules also stipulate that the award should be rendered within 30 days of the close of proceedings.

b. Nigerian Chambers of Commerce Dispute Resolution Centre (NCC-DRC) Expedited Procedure Rules:

- Claim Threshold: The Expedited Procedure Rules apply if the amount in dispute does not exceed US$1,000,000 or NGN 10,000,000.

- Application: The expedited procedure provisions take precedence over any contrary terms of the arbitration agreement. They apply unless the parties have opted out or the court deems them inappropriate.

- Procedure: The Centre informs the parties that the Expedited Procedure will apply after receiving the response to the notice of arbitration or the expiry of the time limit for the statement of defence.

- Award Timeline: The award is rendered within 60 days of the close of the commencement of the arbitral proceedings.

c. Lagos Chamber of Commerce International Arbitration Centre (LACIAC) Fast Track Arbitration Rules:

- Claim Threshold: No specific monetary threshold is mentioned for applying the Fast Track Rules. The application is based on the parties' agreement or the LACIAC Court's discretion.

- Notice of Arbitration: Additional requirements for the notice of arbitration include a request for Fast Track arbitration, appointment of a sole arbitrator, and a comprehensive statement of claim.

- Selection of Arbitrator: A sole arbitrator is appointed by agreement within 15 days of receiving the notice of arbitration or by the LACIAC Court if there's no agreement.

- Hearings and Evidence: The tribunal may conduct telephone or video conference hearings and decide the matter based on documentary evidence, with oral hearings being limited.

- Award Timeline: The award is rendered within 21 days of the close of hearings, and if parties settle, the tribunal may record the settlement as an arbitral award on agreed terms.

52. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

There is a growing recognition of the importance of diversity in the choice of arbitrators and counsel in Nigeria. This is part of a broader trend in the international arbitration community to promote inclusivity and diversity.

The following are the main ways in which diversity is being promoted:

a. Institutional Initiatives: Various arbitration institutions in Nigeria are increasingly mindful of diversity in appointing arbitrators. These institutions often have policies or guidelines that encourage considering diverse candidates. For instance, the Lagos Court of Arbitration (LCA) and the Lagos Chamber of Commerce International Arbitration Centre (LACIAC) emphasise diversity in their panels.

b. Professional Associations: Professional bodies related to arbitration in Nigeria, such as the Chartered Institute of Arbitrators (CIArb), the Nigerian Institute of Chartered Arbitrators (NICArb), and the Nigerian Bar Association (NBA), play a significant role in promoting diversity.

They often organise events, seminars, and training programs that encourage the participation and recognition of diverse groups in arbitration.

c. Networking and Mentorship Programs: Initiatives that provide networking opportunities and mentorship for younger practitioners are becoming more common. These programs aim to increase the visibility and accessibility of arbitration practice to a broader demographic.

d. International Influence: Global movements advocating for diversity in arbitration, such as the Equal Representation in Arbitration Pledge and the Africa Promise, also impact the local arbitration community. These movements encourage organisations and practitioners in Nigeria to commit to diversity in appointing arbitrators and in the composition of counsel teams.

53. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

There have not been any recent court decisions specifically addressing the setting aside of an arbitration award that has already been enforced in another jurisdiction or the converse scenario where a foreign court sets aside an award that is then sought to be enforced in Nigeria.

54. Has there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

There have not been any recent court decisions considering the issue of corruption.

In Nigeria, as with many jurisdictions, the burden of proving allegations of corruption typically falls on the party making the allegations. This principle aligns with the broader legal maxim that "he who alleges must prove". If a party to an arbitration process raises corruption claims, they must provide sufficient evidence to substantiate these claims.

55. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

In Nigeria, like in many jurisdictions globally, there has been a notable shift towards integrating technology into the arbitration process, primarily driven by the need for efficiency and adaptability, especially in light of the COVID-19 pandemic. Nigerian arbitral institutions have implemented reforms to embrace technology and facilitate more cost-effective conduct of arbitrations. These reforms include the adoption of virtual hearings and electronic document submissions, among other advancements.

56. **In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?**

Section 4(1) of the Arbitration and Mediation Act states that an arbitration agreement shall not be invalidated by the death (which includes dissolution or other legal extinction in the case of a non-natural person) of any of the parties to the agreement. This provision can be interpreted to mean that the insolvency (akin to a 'death' in a corporate context) of a party does not render the arbitration agreement invalid.

Section 4(2) further stipulates that an arbitrator's authority is not revoked by the death,

bankruptcy, insolvency, or other change in the circumstance of any party that appointed the arbitrator.

57. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

Nigeria enacted the Climate Change Act on 17 November 2021. The Act represents a significant step in Nigeria's legal recognition and management of climate change issues. While it primarily establishes frameworks for mitigating and adapting to climate change, its implications extend to various sectors, potentially giving rise to new areas of dispute that may intersect with arbitration.

58. Have there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?

There have not been any significant legal developments in Nigeria, specifically addressing disputes related to carbon trade and carbon credits. However, with the growing global emphasis on environmental sustainability and the introduction of the Climate Change Act 2021 in Nigeria, there is an increasing awareness and potential for developing carbon markets and related dispute resolution mechanisms.

The Climate Change Act 2021 sets the stage for Nigeria to engage more actively in climate change mitigation efforts, potentially through mechanisms like carbon trading. This Act could establish carbon credit generation, trading, and regulation frameworks.

59. Is consolidation allowed under local laws?

Consolidation of arbitral proceedings is permitted under Section 39 of the Arbitration and Mediation Act. The accompanying Arbitration Rules provide the specific procedure:

Article 32 - Consolidation

a. Decision Criteria: The arbitral tribunal considers various factors when deciding whether to consolidate proceedings or hold concurrent hearings. These include the presence of common arbitrators in multiple arbitrations, whether claims arise under the same arbitration agreement, and if the arbitrations involve common legal or factual questions arising from the same transaction or series of transactions.

b. Request for Consolidation: Parties requesting consolidation must provide comprehensive information, including the particulars of all parties and arbitrators involved in the arbitrations, the nature of claims, supporting facts and legal arguments, relief sought, and comments on the appointment of the arbitral tribunal post-consolidation.

c. Competency of Request: The Request for Consolidation shall not be rendered incompetent by any controversy regarding its content, as any such controversy is to be resolved by the arbitral tribunal.

Article 33 - Effect of Consolidation

a. Primary Proceedings: When arbitrations are consolidated, they are merged into the arbitration that commenced first unless all parties agree otherwise or the arbitral

tribunal decides differently based on the case's circumstances.

b. Preservation of Court Actions: The consolidation does not affect the validity of any act or order a court makes to support the relevant arbitral proceedings before consolidation.

c. Appointment of Arbitral Tribunal: Upon consolidation, parties are deemed to have waived their right to designate an arbitrator. The Director of the Regional Centre for International Commercial Arbitration, Lagos, appoints the arbitral tribunal for the consolidated proceedings.

d. Validity of Prior Acts: The cessation of an arbitrator's role under this Article does not affect the validity of any prior acts or orders, the arbitrator's entitlement to fees and expenses, or the applicability of any statute of limitations.

e. Non-Objection to Award Validity: Parties shall not object to the validity and enforcement of any award made in the consolidated proceedings based on the arbitral proceedings under section 39 of the AMA.

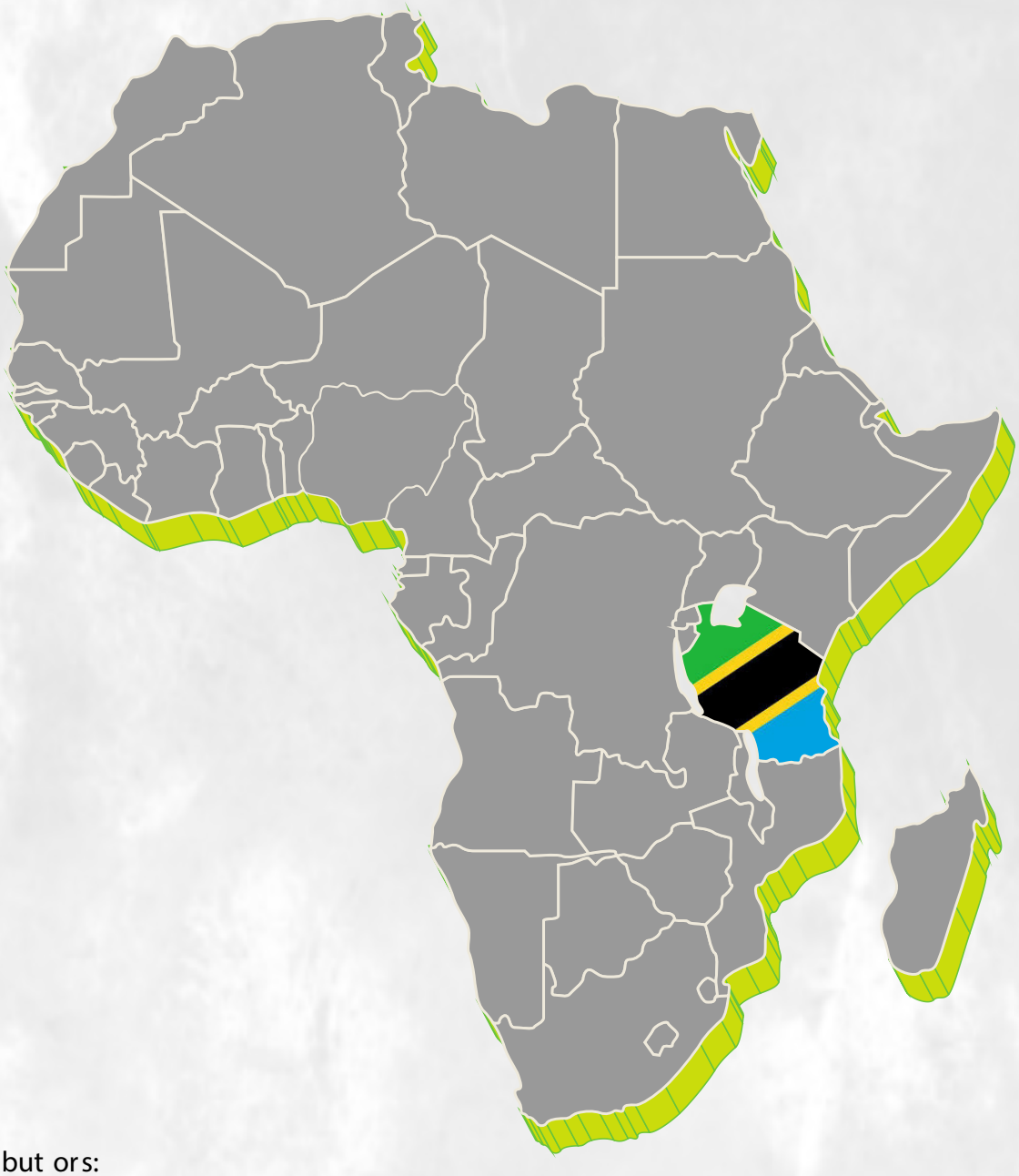
60. What is the regime for the enforcement of ICSID awards in your country?

The enforcement of awards made by the International Centre for Settlement of Investment Disputes (ICSID) is governed by the International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act. Section 1 of the Act provides the following mechanism:

a. A certified copy of the ICSID award, when filed in the Supreme Court of Nigeria by the party seeking enforcement, is treated as if it were an award contained in a final judgment of the Supreme Court.

b. Once recognised in this manner, the ICSID award becomes enforceable in Nigeria in the same way as a judgment of the Supreme Court.

Tanzania



Contribut ors:



Madeline Kimei, M CIArb, FTIArb

1. What legislation applies to arbitration in your country? Are there any mandatory laws? What is their effect?

The principal national arbitration statute in Tanzania is the Arbitration Act CAP 15 Revised Edition 2020 (the 2020 Arbitration Act), which came into force on 18 January 2021 through Government Notice No. 101 of 15 January 2021. The Act has been revised up to and including 30 April 2020 with effect as of 30 December 2020. The 2020 Arbitration Act applies to both domestic and international arbitrations.

The 2020 Arbitration Act is supplemented by:

- The Arbitration (Rules of Procedure) Regulations, 2021, G.N 146 published on 29 January 2021.
- Tanzania Arbitration Centre (Management and Operations) Regulations, 2021, G.N.149 published on 29 January 2021
- Reconciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation), FG.N. 147 published on 29 January 2021
- Code of Conduct and Practice for Reconciliators, Negotiators, Mediators and Arbitrators, G.N. 148 (Contd.) Notice No. 148 published on 29 January 2021.

The Arbitration Act contains a number of mandatory provisions that are listed in Schedule 1. They include:

- The court's power to stay court proceedings brought in breach of an arbitration agreement and related provisions (*sections 15, Arbitration Act*).
- The court's power to extend agreed time limits and to apply limitation acts (*sections 16 Arbitration Act*).
- Provisions dealing with the arbitrator's position, for example, the:
  - power of the court to remove the arbitrator;
  - effect of the arbitrator's death;
  - parties' liability for the fees and expenses of the arbitrator; and
  - arbitrator's immunity (*sections 33. 30(1), 32 and 81, Arbitration Act*).
- General duty of the tribunal to act fairly and impartially (*section 37, Arbitration Act*).
- The tribunal's power to withhold an award for non-payment of the arbitrator's fees and expenses (*section 63, Arbitration Act*).
- The enforcement of an award (*sections 73, Arbitration Act*).
- Grounds for challenging an award (*sections 74 and 75, Arbitration Act*)
- The establishment and operations of the Centre (*Section 82, Arbitration Act*)

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Tanzania has been a signatory to the 1958 New York Convention since 11 January 1965.

Tanzania made a reciprocity reservation in the first sentence of Article I (3) of the Convention, i.e., applying the Convention in Tanzania only to the recognition and enforcement of awards made in the territory of another Contracting State. Section 83 of the Tanzania 2020 Arbitration Act sets forth, although not verbatim, the regime for recognition and enforcement of the New York Convention awards.

3. What other arbitration-related treaties and conventions is your country a party to?

Tanzania has also been a party to the 1965 International Convention on Settlement of Investment Disputes (ICSID Convention) since 17 June 1992; the 1927 Geneva Convention on the Execution of Arbitral Awards; and the Convention on Multilateral Investment Guarantee Agency (MIGA).

Tanzania is a party to regional treaties such as the EAC, and is subject to the EACJ, which maintains an Arbitration Panel (EACJ Arbitration Rules, 2012); and the Southern African Development Community (SADC), of which the AFSA Southern African Development Community (SADC) Division launched an inaugural SADC Panel of International Commercial Arbitrators on 11 December 2020. The SADC Panel of International Commercial Arbitrators was nominated by the fifteen SADC Bar Associations based on globally competitive criterion. The Panel will be accessible to the SADC Member States.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

Tanzania has not fully adopted the UNCITRAL Model Law but is instead modelled on the English Arbitration Act 1996. While the 2020 Arbitration Act does contain many principles enshrined in the UNCITRAL Model Law (as amended in 2006), there are major differences, including the following:

- Tanzania has adopted a single legislative framework governing all arbitrations both domestic and international, so both the terms have been defined with the definition of international commercial arbitration being quite similar to the definition provided in the Model Law.

- Under the Model Law, the default position is that three arbitrators are appointed where the parties have not chosen otherwise, whereas under the 2020 Arbitration Act, the default is a sole arbitrator if the other party fails to make an appointment (where the parties' agreement provides that each party is required to appoint an arbitrator).

- The Centre can remove an arbitrator on certain specified grounds, including justifiable doubts about his impartiality and a failure to properly conduct the proceedings (section 28, Arbitration Act).

- The 2020 Arbitration Act allows a greater level of judicial intervention, including the ability to state case to the court on a question of law arising out of an award (section 76, Arbitration Act).

- The parties are free to agree that the tribunal will have the power to order on a provisional basis any relief it would have the power to grant in a final award (section 46, Arbitration Act).

- Section 39, 40 and 41 of the 2020 Arbitration Act provides for a duty of confidentiality on the parties to an arbitration and for the tribunal to maintain the confidentiality of the hearing, the documents generated and disclosed during the proceedings, and the award itself.

- A party can also apply to court for a determination of any question on the substantive jurisdiction of the tribunal, with the consent of the parties or the permission of the tribunal (sections 35 and 74, Arbitration Act).

5. Are there any impending plans to reform the arbitration laws in your country?

In Tanzania the case law continues to rapidly develop and shed light into different aspects of the framework and varying factual scenarios under it, the legal framework for arbitration in Tanzania is likely to see reforms to address current issues identified during the transitioning to the new arbitration regime. There is still uncertainty as to how the provisions of the 2020 Arbitration Act will be applied by the national courts. The Chief Justice is also yet to put in place arbitration rules to apply to arbitration-related claims in court. A consultative team was established in April 2021 to assist the Judicial Rules Committee in the development of the court arbitration rules.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

There are a number of different institutions that are commonly used in arbitrations seated in Mainland Tanzania. The main arbitral institution in Tanzania is the Tanzania Institute of Arbitrators (TIArb) and its Arbitration Rules 2018 are based on the UNCITRAL Arbitration Rules with modifications to fit the context. TIArb can be reached at:

Tanzania Institute of Arbitrators (TIArb)
4th Floor, NEDCO Building, Ali Hassan Mwinyi Road,
P.O. Box 76890,
Dar es Salaam, Tanzania.

Tel: +255 222 127 369
Mobile: +255 753 989 737
Email: info@tiarb.or.tz
Website: www.tiarb.or.tz

TIArb has not administered any international arbitrations during the period 2016–2020. However, TIArb has reported administering a total of thirty-eight domestic arbitration cases for the period 2016–2020.

The National Construction Council (NCC) is a government institution established by Act No. 20 of 1979 (NCC Act CAP 162 Revised Edition 2008). Under the Act, the NCC's mission includes facilitation of efficient resolution of disputes in the construction industry. The NCC can be reached at:

National Construction Council (NCC)
9th Floor, Samora Tower Building, Mansfield Street,
P.O. Box 70039,
Dar es Salaam, Tanzania.
Tel: +255 22 2131321/ 2135553
Email: info@ncc.go.tz.
Website: https://www.ncc.go.tz/

The NCC Arbitration Rules apply primarily to construction disputes and are based on the UNCITRAL Arbitration Rules as modified to fit the context. If the parties so decide, these rules may also be applied to non-construction disputes.

The NCC has not released any data specifically covering the period 2016–2019. However, the NCC has published a report that reviews a total of sixty-one cases conducted under its Rules during the period between 2002 and 2019. The report does not specify whether these cases are domestic or international arbitrations and is accessible online.

The Tanzania International Arbitration Centre (TIAC) was incorporated in 2020 as a company limited by guarantee by the Tanganyika Law Society (TLS) to provide arbitration and other alternative dispute resolution services, including international and domestic commercial arbitration, adjudication, mediation, and conciliation. The TIAC is operationally independent from the Government and maintains an independent panel of arbitrators and mediators. TIAC operates with an Advisory Board, a Board of Directors, and a Secretariat, and draws on the established legal framework for international arbitration in Tanzania. TIAC *is yet to commence operations. The TIAC*

offices are located at:

Tanzania International Arbitration Centre (TIAC)
Secretary General,
Wakili House, Plot No. 391, Chato Street,
Regent Estate, P.O. Box 2148,
Dar es Salaam, Tanzania
Tel: +255222775313.
Mobile: +255779626286
E-mail: info@tiac.or.tz
Website: www.tiac.or.tz

The Tanzania Arbitration Centre (TAC) is a statutory body established under Part X, Section 82 of the 2020 Arbitration Act. It is a body corporate having perpetual succession, a common seal with power to acquire, hold or dispose of property and power to enter into contract and to sue and be sued in its own name. The functions of the TAC shall be to conduct and manage arbitration; register and maintain a list of accredited arbitrators; enforce the code of conduct and practice for arbitrators; manage and provide continuing education for arbitrators; and to perform any other functions as the minister may direct. There is provision for professional associations to register with the TAC. This means that parties may only chose arbitrators registered by TAC. The governance structure of the body is subject to regulations yet to be enacted (section 82 (4) of the Tanzania Arbitration Act, 2020).

Regulation 17 of the Tanzania Arbitration Centre (Management and Operations) Regulations 2021 provides that the Headquarters of the TAC shall be in Arusha. The Centre may establish branches in regions and cities in and outside Tanzania (s.82 (7)). *The offices are currently situated at:*

Tanzanian Arbitration Centre
The Registrar,
Ministry of Constitutional and Legal Affairs,
Government City, Mtumba Area, Katiba Street,
P.O. Box 315, DODOMA, TANZANIA
Email: km@sheria.go.tz

The Arbitration (Rules of Procedure) Regulations, 2021 shall apply in arbitrations conducted under the TAC. The Rules can be adopted by ad hoc tribunals and provide

schedule of fees. The Tanzania Arbitration Centre (Management and Operations) Regulations as anticipated by section 95 (2)(d) have laid out the management and operations of the Centre. The Panel of Arbitrators is currently being established and the Registrar of the Centre has been appointed. The TAC currently has not registered any arbitrations.

7. Is there a specialist arbitration court in your country?

There is no specialist arbitration court in Tanzania.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

To fall within the scope of the 2020 Tanzania Arbitration Act, an arbitration agreement must be in writing or be evidenced in writing. This includes an oral agreement to arbitrate by reference to "terms which are in writing" (s.10(1) of the 2020 Act).
The Arbitration Act defines an "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen, or which may arise between them in respect of a defined legal relationship, whether contractual or not (Section 3 of the Arbitration Act). The Arbitration Act requires that an arbitration agreement must be in writing for it to be enforceable (Section 10(1) of the Arbitration Act). However, the agreement in writing need not be signed by the parties (Section 10 (3) (a) of the Arbitration Act) and agreement could be found in an exchange of communications in writing (Section 10 (3) (b) of the Arbitration Act.

The Tanzanian Courts are supportive of arbitration and will endeavour to uphold parties' agreements to arbitrate even if they are poorly drafted. They will not enforce an agreement if it is deemed to be 'pathological', that is, if it is impossible to understand what the parties agreed.

9. Are arbitration clauses considered separable from the main contract?

The Tanzanian arbitration law does not require the arbitration agreement to be set out in a separate arbitration agreement because it recognises the doctrine of separability. This establishes that an arbitration agreement is separate from the contract. Therefore, the arbitration agreement can survive a breach or termination of the contract in order to deal with any disputes in respect of liabilities under the contract arising before or after termination. (Section 12 of the Arbitration Act).

10. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

Non-parties can only be joined to arbitral proceedings if:
- They consent to be a party to the same arbitration agreement that gave rise to the arbitral proceedings.
- They have the consent of the parties to the arbitration to join the arbitration after proceedings have arisen.

-

Non-parties can also become parties to arbitral proceedings where proceedings are consolidated together. The Tanzania Arbitration Act 2020 does not contain provisions for court-ordered consolidation. However, this matter can be addressed by either (a) the rules of arbitral institutions, which often provide a framework for consolidation or (b) the parties' agreement (s.42 of the 2020 Act). With the exception of third parties who agree to be bound by arbitral awards, they are generally only effective against the parties to it and persons claiming through or under them.

11. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

Section 3 of the Act defines a "party" to mean a "party to an arbitration agreement". A non- party to a contract may be bound by that contract's arbitration agreement if: (i) a party assigns or transfers rights or causes of action under the contract to that third party; or (iii) the third party replaces one of the original parties by way of novation.

In Mogas Tanzania Limited Vs Petrofuel T Limited Mkeha J held that "*With regard to arbitration, the general rule is that a person is not bound by an arbitration agreement unless he has signed it. The exceptions to this rule are very limited. The "agency" exception allows agents to bind principals to agreements, including agreements to arbitrate, but the opposite is not true. In other words, the principal's signature does not bind its agent to an agreement to arbitrate*" and that as a result "*There is no denial that the respondent was not a signatory to the hospitality agreement between the petitioner and Paramount Energy SA. Therefore, on strength of the case law cited herein above, the dispute between the petitioner and the respondent is not arbitrable between the parties*".

12. Are any types of disputes considered non-arbitrable? Has there been any jurisprudence in this regard in recent years?

The Arbitration Act 2020 itself does not specify whether or not disputes are arbitrable. Instead, the courts determine arbitrability on a case-by-case basis. In general, commercial disputes (both contractual and non-contractual) are capable of arbitration. Disputes relating to intellectual property rights, employment law and consumer rights are also generally arbitrable, as well as certain competition law issues. Insolvency proceedings are subject to a statutory regime under the Companies Act, No. 12 and Companies (Insolvency) Rules 2004. Criminal matters and family law issues are also not arbitrable.

13. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

INorth Mara Gold Mines Limited v. Kiribo Limited (Misc. Cause 66 of 2021) [2022] TZHCComD the notice of Arbitration is based on claim that was acknowledged in the September 2019, which not only altered the choice of forum but made the 2015 Agreement in terms of arbitration agreement changed from South Africa to Tanzania,

since the "*parties decided to change forum and it cannot be heard to ride two horses at a time*"Magoiga J, held that *"the arbitration agreement subject of going to South Africa inoperative".*

In Shivacom Tanzania Limited vs Vodacom Tanzania Public Limited Company (Misc. Civil Application 210 of 2021) [2022] TZHC 15543the court looked at whether this court is conferred with jurisdiction to extend time under Section 14 of the Law of Limitation Act to enable the Applicant to make an application to challenge the conduct of arbitral proceedings whose seat of arbitration is London England. Mruma J held that "*the arbitration chose the law applicable and forum for resolving their dispute. By choosing the seat of the arbitration it means that they chose the territorial jurisdiction of any dispute arising from their dispute to be London and therefore ousted jurisdiction of this court. This court has no territorial jurisdiction in London".*

14. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The rule of domestic arbitration law is that the arbitral tribunal should apply the substantive law chosen by the parties in the agreement. Generally, parties to a contract in our jurisdiction are allowed to decide on a forum and choice of law for the determination of contractual dispute as rightly held in the case Sunshine Furniture Co. Ltd Vs. Maersk (China) Shipping Co. Ltd And Nyota Tanzania Limited, Civil Appeal No.98 Of 2016 (DSM) CAT Unreported.

The proper law of contract is determined in three stages: express choice, implied choice, and closest connection.

15. In your country, are there any restrictions in the appointment of arbitrators? Are there any legal requirements relating to the number, qualifications, and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?

Parties are free to agree on the number, composition and credentials of the arbitrators who will form the arbitral tribunal. The Tanzania Arbitration Act, 2020 sets out a number of default provisions providing for the number of arbitrators and their roles, where the parties have not agreed them, and the arbitral rules are silent.

If the parties agree that the number of arbitrators will be two, or any other even number, the appointment of an additional arbitrator as chairman of the tribunal is required (*section 19(2), Arbitration Act*). Pursuant to section 24(1) and (2) of the Arbitration Act, where there is no agreement as to what functions the chairman has, the decisions, orders and awards must be made by all or a majority of the arbitrators (including the chairman). The view of the chairman prevails in relation to a decision, order, or award in respect of which there is no unanimity or a majority (*section 24(3), Arbitration Act*). Where parties agree to a tribunal of three arbitrators, the third acts as the chairman unless the parties agree he must act as umpire (section 25(1), Arbitration Act).

The arbitrator can be a national or a foreigner however, Section 93 of the Arbitration Act requires for arbitrators who decides to practice at a fee to register in accordance with the accreditation system. This also prohibits a foreign national from being selected as an arbitrator in a Tanzanian-seated arbitration. Section 64B (2) of the Civil Procedure Act (Cap 33) ("CPC") which reads as follows: "*No person shall practice for fee as reconciliator, negotiator, mediator or arbitrator unless such a person is accredited in accordance with subsection (1).*" Also, Section 64B(3) criminalize any person who practices for fee as a reconciliator, negotiator, mediator, arbitrator or any other category of a dispute resolution practitioner without being accredited. Section 64B (3) of the CPC provides that: *"It shall be an offence to practice for fee as a reconciliator, negotiator, mediator or arbitrator or any other category of a dispute resolution practitioner without being accredited".* The provisions of section 64B of the Act requires all reconciliators, negotiators, mediators or arbitrators to be accredited by the Registrar appointed under section 64C(1) of the Act. Section 64B(4) of the CPC that *"Any person who commits an offence under this section shall, on conviction be liable to a fine not exceeding 5 million shillings or imprisonment for a term not exceeding 2 years or to both".*

Regulation 13(1) of the Arbitration (Rules of Procedure) Regulations, GN. No. 146 of 2021 provides strictly that only those arbitrators who are accredited or provisionally registered in terms of the Reconciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation) Regulations of 2021, shall act as arbitrators that may be chosen by the parties. Furthermore, under the provisions of section 82(3)(b) of the Arbitration Act No. 2 of 2020 and rule 13(2) of the Arbitration Rules, 2021, all names of all accredited arbitrators shall be registered by the Tanzania Arbitration Centre established under the Act.

16. Are there any default requirements as to the selection of a tribunal?

If the parties and the arbitral rules do not give any indication of the number of arbitrators, the parties must jointly appoint a sole arbitrator (*Section 19 (3) of the Arbitration Act).*

17. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

The Arbitration Act 2020 seeks to minimize court intervention of arbitration proceedings. The Tanzanian courts are supportive of international arbitration and are not likely to intervene to frustrate it.

The court can only intervene in two situations: (i) When one of the provisions in Part I of the Arbitration Act 2020 that permit court intervention is met and (ii) in very exceptional circumstances, to prevent a substantial injustice, even if there is no relevant provision in Part I of the Arbitration Act.

Examples of the court's powers to support arbitration include:

- Ordering a party to comply with a peremptory order made by the tribunal (*section 49, Arbitration Act*).

- Requiring the attendance of a witness in order to give oral testimony or to produce documents or other material evidence. This can be done with the permission of the tribunal or the agreement of other parties (*section 50, Arbitration Act*).

- Granting an interim injunction regarding the matters expressly specified in *section 51(2) of the Arbitration Act*

Further, where the court is able to intervene, there are restrictions on its powers. These restrictions are contained in the specific sections and should be considered before seeking the court's assistance.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

The parties are free to agree to the selection and appointment of arbitrators under the Tanzania Arbitration Act. In the case of failure of appointment procedure, Section 22 (2) a party to the arbitration agreement may, upon notice to the other party, apply to the Centre which may-(a) give directions as to the making of any necessary appointment; (b) direct that the arbitral tribunal shall be constituted by such appointment, or any one or more of them, as has been agreed; or (c) make any necessary appointment. Under Section 22 (3) "*an appointment made by the Centre under this section shall have effect as if it was made by the agreement of the parties".* However, Section 23 provides reference to the "Court" as opposed to the "Centre" when addressing on whether or how to exercise, any powers under Section 20 or 22 of the Act, to have due regard to any agreement of the parties as to the qualifications required of the arbitrators.

In Arab Contractors (Osman Ahmed Osman & Co) & another vs Bharya Engineering & Co. Ltd (Becco) & another (Misc. Commercial Case 28 of 2022) [2022] TZHCComD 344 the Court considered the question as to whether an arbitrator can be removed by the Court from presiding over on-going arbitral proceedings? Nangela J, held that "since I have established that there was a breach of natural justice, it follows that, where there has been a violation of natural justice the right course is to order a hearing de novo before a different arbitrator".

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Section 28 of the Arbitration Act gives power to the Centre (established under Section 82) to apply to the Centre to remove an arbitrator on any of the following grounds: (a) that there are circumstances which give rise to justifiable doubts as to his impartiality; (b) that he does not possess the qualifications required by the arbitration agreement; (c) that he is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his capacity to do so; or (d) that he has refused or failed to- (i) properly conduct the proceedings; (ii) use all reasonable dispatch in conducting the proceedings; or (iii) make an award and substantial injustice has been or will be caused to the applicant.

20. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

The Tanzania Arbitration Act provides for several provisions allowing a party to make applications to the local courts in relation to an arbitration seated in Tanzania. There are currently no court procedural rules applicable to application related to arbitration matters and hence no timelines or guidance is provided for making the process unpredictable and at risk of delaying the arbitration. A party can delay proceedings by frequent court applications.

Generally, the Courts are reluctant to intervene in arbitral proceedings as was stated in Arab Contractors (Osman Ahmed Osman & Co) & another vs Bharya Engineering & Co. Ltd (Becco) & another (Misc. Commercial Case 28 of 2022) [2022] TZHCComD 344 the court stated that "ordinarily, Courts do not enjoy the liberty of interfering with arbitral proceedings at will. It is only when there are circumstances of exceptional nature and/or of grave concern that a Court will be permitted to intervene" and made reference to the case of Vodacom Tanzania Public Limited Company vs. Planet Communications Ltd, Civil Appeal No.43 of 2018, the Court of Appeal reproducing what this Court, stated regarding Court's interference it was noted, that: *"The interference of the court must be very minimal so as not to override a valid agreement to arbitrate. ... "The power ... should only be exercised in exceptional circumstances/ and with caution/ because of the acceptance of the principle that the tribunal should usually (but not always) be the first to determine its own jurisdiction. Even if an applicant establishes that one of its legal or equitable rights had been infringed or that the continuation of the arbitration was vexatious/ oppressive or unconscionable, this may not be sufficient*."

Cases that involve significant court intervention are largely in relation to ad hoc arbitrations where the parties have not agreed on a basic procedure in the arbitration agreement and are unwilling or unable to agree the procedure once an arbitration begins. This intervention is intended to support the proceedings.

Pursuant to Section 89 (1) of the Arbitration Act the court may by order extend any time limit agreed by the parties in relation to any matter relating to the arbitral proceedings or specified in any provision of this Act having effect in default of such agreement.

21. Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?

Section 37 (1) (a) of the Arbitration Act, 2020 provides that, the arbitral tribunal has a general duty to act fairly and impartially. In CSI Electrical Ltd vs Capcon Ltd (Misc. Commercial Cause No. 59 of 2022) [2023] TZHCComD 256 *it was alleged that* the Respondent was aware of the Award before the parties had been notified to collect the same by relevant Authorities. The applicant submitted that unilateral communication in the Arbitration proceedings is expressly prohibited by the Code of Conduct for Reconciliators, Negotiators, Mediators and Arbitrators, Regulations, 2021, GN No. 148 of 2021 under Item 15 (3) of the first Schedule to the Regulations which provides that,

throughout the Arbitral proceedings, an arbitrator should avoid any unilateral communications regarding the case with any party, or its representatives. The Court held that the "*presence of unilateral communication between the arbitrator and a party to the arbitration proceedings touching confidential matters like the prospective award as it happened in this case, raises doubts regarding fairness and impartiality of the arbitrator. I hold the same to be a serious irregularity within the meaning of the of section 75 (2) (a) of the Arbitration Act, Chapter 15, RE, 2020*".

22. Has there been any recent decisions in your country concerning arbitrator's duty to disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

The case of Oryx Oil Company Ltd & Another vs Oilcom Tanzania Ltd (Misc. Civil Cause 138 of 2022) [2022] TZHC 13966 (18 October 2022) was concerned on the issue of the arbitrator never disclosing certain facts as to his impartiality and connection with the Respondent. The petitioner relied on English case of *Halliburton Company v. Chubb Bermuda Insurance Ltd* [2020] UKSC 48 to buttress the point that that an arbitrator must be alive to the possibility of apparent bias and of actual but unconscious bias. He must disclose matters which could be said to give rise to real possibility of bias. However, the court held that that the Applicant's allegation of the existence of bias/lack of impartiality on the Arbitrator was more of a perception than a reality despite the existence of proof. In Oryx Oil Company Ltd and another vs Oilcom Tanzania Limited (Misc. Civil Application 529 of 2022) [2023] TZHC 16669 *one of the* legal issues to be determined by the Court of Appeal *is* "Whether the High Court was correct to regard a persuasive decision in **Halliburton Company versus Chubb Bermuda Insurance Ltd (formerly known as Ace Bermuda Insurance Ltd** [2020] UKSC 48 interpreting section 24(1) (d)(1) of the 1996 Arbitration Act of the UK which is pari material provision to Section 28 (1) (a) of the Arbitration Act".

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

The 2020 *Act* allows the parties to agree on the procedure to be adopted in instances where there is a *truncated tribunal* (Section 31).

24. Are arbitrators immune from liability under local laws?

Yes. This is provided under Section 33 (1) of the Arbitration Act, which states that an arbitrator "shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as arbitrator unless the act or omission is proven to have been done in bad faith or professional negligence".

25. Is the principle of competence-competence recognized in your country?

The principle of competence-competence is recognised under the Arbitration Act, which empowers the tribunal to rule on the question of whether it has jurisdiction (Section 34 (1) of the Arbitration Act). The tribunal can rule on the following: *a) whether*

there is a valid arbitration agreement; (b) whether the arbitral tribunal is properly constituted; and (c) what matters shall be submitted to arbitration in accordance with the arbitration agreement".

26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Pursuant to Section 15 (1) of the Tanzania Arbitration Act, if a party commences court proceedings in breach of the arbitration agreement, the other party is entitled to "apply to that court to stay the proceedings so far as the proceedings relate to that matter". Section 15 (4) further provides that the court to which a stay application has been made is to make the order staying the proceedings so far as the proceedings relate to the matter, "unless it is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed".

In Hass Petroleum (T) Ltd vs Ukod International Co. Ltd (Commercial Case 68 of 2022) [2023] TZHCComD 47 (28 February 2023) the Court held that "*this Court has a discretion to stay a suit or proceedings pending arbitration. However, if the Court is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed, the Court will not stay the suit. I wish also to state, albeit in orbiter, that, the Court may even refuse a stay and strike out the suit with leave to refile, especially when it is clear to the Court that the suit will unnecessarily create a backlog of cases*" observing that "*even if referred to an arbitrator will not be the dispute which the parties agreed should be referred to an arbitrator. This is a kind of dispute which the parties have, in exercise of their autonomy, decided that, should not be subjected to arbitration".* This same approach was taken in Petrofuel(T) Limited vs Market Insight LTD, Misc. Commercial Cause No.07 of 2022, HC (Commercial Division) and Leisure Tours and Holidays Ltd vs Market Insight Ltd (Commercial Case 93 of 2022) [2022] TZHCComD 406.

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

The parties are free to agree when an arbitration is commenced under the Arbitration Act 2020. If there is no agreement on commencement the arbitral proceedings in respect of a particular dispute shall commence on the date on which the request for the dispute to be referred to arbitration is received by the other party [*Section 16 of the Arbitration Act*].

Failing to commence the arbitration within this time limit bars the right to commence arbitration. However, Section 89 of the Arbitration Act confers on the court the discretion to extend the time available in exceptional circumstances, for example where the conduct of one party makes it unjust to hold the other party to the strict terms of the limitation provision.

Pursuant to section 17(1) of the Arbitration Act, the by the Law of Limitation Act, Cap 89 apply to arbitral proceedings as they apply to legal proceedings.

28. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?

Pursuant to section 77 (3) of the Arbitration Act 2020, a challenge to an international arbitral award under the Act must be made within 28 days of the award. If there was an arbitral process of appeal or review, a challenge must be made within 28 days of the date when the applicant or appellant was notified of the result of that process.

29. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

The Respondent's refusal to participate in the arbitration proceedings does not prevent the arbitration from proceeding. Further, if any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the facts and evidence before it.

30. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Joinder of parties is governed by the procedural law or institutional rules which apply to the arbitration. With consent of the parties to the arbitration, third parties can voluntarily join arbitration proceedings.

Both the TIAC and TIArb Rules allow a party wishing to join an additional party to the arbitration to submit the appropriate request to the institution or the tribunal once constituted.

31. Can local courts order third parties to participate in arbitration proceedings in your country?

There is no provision in the Arbitration Act empowering courts to compel third parties.

32. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

The Arbitration Act does not explicitly refer to interim remedies. However, the parties are free to agree the powers of the tribunal in relation to the proceedings (*section 45 (1), Arbitration Act*). In the absence of such agreement the tribunal has the following general powers (*sections 45(2)(a) and (d), Arbitration Act*):

- Order a claimant to provide security for the costs of the arbitration.
- Give directions on any property that is the subject matter of the proceedings or as to which any question arises in the proceedings (such property must be owned by or be in the possession of a party to the proceedings). This includes:
  - o any inspection, photographing, preservation, custody or detention of the property by the tribunal, an expert or a party; or

o an order to take samples from that property, make observations or conduct experiment on the property.
- Give directions to a party for the preservation of any evidence in his custody or control.
- To direct a party or witness to be examined on oath or affirmation as the case may be and may for that purpose administer an oath or take affirmation.

Parties are free to agree what interim measures the tribunal can order (*section 46, Arbitration Act*). These include measures on a provisional basis and any relief it can grant in a final award. Tribunals can also issue partial awards that are binding on the parties until a final determination of the issue.

33. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Yes, anti-suit and/or anti-arbitration injunctions are available and enforceable in Tanzania.

34. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

Under Section 37 (2) the arbitral tribunal has a general duty in conducting the arbitral proceedings, in making decisions on matters of procedure and evidence, and in the exercise of all other powers conferred on it.

Section 38(1) provides that the arbitral tribunal shall decide all procedural and evidential matters, subject to the agreement of the parties.

Section 51 (2) (a) and (b) provides that for purposes of and in relation to arbitral proceedings the Court have the same power to make orders on matters such as taking of the evidence of witnesses and the preservation of evidence.

35. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

The Code of Conduct and Practice for Reconciliators, Negotiators, Mediators and Arbitrators, G.N. 148 (Contd.) Notice No. 148 published on 29 January 2021.

The Arbitration Act requires that an arbitrator who decides to practice at a fee shall be required to register in accordance with the system put in place pursuant to section 64 of the Civil Procedure Code or any other law for the time being in force (Section 93 of the Arbitration Act). The Reconciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation), G.N. 147 published on 29 January 2021 establishes an Accreditation Panel (Regulation 3) and provide for the requirements for the qualifications for registration of domestic arbitrators under Regulation 6 and for foreign arbitrators under Regulation 7.

36. In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

Section 39 – 41 of the Arbitration Act contains new provisions mandating confidentiality of the arbitral proceedings. Section 39 (1) requires for an arbitral tribunal shall conduct the arbitral proceedings in camera. Section 39 (2) presupposes that every arbitration agreement shall be deemed to provide that the parties and the arbitral tribunal shall not disclose confidential information.

The provisions create a default "opt-in" system, requiring parties to expressly provide for confidentiality in their arbitration agreements, in the absence of which the proceedings shall not be treated as confidential. A default position in favour of transparency could have a powerful impact.

37. How are the costs of arbitration proceedings estimated and allocated?

The 2020 Arbitration Act also provides comprehensive provisions on costs and the introduction of the '*costs follow the event*' principle in Tanzania, as was held in *Huwai Shamte v. Pili Marwa,* Civil Application No. 475/01 of 2020. The Act covers the payment of and liability for arbitrators' fees and arbitral costs in a relatively important place in the regulatory framework (Part VIII of the Tanzania Arbitration Act 2020), hence minimizing frivolous and meritless arbitration costs and overall speed and efficacy of the arbitral process. This is extremely unusual in national arbitration laws and appears more commonly in arbitral institutional rules. Notably, under the Tanzania Institute of Arbitrators (TIArb) Arbitration Rules, 2018, Rule 16.3 states that *'the arbitrator's fees ... will be charged at rates appropriate to the particular circumstances of the case including its complexity and any special qualifications of the arbitrator*' and further indicates that '*the rates will be established, reviewed and published by the institute from time to time'* (which has to date not been effected). The statute takes into account the current arbitration environment, which has been forged by exorbitant arbitration costs and no set schedule of arbitrator's fees established by any of the existing arbitral institutions, hence curing the gap. These costs may be limited, and the court has powers under section 72(2) of the 2020 Act in respect of costs.

38. Can pre- and post-award interest be included on the principal claim and costs incurred?

Section 56 (1) of the Arbitration Act gives complete discretion to the tribunal to impose interest in arbitration proceedings. Pursuant to Section 56 (2) and (3) of the Arbitration Act, an arbitral tribunal has power to award simple, compound interest, whether pre- or post-award.

39. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

The recognition and enforcement of both a domestic and foreign award are governed

by the Arbitration Act. The provisions and procedure for enforcing both are similar.

Section 83 (1) provides that upon application in writing to the court, a domestic arbitral award or foreign arbitral award shall be recognised as binding and enforceable.

Tanzania is a signatory of the New York Convention which is incorporated under Section 83 (4) of the Arbitration Act. Accordingly, Article V of the Convention, which provides grounds for refusal of recognition and enforcement of an award applies in Tanzania. Article V (1) of the Convention provides the grounds for challenging recognition and enforcement of an award by a party including arbitration agreement is invalid, proper notice of appointment of arbitrator not given to a party, award containing decisions beyond the scope of submissions, etc. Article V(2) allows the competent authority,, which is the High Court of Tanzania, to refuse recognition and enforcement of an award if the subject matter of dispute is not capable of settlement by arbitration under the laws of Tanzania, or if recognition and enforcement will be contrary to the public policy of Tanzania.

40. What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

Pursuant to section 64(3) of the Arbitration Act a challenge to an international arbitral award under the Act must be made within 28 days of the award. If there was an arbitral process of appeal or review, a challenge must be made within 28 days of the date when the applicant or appellant was notified of the result of that process.

In **Dezo Civil Contractors Co. Ltd vs Oysteerlay Investment Limited (Misc. Application 23 of 2022) [2022] TZHCComD 33** *Nangela J held that "In that regard, it is my finding that, the orders of this Court which allowed the Petition to challenge the award did not grant the Petitioner a lee way of avoiding the procedures laid down or the applicable laws concerning limitation of time. Under Item 21 of Part III to the Schedule to the Law of Limitation Act, Cap. 189, R.E 2019 the law provides for period within which applications made under other laws for which no period of limitation is provided are to be made. The Arbitration Act, Cap.15 R.E 2020 is one of such laws in as far as the time when an Award may be challenged once filed in Court".* Nangela J went on to state that *"Although the Arbitration Act, Cap.15 R.E 2020 does not state the limitation, by virtue of the authorities in the cases of Afriq Engineering & Construction Co. Ltd (supra), Kigoma/Ujiji Municipal Council vs. Nyakirang'ani Construction Ltd, Misc. Commercial Cause No. 239 of 2015 (unreported), and the Court of Appeal Decision in the case of Tanzania Cotton Marketing Board vs. Cogegot Cotton Company SA [1997] T.L.R. 165, that period is limited to sixty (60) days counted not from the time when the award was made but from the time when it was filed in Court".*

There is no expedited procedure provided for by the law.

In practice, a party may bring a motion for the recognition and enforcement of an award on an ex parte basis.

41. To what extent is a foreign arbitration award enforceable?

Tanzania is party to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). This allows states to choose to recognise and enforce only those arbitral awards made in another convention territory.

Tanzania has also ratified the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States 1965 (International Centre for Settlement of Investment Disputes (ICSID) or Washington Convention), which applies to ICSID awards.

42. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

The Tanzanian courts recognise and enforce a foreign arbitral award of the states that are parties to the conventions that the Tanzania has ratified (New York Convention). These awards are enforced in the same way as a judgment or order of the national courts.

Article 5 of the New York Convention (that deals with the grounds on which New York Convention Awards can be enforced) is reflected in section 83 of the Arbitration Act 2020, under which the courts can refuse to enforce and award where, among others:

- A party to the arbitration agreement was under some incapacity.
- The arbitration agreement was not valid under its substantive law.
- A party against whom it is to be enforced was not given proper notice or was unable to present its case.
- The tribunal lacked jurisdiction.
- There was a procedural irregularity.
- It would be contrary to public policy to recognise or enforce the award.

43. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

The parties are free to agree on the powers exercisable by the Tribunal as regards to remedies [*Section 54 (1) of the Arbitration Act*].

44. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Yes, arbitration awards issued in international commercial arbitrations seated in Tanzania can be challenged but not appealed in the High Court of Tanzania in the exercise of its ordinary original civil jurisdiction *[Section 6 (1) (b) of the Arbitration Act 2020]*.

A domestic award may be challenged on the grounds constituting serious irregularities are categorically stated in section 75(2) (a) to (i) of the Arbitration Act, Cap.15 [R.E 2020].

"(a) failure by the arbitral tribunal to comply with section 37;
(b) the arbitral tribunal has exceeded its powers otherwise than by exceeding its substantive jurisdiction;
(c) failure by the arbitral tribunal to conduct the proceedings in accordance with the procedure agreed by the parties;
(d) failure by the arbitral tribunal to deal with all the issues that were raised before it;
(e) any arbitral institution or other institution or person vested by the parties with powers in relation to the proceedings or the award exceeding its powers;
(f) uncertainty or ambiguity as to the effect of the award;
(g) the award being obtained by fraud or procured in a manner that is contrary to public policy;
(h) failure to comply with the requirements as to the form of the award; or
(i) any irregularity in the conduct of the proceedings or in the award which is admitted by the arbitral tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award."

Section 75 (2) of the AA2020 defines "serious irregularity" to mean "an irregularity of one or more of the following kinds which the court considers has caused or is likely to cause substantial injustice to the applicant". Applications under s. 75 of the Act are subject to a high hurdle. Nangela J, in a recent case of *Cereals and other Produce of Board of Tanzania vs Monaban Trading & Farming Company Limited [2022] TZHCComD 266*" grounds *constituting serious irregularities are categorically stated in section 75(2) (a) to (i) of the Arbitration Act, Cap.15 [R.E 2020]. As such, what is alleged must fall in one or in all of the paragraphs (a) to (i) of that section. The said provision contains high thresholds and not every alleged matter, even if labelled "serious irregularity", may fall under those thresholds*". The same court has also held that the grounds are a "closed list" in the case of *M/s Marine Services Co. Ltd vs M/s Gas Entec Company Ltd [2021] TZHCComD 3337*. The outcome of Section 75 applications is that *"The court may, where it determines that there is a serious irregularity affecting the arbitral tribunal, the proceedings or the award-(a) remit the award to the arbitral tribunal, in whole or in part, for reconsideration; (b) set aside the award in whole or in part; or (c) declare the award to be of no effect, in whole or in part Provided that, the court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it will be inappropriate to remit the matters in question to the arbitral tribunal for reconsideration*" (Section 75 (3)). The party aggrieved by the outcome will need leave of the court to appeal pursuant to Section 75 (4).

The Section 83 (2) lays out conditions for refusal of both a domestic and foreign arbitral award which are very limited as reproduced below:

"Notwithstanding subsection (1), a domestic arbitral award <u>or foreign arbitral award</u> shall be refused if-
(a) at the request of the party against whom it is invoked, that party furnishes to court proof that-
(i) parties to the arbitration agreement, pursuant to the law applicable-
(aa) lacked capacity to enter into the agreement; or

(bb) were not properly represented;
(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, under the law of the state where the arbitral award was made;
(iii) the party against whom the arbitral award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration, or it contains decisions on matters beyond the scope of the reference to arbitration, provided that, if the decisions on matters referred to arbitration can be separated from those not so referred, that part of the arbitral award which contains decisions on matters referred to arbitration may be recognised and enforced;
(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing any agreement by the parties, was not in accordance with the law of the state where the arbitration took place; or
(vi) the arbitral award has not yet become binding on the parties or has been set aside or suspended by a court of the state in which, or under the law of which, that arbitral award was made;
(a) the making of the arbitral award was induced or affected by fraud, bribery, corruption or undue influence; or
(b) if the court finds that-
(i) the subject matter of the dispute is not capable of settlement by arbitration under any written laws; or
(ii) the recognition or enforcement of the arbitral award would be contrary to any written laws or norms.

In ***MIC*** *Tanzania Limited vs* ***Crystal*** *Mobile Tanzania* (166/2020) [2021] TZHCComD 2059, Phillip J held outrightly that "*a petition challenging the registration of an Award as a Court decree is not an appeal and should not be an appeal in disguise*"...." *decisions prior to the enactment of the new Arbitration Act, 2020 is still applicable to date as it carries one of the important rule on the finality of an Arbitral Award, that is, it is not appealable".*
Pursuant to Section 76 (1) of the Arbitration Act, an appeal regarding a question of law can only be made against an award in a form of special case to the court on a question of law arising out of an award made in the proceedings. Such appeal can be made only with the agreement of all the parties in the proceedings or with the permission of the Court.

45. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

The Parties can waive any rights of appeal or challenge to an award by agreement.

46. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

Both the New York Convention and the International Centre for Settlement of Investment Disputes allow the defence of state immunity or sovereignty. Therefore, it is always possible that this defence may be raised at an enforcement stage.

The Court of Appeal in **East African Development Bank vs Blueline Enterprises Limited (Civil Appeal 110 of 2009) [2011] TZCA 52** *held that "In our considered judgment, the appellant like the United Nations or the African Development Bank, etc., derives its immunity from the Treaty/Charter which established it and fortunately the Tanzania Government does not deny this fact. It is imperative, therefore, that its claimed immunity must be judged only on the basis of its Charter provisions and not on customary international law doctrine of sovereign immunity"* and further recognised that *"[...]basing on the generally accepted rule, the immunity of international organisations is based on the principle of functionality. Furthermore, we accept as a correct proposition of law, as evidenced by state and judicial practice as well as academic writings on the issue, that the proper determination of this immunity should be based on the organisation's constitutional instrument (eg. Treaty, Charter etc.)".* In enforcement proceedings, the Court upheld the objection made in **Blue Line Enterprises vs East African Development Bank(Misc. Civil Application No. 264 of 2020) [2023] TZHC 17476** that the Respondent enjoys immunity from every form legal process and immunity from execution through judicial action pursuant to article 44 and 45 of the East African Development Bank Act (Act No. 7 of 1984) Cap. 231 as amended by the Finance Act 2005 (No. 13) holding that "[.....]*Article 44 of the Charter in respect of the immunity granted to the 1st Respondent whereas lending powers fall in ambit of the immunity*".

47. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

Section 79 which deals with the rights of a person who does not take part in arbitral proceedings. The Act draws a distinction between someone who participates in arbitration proceedings (even if only to contest jurisdiction) and someone who does not.

Section 79 (1) (a) of the Act, which allows "a person who is an interested party to arbitral proceedings but who took no part in the proceedings" to seek from the court a declaration, injunction or other appropriate relief on questions going towards the tribunal's jurisdiction, is directed to the interlocutory stage prior to the issuance of an award. The questions such as (i) whether there is a valid arbitration agreement; (ii) whether the arbitral tribunal is properly constituted; (iii)what matters shall be submitted to arbitration in accordance with the arbitration agreement; or (iv) whether there is a contravention of laws and norms; and under 79 (1) (b) for a declaration or injunction or other appropriate relief. The application of Section 72(1) is not limited to the position before an award is issued. Section 72(1) is a right that is available, unfettered, to someone who has taken no part in the proceedings. Since the remedies that may be granted under Section 72(1) are discretionary, any issue that would go towards the appropriateness of the remedy sought, such as delay, would be considered by the court in exercise of its discretion.

Under Section 79 (2) the applicant under Section 79(1) has the same right as a party to the arbitral proceedings to challenge an award by an application under (a) section 74 on the ground of lack of substantive jurisdiction in relation to him; or (b) section 75 on the ground of serious irregularity, within the meaning of that section, affecting him, and section 77(2) shall not apply in his case.

48. Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

There has been no court decisions considering third party funding in connection with arbitration proceedings in Tanzania.

49. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

The Arbitration Act does not recognize the concept of an '*emergency arbitrator;* however, institutional rules do provide for an emergency arbitrator. For example: Rule 28.1 (a) of the Tanzania International Arbitration Centre Arbitration Rules 2021 provide that "*a party may request emergency interim measures of protection to be issued by an arbitrator (the Emergency Arbitrator) appointed prior to the constitution of the Arbitral Tribunal".*

The enforceability of the emergency arbitrator's decision has yet to be tested in our Courts of law however, as a common law jurisdiction its enforceability will be persuaded by recent approaches in the UK and Singapore.

50. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

The arbitration law does not provide for simplified or expedite procedures for claims under certain value.

Both the TIAC and TIArb Arbitration rules provide for expedited procedure. Rule 45 of the TIAC Arbitration Rules 2021 for matters with value that does not exceed Tanzanian Shillings 50 million (equivalent to approx. USD 19,600) and under Rule 22 of the TIArb Arbitration Rules 2022 does not exceed Tanzanian Shillings 15 million (equivalent to approx. USD 5,880).

51. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

Yes, through the arbitral institutions several programs and initiatives has been championed to achieve greater diversity in the pool of available arbitrators and counsel. These institutions have also worked in collaboration with the Bar associations to ensure counsels are trained in representing their clients in arbitral proceedings.

Tanzania Institute of Arbitrators (TIArb) has reported an increase in the number of cases received from July 2022 to June 2023. TIArb reports diverse membership in the year 2022/2023 in terms of gender and professional background. It was reported that 22 new members were admitted in the category of Associate Members from engineers, quantity surveyors, architectures, lawyers, accountants, IT technicians, social workers and even project managers. Out of all the recorded 22 members, 10 are men while 12 are women.

52. Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

Clearly, the courts of the seat of arbitration should have jurisdiction to hear any challenge of an award or action to set aside also the current version *of the New York Convention offers no possibility to recognise and enforce an arbitral award* that has been set aside in the country. There have been no court decision considering the setting aside of an award that has been enforced in another jurisdiction or vice versa under the new Tanzania Arbitration Act 2020.

53. Has there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

In **DB Shapriya & Co. Ltd vs YARA Tanzania Ltd Misc. Commercial Cause No. 3 Of 2019 TZHCComD 341** Mteule J, on the question of illegal procurement of the award by the Respondent and misconduct on part of the Arbitral Tribunal/Arbitrator and the allegations of fraud and corruption found the ground unfounded because "they need to be proved beyond reasonable doubt before anyone is penalised whether in criminal matters or in civil"and that the same "did not have tangible evidence to clear reasonable doubts on this".

54. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

The Tanzania Institute of Arbitrators (TIArb) Arbitration Rules 2022 have introduced provisions that allow for greater use of technology. The 2022 Rules have further improved rules for expedited arbitration.

The Tanzania International Arbitration Centre (TIAC) set of Arbitration Rules of 2021 have provisions accommodating the use of technology and providing innovations such as expedited and emergency arbitration provisions.

55. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

The impact that a party's insolvency has on pending arbitration proceedings *depends on the type of insolvency proceedings that have been commenced.*

In **Queensway Tanzania (epz) Ltd vs Tanzania Tooku Garments Co. Ltd, [2021] TZHCComD 3407,** Nangela J, when he considered the non-arbitrability of insolvency proceedings under the Companies Act, 2002, held (at page 27) that the dispute between the parties was an "arbitrable dispute" having had considered the fact that the underlying dispute was a bonafine disputed debt and was a "*question of termination of the Lease Agreement*" and not in nature of the insolvency proceedings of the High Court has jurisdiction.

In **Sinotruck International vs TSN Misc. Commercial Cause No.13 of 2021(unreported)** another insolvency petition which upheld the Courts jurisdiction having had argued that there was no bona fide dispute debt between the parties for a referral to arbitration since there was an acknowledgment of debt, Nangela held that ""*It is a fact well settled that, arbitration and insolvency can present a significant conflict of policy interests. From such a scenario, therefore, a fair and appropriate balance, inmy view, would be that which gives more weight to the parties' preferred choice before allowing the Court to step in.*"

56. Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

EcoDevelopment in Europe AB and EcoEnergy Africa AB v. United Republic of Tanzania (ICSID Case No. ARB/17/33 investment dispute against Tanzania for cancelling its land lease tied to a claims arising out of the cancellation by the Government, in 2016, of the claimants' sugar cane and ethanol project on the grounds that it would have adverse impact on local wildlife. The dispute concerns the Agro EcoEnergy project in Bagamoyo, a venture that has been criticized for its potential impacts local farmers and villagers (with media reports noting allegations that more than 1,500 evictions would have been required), as well as for its potential impacts on wildlife and tourism at Saadani National Park. In January 2015, the Tanzanian parliamentary committee on Land, Natural Resources, and Environment reportedly required the Ministry of Lands, Housing, and Human Settlements Developments to recover 3,000 hectares of the land allocated for the project that fell within the national park; the following year, the entire project was reportedly halted.

The annulment proceedings were discontinued in May 2023 pursuant to ICSID Arbitration Rules 53 and 43(1).

57. Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?

Tanzania recently issued the Environmental Management (Control and Management of Carbon Trading) Regulations Government Notice Number 636 of 2022 (the Regulations). The Regulations apply to all carbon trading projects in Mainland Tanzania and are the first piece of legislation on carbon trading in the country. However, there are no disputes related to carbon trade and carbon credits in Tanzania.

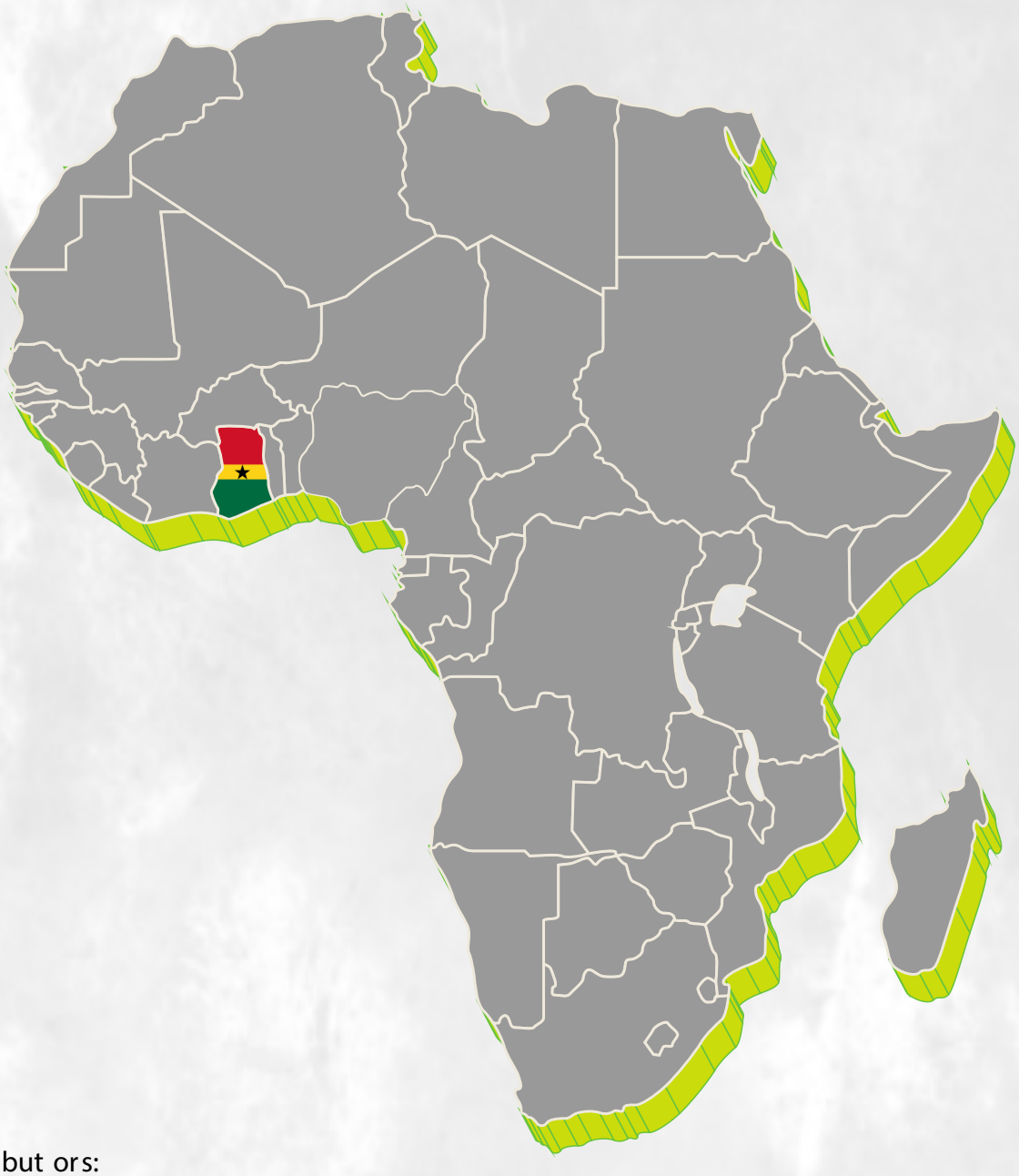
58. Is consolidation allowed under local laws?

Under Section 42 (1) of the Arbitration Act, the parties may agree that-(a) the arbitral proceedings shall be consolidated with other arbitral proceedings, or (b) concurrent hearings shall be held, on such terms as may be agreed. The arbitral tribunal has no power over third parties; and the fact that the absent agreement tribunal has no power to consolidate arbitrations arising from the same set of facts (Section 42 (2) of the Arbitration Act).

59. What is the regime for enforcement of ICSID awards in your country?

The Arbitration Act CAP 15 R.E. 2020 does not provide for specific provisions for enforcement of ICSID Arbitral Awards (the Convention), hence there is no legislative scheme for dealing specifically with ICSID award. The procedure will hence entail lodging execution proceedings under the Civil Procedure Code, Cap 33 R.E. 2019.

Ghana



Contribut ors:



Nania Owusu- Ankomah, F CIArb



Kwame Owusu Nk ans ah

1. **What legislation applies to arbitration in your country? Are there any mandatory laws? What is their effect?**

In Ghana, the principal legislation governing arbitration is the Alternative Dispute Resolution Act, 2010 (Act 798) ('ADR Act'). This Act provides a comprehensive legal framework for arbitration, as well as other forms of alternative dispute resolution (ADR) such as mediation and customary arbitration.

2. **Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?**

Yes, Ghana is a signatory to the New York Convention. Ghana acceded to the Convention on 9 April 1968, without any reservations to the general obligations of the Convention.

3. **What other arbitration-related treaties and conventions is your country a party to?**

In addition to the New York Convention, Ghana is also a signatory to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID). Ghana became a contracting party to ICSID on 14 October 1966.

4. **Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?**

The ADR Act governs both domestic and international arbitration within Ghana. The ADR Act largely reflects the UNCITRAL Model Law, but the Act is broader in scope and application. Provisions under the ADR Act relating to the competence of the arbitral tribunal to rule on its own jurisdiction, the powers of the arbitral tribunal to order interim measures, the autonomy of the parties to agree on rules of procedure and the grounds for setting aside an award, amongst others, are based on the UNCITRAL Model Law.

The key differences between the ADR Act and the UNCITRAL Model Law are:

(a) the ADR Act provides a framework for resolving a wide variety of disputes and applies to commercial and non-commercial matters, while the UN Model Law largely applies to international commercial disputes between parties;

(b) the ADR Act legislates on customary arbitration, a distinctive form of dispute resolution under Ghanaian law where parties voluntarily submit a dispute (whether or not relating to a written agreement) for a final binding determination by an impartial traditional decision-maker knowledgeable in the customs and practices of the relevant locality, such as a traditional leader, chief, head of family or head of clan. The dispute is resolved informally, but on its merits and the arbitrator is not obliged to apply legal rules of procedure but may be guided by rules of natural justice and fairness.

(c) the ADR Act contains provisions on mediation, granting the settlement

agreement from mediation proceedings an enhanced status, akin to an arbitral award;

(d) the ADR Act grants an expanded role to the appointing authority in the arbitral process;

(e) the ADR Act gives the courts powers, in certain circumstances, to intervene (pay a supportive role) in arbitration proceedings, including mandating the High Court to determine any preliminary point/question of law which substantially affects the rights of the parties, arising in the course of arbitration proceedings. The Model Law does not allow this level of intervention; and

(f) the ADR Act specifically confers power on the tribunal to award interest in arbitration proceedings.

5. Are there any impending plans to reform the arbitration laws in your country?

Presently, there are no proposed bills in the Ghanaian Parliament seeking to reform the existing arbitration laws in Ghana.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The Ghana Arbitration Centre (GAC) and the Ghana ADR Hub are the leading arbitral institutions in Ghana. The GAC Arbitration Rules, established in 1996, have not undergone any amendments to date. However, a proposed amendment is under review and is expected to be implemented in 2024. The Ghana ADR Hub, on the other hand, released its most recent arbitration rules in 2020, and there are no current plans for amendments.

The ADR Act established the Alternative Dispute Resolution Centre, with its arbitration rules outlined in the second schedule of the Act. However, the Centre has not yet been established.

7. Is there a specialist arbitration court in your country?

There are no specialist arbitration courts in Ghana. Generally, the High Court is the court of first instance for disputes arising from the application and enforcement of the provisions of the ADR Act.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

The formal validity requirement for an arbitration agreement is that it must be in writing. The ADR Act provides a comprehensive definition of "writing", which includes an exchange of letters, telex, fax, email or any other communication method that provides a record of an agreement to submit a dispute for arbitration resolution. Under the ADR

Act, if a party admits or does not deny the existence of an arbitration agreement in court pleadings, it fulfils the writing requirement.

The substantive validity requirements are usually determined by the law selected by the parties to govern the arbitration agreement. If no choice is made, the law of the seat of arbitration is likely to be applied.

9. Are arbitration clauses considered separable from the main contract?

Yes, arbitration clauses are considered separable from the main contract. Thus, the invalidity of the main contract does not automatically render the arbitration clause invalid.

10. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

There are no specific legislative rules that govern multi-party or multi-contract arbitration.

11. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

The ADR Act does not have provisions on third parties or non-signatories to an arbitration agreement. An arbitral tribunal's authority is based on the parties' consent to arbitrate and therefore, a party cannot be compelled to submit to arbitration without their consent. This was the position of the Supreme Court of Ghana in *Republic v High Court (Commercial Division), Accra; ex parte GHACEM (AJ Fanj Construction and Engineering Ltd – Interested Party)* [Civil Motion No J5/29/2018; 30 May 2018]. An heir or assign of a party to an arbitration agreement, however, may be bound by the terms of the agreement.

Further, under the Contracts Act, 196 (Act 25), a third-party beneficiary under a contract may enforce an arbitration agreement to enforce a benefit under the underlying agreement.

12. Are any types of disputes considered non-arbitrable? Has there been any jurisprudence in this regard in recent years?

Under the ADR Act, the following matters are non-arbitrable:

(a) matters relating to the national or public interest;
(b) matters relating to the environment;
(c) matters relating to the enforcement and interpretation of the 1992 Constitution of Ghana; or
(d) matters that by law cannot be settled by an alternative dispute resolution method.

The most contested of the four non-arbitrable issues listed under the ADR Act is the one

relating to the enforcement and interpretation of the Constitution. This issue particularly features in matters where Article 181(5) of the Ghanaian Constitution (the "Constitution") is raised by the Ghanaian state party or state entity. Under Article 181(5) of the Constitution, parliamentary approval is required for international business transactions that the state or government is a party to. The Supreme Court has held that a contract that was not submitted for parliamentary approval in breach of Article 181(5) of the Constitution is null.

In Attorney-General v Balkan Energy Ghana Limited [2012] 2 SCGLR 998 ("Balkan"), the Supreme Court held that a business transaction is international if it has a significant foreign element or the parties to the transaction (other than the Government) have a foreign nationality or reside in different countries or, in the case of companies, the place of their central management and control is outside Ghana. This requirement applies to all major international business transactions. In Balkan, the Government of Ghana ("GOG") entered into a Power Purchase Agreement ("PPA") with Balkan Energy Ghana Limited ("BEGL"), a company registered in Ghana but with majority of its shareholders being foreigners and the control of the company exercised from outside Ghana. The GOG terminated the PPA in breach of its terms, which led BEGL to institute arbitration proceedings against the GOG. Whilst the arbitration was ongoing, the GOG filed an action in the High Court seeking to restrain the tribunal from hearing the dispute because it involved the interpretation of a constitutional provision (i.e. Article 181(5)). The matter was eventually referred to the Supreme Court where it held that the PPA required parliamentary approval. The foreign arbitral tribunal however heard the arbitration and made an award in favour of BEGL.

The same issue arose in Bankswitch Ghana Limited v The Republic of Ghana (acting as the Government of Ghana) [PCA Case No. 2011-10; UNCITRAL Award dated 11th April 2014] ("Bankswitch"). Bankswitch Ghana Limited (a Ghanaian company but 60% Swiss-owned), signed a contract with GOG to provide an electronic platform to process and value imported goods. The GOG terminated the contract which led Bankswitch Ghana Limited to initiate arbitration proceedings. The arbitral tribunal relied on the principle of estoppel to dismiss the GOG's allegation that the contract was void because parliamentary approval was required but not sought. An action was subsequently filed at the Supreme Court, relying on the decision in Balkan, to argue that the underlying contract is void because it did not receive parliamentary approval. The action before the Supreme Court was subsequently discontinued by the parties to pursue an out-of-court settlement.

Felony criminal offences are also generally non-arbitrable.

13. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

In *Dutch African Trading Co BV v West African-Mills Co Ltd* [Suit No H1/46/2021; 20 January 2022], the High Court held that if parties do not specify the law which should apply to the arbitration agreement, the courts are likely to conclude that the law of the seat of arbitration would apply to the arbitration agreement.

14. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The initial step in identifying the law that governs the substance of a dispute is to look at the law expressly chosen by the parties in the contract or agreement. If the contract does not clearly specify the law to be applied to the substance of the dispute, the ADR Act empowers the arbitrator to decide which conflict of law rules should apply.

15. In your country, are there any restrictions in the appointment of arbitrators? Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?

The ADR Act does not impose any limitations on the parties' power to select and appoint an arbitrator and therefore parties can agree on the process for selecting and appointing arbitrators. A person of any nationality may be appointed as an arbitrator, unless otherwise determined by the parties. It is therefore entirely up to the parties to decide if any restrictions should apply in their arbitration agreement. For example, they might stipulate requirements for subject matter expertise in their arbitration agreements. The primary factor, under the law, is the arbitrator's independence and impartiality.

16. Are there any default requirements as to the selection of a tribunal?

The parties are at liberty to decide on the number of arbitrators and the procedure for selecting the arbitrators. The law requires that the arbitrators be an uneven number, and where parties fail to provide for the number of arbitrators, the default position is three arbitrators. Where the parties do not agree on the method for selecting the tribunal, the default requirement is that each party, in an arbitration which requires the appointment of three arbitrators, shall appoint one arbitrator and the two appointed arbitrators, shall appoint the third arbitrator who shall be the chairperson.

Both the Ghana ADR Hub Rules and the GAC Rules adopt the default provision of appointing a sole arbitrator if the parties' agreement does not provide for the number of arbitrators.

17. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

Yes. Ghanaian courts are also empowered by the ADR Act to grant orders in support of arbitration proceedings, such as:

(a) orders related to taking of evidence of witnesses;
(b) preservation of evidence;
(c) sale of any goods that are the subject of the arbitration;
(d) security for costs; and
(e) injunctions.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

No, the power to select arbitrators is vested in the parties or an institution or person conferred by the parties with power to do so. Where a party fails to appoint an arbitrator, or the two appointed arbitrators fail to appoint the third, the appointing authority selects the arbitrator.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Yes, the appointment of an arbitrator can be challenged by a party on two grounds. Firstly, if there are circumstances that raise reasonable doubts about the arbitrator's impartiality or independence. Secondly, if the arbitrator lacks the qualifications agreed upon by the parties.

The parties are free to agree on a procedure for challenging the appointment of an arbitrator. In the absence of such an agreement, the challenging party is required to submit a written statement to the tribunal or the appointing authority, outlining the reasons for the challenge. This statement must be submitted within 15 days of the notification of the tribunal's constitution or upon becoming aware of circumstances that justify the challenge.

If the other party concurs with the challenge, the appointment of the arbitrator is automatically terminated. However, if the challenged arbitrator does not step down and the other party does not agree to the challenge, the tribunal will decide on the challenge. This applies if the tribunal consists of more than one arbitrator.

In the case of a sole arbitrator, the decision depends on who appointed the arbitrator. If the appointing authority appointed the arbitrator, then the appointing authority will decide on the challenge. However, if a party appointed the arbitrator, then the challenging party can apply to the High Court to decide on the challenge.

20. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceeding by frequent court applications?

A court can only intervene in arbitration proceedings in limited circumstances, upon application by a party to a dispute. Apart from the circumstances where the court can grant orders in support of arbitration proceedings under section 39 of the ADR Act (enumerated at 17 above), a party may:

(a) appeal an arbitrator's ruling on jurisdiction;

(b) apply for the revocation of an arbitrator's authority (where the parties have not vested this power in the appointing authority) under section 18 of the ADR Act. An arbitrator's authority may be revoked by the High Court, upon application by a party, where a) there are doubts as to the arbitrator's impartiality;(b) the arbitrator does not possess the qualifications or experience required under the

arbitration agreement or agreed to by the parties; (c) the arbitrator is physically or mentally incapable or there is justifiable doubt as to the arbitrator's capability to conduct the proceedings; or(d)the arbitrator has refused or failed to conduct the arbitral proceedings properly or use reasonable despatch in conducting the proceedings or making an award. Such an application operates as a stay of arbitral proceedings.

(c) apply for the determination of a preliminary point of law under section 40 of the ADR Act. The arbitrator may continue the arbitral proceedings and make an award while the application to the Court is pending.

21. Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?

In *Adamus Resources Ltd v Prof Albert K Fiadjoe & 3 Others* [Suit No CM/MISC/0740/2021; 21 January 2022], the court had the opportunity to consider the grounds for the removal of an arbitrator, particularly on the basis of impartiality. The applicant argued that there were sufficient reasons to question the impartiality of all three arbitrators involved in an arbitration where the applicant was a respondent. The applicant claimed that despite being informed about a pending application at the High Court to revoke their authority, the arbitrators refused to stay proceedings. The applicant also contended that the arbitrators improperly exercised their discretion when they granted interim measures. Conversely, the respondents maintained that the arbitrators' decisions concerning the conduct of the arbitration did not justify their removal.

The High Court disagreed with the applicant and held that there was no sufficient reason to doubt the impartiality of the arbitrators. The High Court held that a difference in opinion on the applicable legal principles does not demonstrate that an arbitrator is impartial.

22. Has there been any recent decisions in your country concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

There are no recent decisions on an arbitrator's duty of disclosure.

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

When a tribunal becomes truncated, the parties may either choose to fill the vacancy by re-appointing another arbitrator or continue the arbitration proceedings without re-appointment. A vacancy automatically occurs if an arbitrator dies or resigns. However, if an arbitrator withdraws from office or fails to sit within a reasonable time, their authority is revoked, creating a vacancy on the arbitral tribunal.

When a vacancy arises due to death, resignation, or revocation of an arbitrator's authority, the parties can agree on three things:

1. Whether to appoint a new arbitrator to fill the vacancy.
2. The process of re-appointment, if they agree to re-appoint.
3. Whether to adopt the previous proceedings or start proceedings afresh.

If the parties cannot agree on the first two points, the appointing authority has the power to appoint a replacement arbitrator. If they cannot agree on the third point, the replacement arbitrator decides whether to adopt the previous proceedings.

24. Are arbitrators immune from liability under local laws?

Under the ADR Act, an arbitrator is typically immune from liability for any actions or omissions in connection with an arbitration, unless proven to have acted in bad faith or engaged in a deliberate wrongdoing. This immunity also applies to any employees or agents of the arbitrator.

25. Is the principle of competence-competence recognised in your country?

Yes. The arbitral tribunal has the power to determine its own jurisdiction, including matters concerning: (a) the existence, scope, or validity of the arbitration agreement; (b) the existence or validity of the main contract; and (c) whether the matters submitted to arbitration are in accordance with the arbitration agreement.

A party who intends to object to the arbitral tribunal's jurisdiction must do so before they take any step to contest the case on its merits. Should a jurisdictional challenge arise during the arbitration process, the party must present their objection immediately following the occurrence of the jurisdictional issue. Nonetheless, the arbitrators retain the right to consider a challenge to their jurisdiction, even if it is made after the deadline set by law.

26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Where a party commences litigation in apparent breach of an arbitration agreement, the court must stay proceedings and refer the dispute to arbitration, upon application by the other party to the dispute.

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

The rules of the relevant arbitral institution chosen by the parties governs the manner in which arbitration proceedings are commenced. Where the parties opt for *ad hoc* arbitral proceedings and select the UNCITRAL Rules, the provisions for the commencement of proceedings in those rules will apply. Otherwise, the parties are free to agree on the procedure for the commencement of arbitration proceedings in their arbitration agreement.

28. What is the limitation period applicable to actions to vacate or challenge an

international arbitration award rendered inside your jurisdiction?

If the arbitration is seated in Accra, Ghana, an application to set aside the award must be brought before the High Court within three months from the date on which the applicant received the award, unless the Court orders otherwise, for justifiable reasons.

29. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

A State or state entity does not have immunity from arbitration proceedings.

30. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

Where a party fails to participate in arbitration proceedings without providing a good reason, the tribunal may proceed with the arbitration in the absence of the party. There are no provisions under the ADR Act empowering the court to compel a party to participate in the arbitration.

31. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Although the ADR Act makes no specific provision for third party involvement, the Act gives prominence to the principle of party autonomy. This suggests that a third party may join arbitration proceedings, so long as the parties to the arbitration consent to it.

32. Can local courts order third parties to participate in arbitration proceedings in your country?

The Supreme Court in *Dutch African Trading Company v West African Mills Company* found that because arbitration is a consensual process, there can be no arbitration initiated by or against a person not party to the arbitration. In the Supreme Court case of *AJ Fanj Construction Limited v. West Africa Quarries Limited* [2022] GHASC 7 (2 March 2022), the court similarly upheld the principle that only parties to an arbitration agreement can participate in arbitral proceedings on a dispute arising from the agreement. Hence the local courts cannot order third parties to participate in arbitration proceedings.

33. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Under Section 38, an arbitrator may, at the request of a party, grant any interim relief the arbitrator considers necessary for the protection or preservation of property. The interim relief may be in the form of an interim award and the arbitrator may require the payment of cost for such a relief.

The courts may also grant interim measures pending the constitution of the tribunal.

Section 39 of the ADR Act identifies two circumstances where it would be possible for a court to grant interim measures even where the tribunal has not been constituted:

- in circumstances where the case is one of urgency, the Court may make orders that it considers necessary for the purpose of preserving evidence or assets, upon application of a party to the arbitral proceedings; and

- the Court shall act (give any orders necessary) if the arbitrator or other institution or person vested by the parties with power in that regard, is unable for the time being to act effectively.

34. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Where there is an arbitration agreement, a court or tribunal may grant an order preventing a party from continuing with or commencing litigation proceedings. Under the ADR Act, party may apply to the court to stay proceedings and refer the action or a part of the action to which the arbitration agreement relates, to arbitration.

In appropriate circumstances, the courts may grant anti-arbitration injunctions to prevent a party from initiating or conducting arbitration proceedings.

35. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

Parties in arbitration have the autonomy to decide on evidence-related procedures, meaning they can choose any set of evidential rules they prefer. This choice often reflects in the institutional arbitration rules selected for managing their arbitration. If the parties don't make such a choice, the ADR Act empowers the arbitrator to make decisions regarding evidence, and can decide whether to apply the stringent rules of evidence concerning the admissibility, relevance, and significance of evidence and required documents. Additionally, the arbitrator can subpoena witnesses at the request of a party.

The High Court is also empowered under the ADR Act to make orders in support of arbitration proceedings, including orders for the taking of evidence of witnesses and for the preservation of evidence, unless otherwise agreed by the parties.

36. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

There are no specific ethical codes that apply to arbitrators and counsel. However, a lawyer (who serves as an arbitrator or counsel in arbitration proceedings) must observe the professional standards set out in the Legal Profession Act, 190 (Act 32) and the Legal Profession (Professional Conduct and Etiquette) Rules, 2020 (LI 2423).

Further, the ADR Act mandates arbitrators to be fair and impartial to the parties and to

give each party the opportunity to present its case. Arbitrators must also conduct arbitration proceedings in a manner that they consider appropriate, avoid unnecessary delay and expenses and adopt measures that will expedite resolution of the dispute.

37. In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

Under the ADR Act, arbitrators are required to ensure the confidentiality of the arbitration proceedings, unless otherwise agreed by the parties or provided by law. Although the ADR Act is silent on the issue of confidentiality in relation to parties and institutions, the general consensus is that the confidentiality requirement equally apply to parties and centres or institutions of arbitration.

38. How are the costs of arbitration proceedings estimated and allocated?

Costs of arbitration (administrative costs) and arbitrator's fees are usually estimated/determined during the first arbitration management conference between the parties or their representatives and the arbitrator(s). The administrative costs and arbitrator's fees are shared equally between the parties, unless the parties agree otherwise or the arbitrator awards costs against a party in the arbitral award.

39. Can pre- and post-award interest be included on the principal claim and costs incurred?

The tribunal has the power to grant pre-award or post-award relief at simple or compound interest. This is contingent on the terms of the contract and the provisions of the applicable law.

40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

Unless the parties agree otherwise, an arbitration tribunal rendering an award must state the reasons for the award.

To enforce a domestic award, the successful party must apply to the High Court for leave to enforce the arbitral award as a judgment of the court. The court may refuse enforcement if the arbitrator did not have substantive jurisdiction to issue the award. Generally, the party is also required to produce the award or an authenticated copy, as well as the agreement (or duly authenticated copy of the agreement) pursuant to which the award was made. It will not be enforced where due process/natural justice requirements were not met or where setting aside proceedings are pending.

To enforce a foreign award, the successful party must similarly apply to the High Court for leave to enforce the arbitral award as a judgment of the court. The High Court shall enforce a foreign arbitral award if it is satisfied that:

(a) the award was made by a competent authority under the laws of the country in which the award was made;

(b) a reciprocal arrangement exists between Ghana and the country in which the award was issued. This will include instances where both countries are signatories to the New York Convention or any other international convention on arbitration ratified by Parliament; and

(c) the party that seeks to enforce the award has produced the original award or an authenticated copy of the award and the contract pursuant to which the award was made or an authenticated copy of it; and

(d) there is no appeal (setting aside or annulment proceedings) pending against the award in any court.

Where the applicant relies on a document which is not in the English Language, a certified true translation of that document in English must be produced to the Court.

The court will not enforce a foreign award if:

(a) the award has been annulled in the country in which it was made;

(b) the party against whom the award is invoked was not given sufficient notice to enable the party present the party's case;

(c) a party, lacking legal capacity, was not properly represented;

(d) the award does not deal with the issues submitted to arbitration; or

(e) the award contains a decision beyond the scope of the matters submitted for arbitration.

41. What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

A successful party may enforce an arbitral award by first applying to the High Court for leave to enforce the award. This motion must be on notice to the other party; it cannot be on an ex parte basis. It generally takes between 1 to 6 months for recognition and enforcement of an arbitral award in Ghana, but may be more depending on the nature of the challenge to the enforcement of the arbitration award. Enforcement proceedings may also take longer where the party against whom the award is being enforced appeals the decision of the High Court on the recognition and enforcement of the award.

There is no expedited procedure for the recognition and enforcement of an award.

42. To what extent is a foreign arbitration award enforceable?

Foreign arbitration awards are enforceable in Ghana, as set out under question 40 above.

43. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Both domestic and foreign arbitral awards are enforced by way of an application seeking leave of the High Court to enforce the award in the same manner as a judgment or order of the Court. The considerations for the court when deciding an application for leave to enforce domestic and foreign awards are similar, except that there is a requirement for reciprocity when dealing with a foreign award.

44. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

The ADR Act does not impose a limit on the available remedies in arbitration or enforceable by the courts. The tribunal may grant any relief within the terms of the arbitration agreement.

45. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Arbitration awards are final, and there is no right of appeal against them. However, a dissatisfied party has the right to apply to the High Court to set aside the award. A party to an arbitration may apply to the High Court to set aside an arbitral award on the grounds that:

(a) a party to the arbitration was under some disability or incapacity;
(b) the law applicable to the arbitration agreement is not valid;
(c) the applicant was not given notice of the appointment of the arbitrator or of the proceedings or was unable to present the applicant's case;
(d) the award deals with a dispute not within the scope of the arbitration agreement or outside the agreement except that the Court shall not set aside any part of the award that falls within the agreement;
(e) there has been failure to conform to the agreed procedure by the parties;
(f) the arbitrator has an interest in the subject matter of arbitration which the arbitrator failed to disclose.

The Court shall set aside an arbitral award where the subject-matter of the dispute is incapable of being settled by arbitration or the arbitral award was induced by fraud or corruption.

The applicant must apply to set aside the award within 3 months from the date of receipt of the award. The court may, however, extend this time limit if the applicant provides a justifiable reason.

46. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

There is no right of appeal against an arbitral award. Although the ADR Act provides parties with the right to apply to the High Court to set aside/ challenge the arbitral award, parties have the autonomy to waive this under their arbitration agreement.

47. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

The ADR Act does not deal directly with raising the defence of state immunity. However, the issue of state immunity is not one of the grounds pursuant to which the court may deny enforcement of awards.

Further, Section 27 of the ADR Act provides that a party will be deemed to have waived a right to object if they do not raise the objection. The provision specifically states that any party who takes part or continues to take part in an arbitral proceeding, knowing that (a)the arbitrator does not have jurisdiction; (b)the proceedings are improperly conducted; (c)the arbitration agreement or the ADR Act has not been complied with; or (d)there is an irregularity in respect of the arbitrator or proceedings, and who fails to object to the proceedings will be deemed to have waived the right to raise the objection. It is therefore unlikely that the issue of state immunity, raised at the enforcement stage, will be considered to deny enforcement.

There is also general acceptance that state immunity does not apply where the dispute arises from a commercial transaction.

48. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

The authority of an arbitral tribunal originates from the arbitration agreement between the parties. Thus, an arbitral award will not bind a third party who is not subject to the arbitration agreement, except where the third party derive their rights from one of the parties to the arbitration agreement, such as successors, agents, assigns, etc.

49. Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

There are no court decisions on third party funding in connection with arbitration proceedings.

50. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

The ADR Act does not provide for emergency arbitrator relief. However, the Ghana ADR Hub (2020) and GAC Rules make provision for emergency arbitrator relief.

51. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

The ADR Act gives parties the right to choose the Expedited Arbitration Proceedings Rules established by the yet-to-be operational Ghana ADR Centre. Even in the absence of the Centre's full operational status, parties may adopt its arbitration rules, including those for expedited proceedings. If the claim or counterclaim does not exceed US$100,000 or its cedi equivalent, expedited proceedings will be adopted. However, even where the claim or counterclaim in issue exceeds US$100,000 or its cedi equivalent, the parties may agree to the resolution of the issue by expedited arbitration procedure, regardless of the claim or subject matter.

The Ghana Arbitration Centre also provides for expedited arbitration, which aims to conclude within 24 hours, subject to extension, without imposing a financial limit on claims eligible for such proceedings.

52. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

While there is no concerted effort to actively promote diversity, an acknowledgment of diversity is nonetheless evident in the selection of arbitrators and counsel for arbitration disputes in Ghana.

53. Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

There are no recent decisions on setting aside an award which has been enforced in another jurisdiction.

54. Has there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

The High Court will set aside an arbitral award induced by corruption. The onus of proof lies with the party seeking to set aside the award. There are no recent judgments that provide a clear standard for demonstrating corruption. The courts will therefore be inclined to rely on standards formulated in cases from common law jurisdictions.

55. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

The Ghana Arbitration Centre and the Ghana ADR Hub do not have any specific rules governing the use of technology or virtual hearings. However, at the onset of the COVID-19 pandemic, both institutions put measures in place to incorporate the use of technology in arbitration proceedings and fully embraced virtual hearings.

56. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

The ADR Act does not have any provisions on a party's insolvency and its effect on enforcing an arbitration agreement. However, the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) contains provisions that appear to provide guidance on the impact that insolvency (administration and liquidation) has on arbitration proceedings, in particular sections 32, 33, 87, 93 of Act 1015.

Arbitration proceedings may be commenced or continued against a company that has gone into Administration, without leave of the Court. However, leave of the court is required to enforce an arbitral award against a company that has gone into Administration.

In relation to a company that is in liquidation, leave of the court is required before arbitration proceedings can be commenced or maintained against such a company. Leave of the court is however not required in liquidation if the proceedings is to enforce a secured credit arrangement.

57. Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

There are no developments concerning disputes related to climate change and human rights. Under the ADR Act, issues pertaining to the environment and the enforcement or interpretation of the constitution are not subject to arbitration. Under Ghanaian law, human rights issue generally fall under constitutional issues. The arbitrability of a climate change dispute or a human rights dispute is therefore doubtful.

58. Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?

There are no developments concerning disputes related to carbon trade and carbon credits as this is an evolving area. Moreover, matters related to carbon trade and carbon credits could potentially be classified as relating to the environment, which would make such disputes inarbitrable under Ghanaian law.

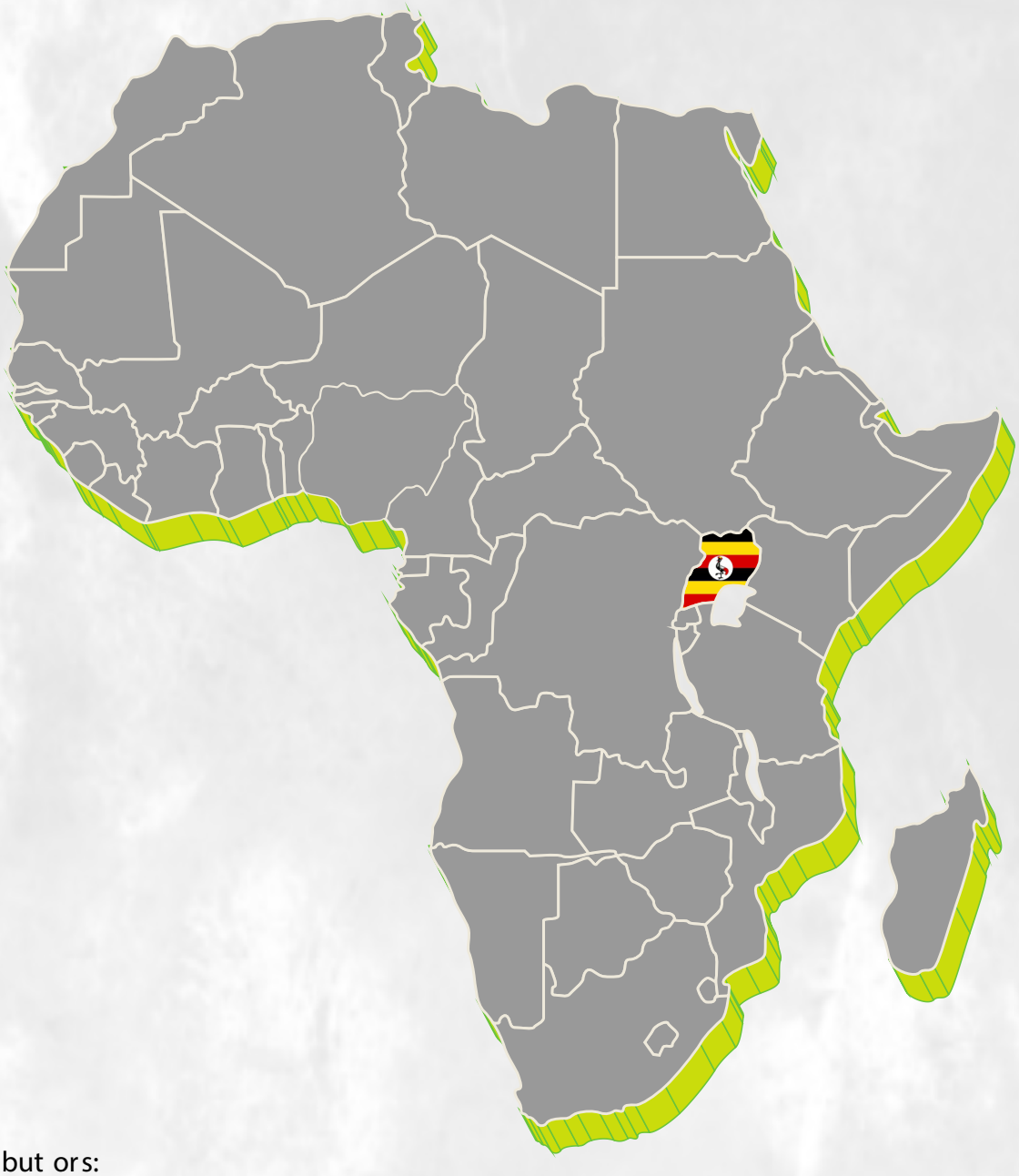
59. Is consolidation allowed under local laws?

The ADR Act empowers parties to permit an arbitrator to consolidate arbitral proceedings.

60. What is the regime for enforcement of ICSID awards in your country?

ICSID awards will be considered foreign arbitral awards in Ghana. The party would have to seek leave of the High Court and the requirements for the enforcement of a foreign arbitral award would apply.

Uganda



Contribut ors:



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1. **What legislation applies to arbitration in your country? Are there any mandatory laws? What is their effect?**

Arbitration in Uganda is governed by the Arbitration and Conciliation Act Chapter 4 Laws of Uganda ("**ACA**") which applies to both domestic and international arbitration. It is modelled on the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Rules of Arbitration.

Parts III and IV of the ACA incorporate the application of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**") and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (**ICSID**).

In general terms, Ugandan courts respect the mandatory requirement for arbitration to be strictly adhered to where parties provide for it in their agreements. Secondly, Ugandan Courts have also been receptive in recognizing and enforcing international awards pursuant to the Arbitration and Conciliation Act (ACA) which is the principal legislation governing enforcement of arbitral award.

2. **Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?**

Yes – Uganda is a signatory to the New York Convention since 12 February 1992. Accordingly, foreign arbitral awards are enforceable in Uganda under the New York Convention regime by virtue of sections 39, 41, 42 and 43 of the ACA. No reservation was made. Uganda's ratification of the New York Convention was attended by a declaration to the effect that "the Republic of Uganda will only apply the Convention to recognition and enforcement of awards made in the territory of another Contracting State."

3. **What other arbitration-related treaties and conventions is your country a party to?**

Uganda is a Contracting Party and signatory to *ICSID, which is* incorporated in the ACA together with the New York Convention. Uganda is also a party to the Treaty for the Establishment of the East African Community ("**EAC Treaty**") that establishes the East African Court of Justice (EACJ). The EAC Treaty incorporates an arbitration framework pursuant to which the EACJ has arbitral jurisdiction to hear and determine disputes arising from an arbitration clause contained in a commercial agreement in which the parties have conferred jurisdiction on the EACJ. The arbitral proceedings are usually governed by the Arbitration Rules of the EACJ. Further, Uganda is also a party to the Treaty for Establishment of Common Market for Eastern and Southern Africa ("**COMESA Treaty**") that established the Court of Justice of the Common Market for Eastern and Southern Africa herein known as "COMESA Court of Justice" created under Article 7 of the COMESA Treaty. Article 28 of the COMESA Treaty incorporates an arbitration framework pursuant to which the COMESA Court of Justice has arbitral jurisdiction to hear and determine disputes arising from an arbitration clause contained in contracts. However, the parties must have conferred jurisdiction on the COMESA Court of Justice to which the Common Market or any of its institutions is a party or jurisdiction must arise from a dispute between the Member States regarding COMESA Treaty if the dispute is

submitted to it under a special agreement between the Member States concerned.

4. **Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?**

The ACA is modelled on the UNCITRAL Model Law and the UNCITRAL Rules of Arbitration without significant difference. The decision from the Commercial Court of Uganda in *Miscellaneous Application No. 665 of 2020; Dr. Alfred Otieno Odhiambo -versus- Meduprof-S BV* endorsed the application of the UNCITRAL Model Law as to the intent of arbitration under the ACA. The decision also cited with approval the explanatory Note by the UNCITRAL Secretariat on the 1985 Model Law on International Commercial Arbitration as amended in 2006 annexed as part 2 to the amended model law. Courts in Uganda have been consistent in emphasizing the finality of arbitral awards.

Under the Act, in addition to the grounds set out in the UNCITRAL Model Law, an award may be set aside by court if it was procured by corruption, fraud, undue influence, or there was proof of partiality or corruption in one or more of the arbitrators, or if the arbitral award is not in accordance with the ACA. The parties have one month to seek to set aside an arbitral award instead of three months under the UNCITRAL Model Law.

5. **Are there any impending plans to reform the arbitration laws in your country?**

There are plans to amend the ACA. The Uganda Law Reform Commission has already provided a review study dated June 2021. The key recommendations include a comprehensive definition and form of an arbitration agreement, a provision on immunity of arbitrators and the power of an arbitral tribunal to grant and enforce interim and preliminary measures. The proposals are not yet tabled in Parliament of Uganda for consideration.

6. **What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?**

The Centre for Arbitration and Dispute Resolution (CADER) was established under the ACA as the main national arbitration institution for both domestic and international arbitration. CADER has been in existence since the enactment of the ACA in 2000. It applies Arbitration Rules, which appear as First Schedule to the ACA. CADER was set up with the support of the government, and it was expected that funding from the government would continue. However, over the years, the institution has suffered from chronic underfunding. There is legislative proposal to make CADER a department under the Ministry of Justice instead of being an independent entity under the ACA.

In 2018, an independent non-governmental arbitration institution- the International Centre for Arbitration and Mediation in Kampala (ICAMEK) was established under the joint effort of Uganda Bankers Association and Uganda Law Society. In 2020, the Minister of Justice and Constitutional Affairs formally established ICAMEK as an appointing authority under Section 2(1)(a) of the ACA. The Minister issued an official notice of this appointment under the Arbitration and Conciliation (Appointment of

International Centre for Arbitration and Mediation in Kampala as an Appointing Authority) Notice 2020, Legal Notice No. 4 of 2020.

ICAMEK developed and applies the International Centre for Arbitration and Mediation in Kampala (Arbitration) Rules 2018. No amendments to the Rules are being considered currently. Several domestic and international parties continue to make references to arbitration under the ICAMEK Rules of Arbitration. ICAMEK is making positive impact towards the general understanding and use of international arbitration as a dispute settlement mechanism.

Whilst several arbitration claims filed with ICAMEK have significantly grown in the last couple of years, most of the arbitrations in Uganda are still, conducted outside the auspices of these arbitration institutions on an *ad hoc* basis with a seat in Uganda.

7. **Is there a specialist arbitration court in your country?**

There is no specialist arbitration court in Uganda.However, section 2(1)(f) of the ACA designates the High Court as the court empowered to hear disputes related to international arbitrations and/or domestic arbitrations. In practice, Rule 8 of the Commercial Court guidelines of 2005 provides for the divisional jurisdiction of the High Court (Commercial Division) to determine commercial questions arising out of arbitration. Commercial Court Division handles all arbitration related disputes.

8. **What are the validity requirements for an arbitration agreement under the laws of your country?**

Under Section 3 of the ACA, an arbitration agreement is required to be in writing regardless of whether it is contained in a parent contract as an arbitration clause or a submission agreement separate from the main contract from which a dispute has arisen. This is elaborated to mean that it must be contained either in a document signed by the parties or an exchange of letters, a telex, a telegram or other means of telecommunications providing a record of the agreement. In determining validity and enforceability of an arbitration agreement, the courts will look at both the formal and substantive validity of the arbitration agreement based on the test laid out in Section 5(1) of the ACA.

The law further provides that an arbitration agreement should be signed by the parties regardless of whether it is contained in a parent contract as an arbitration clause or a submission agreement.

A valid arbitration agreement will be enforced provided it is not null and void, inoperative or incapable of being performed. In the case of *HCMA No. 924 of 2013; British American Tobacco Uganda Ltd -vs- Lira Tobacco Stores*, the Court held that its only consideration in deter mining a reference to arbitration is whether the arbitration agreement is null and void, inoperative or incapable of being performed, or whether there is a dispute to be referred to arbitration.

9. **Are arbitration clauses considered separable from the main contract?**

Yes. Under Section 16(1) of the ACA, arbitration clauses forming part of a contract are required to be treated as a separate agreement independent of other terms of the contract. This provision codifies the doctrine of separability where an arbitration clause may be considered valid even if the rest of the contract in which it is contained is invalid. Section 16(1) of the ACA not only recognises that an arbitration clause is independent of the contract, but it also provides that an arbitration clause is not invalidated by a contract that is null and void.

10. **Is there anything particular to note in your jurisdiction with regard to multi-party or multi- contract arbitration?**

There are no specific procedures set out under the ACA for multi-party or multi-contract arbitration. The CADER Arbitration Rules, 1998 are also silent on these aspects.

The ICAMEK (Arbitration) Rules, 2018 however set out a procedure for multiparty appointment of arbitrators. Rule 18 provides for joint nomination of the arbitrators for confirmation by ICAMEK within twenty-eight (28) days of filing of the Request for Arbitration or any other period agreed upon by the parties failing which ICAMEK is empowered to appoint the arbitrators. Where the dispute requires three (3) arbitrators, ICAMEK is also required to designate one of the arbitrators it has appointed as the presiding arbitrator. Where the dispute is to be referred to a sole arbitrator, ICAMEK is empowered to appoint the arbitrator if the parties fail to agree on an arbitrator within twenty-eight (28) days of the filing of the Request for Arbitration.

11. **In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?**

There is no specific provision in the ACA which provides governing circumstances in which an arbitral tribunal may assume jurisdiction over individuals or entities that are neither party to an arbitration agreement nor signatories to the contract containing the arbitration agreement.

In *High Court Civil Suit No. 0739 of 2021; AC Yafeng Construction Company Limited versus The Living Word Assembly Limited and 2 Others,* High Court took the position that unless the non-signatory's intention to be bound by the arbitration agreement can be established, such non-signatory cannot be referred to arbitration. This was premised on the fact that given the fundamental principle that arbitration process is a consensual one, denoting that the scope of an arbitration agreement be limited to the parties who entered into it and those claiming under or through them. The Court noted, however, that an arbitration clause may be assigned, taken over, transferred, or simply become binding as a third party involves itself deeply enough in the contractual relationship, including assignment, novation, and statutory provisions or where there is a clear intention of the parties to bind both, the signatory as well as the non-signatory parties. To illustrate that, the Court noted that in contracts of guarantee, the guarantor “acquires” the arbitration clause only if he or she assumes joint liability with the debtor.

12. **Are any types of disputes considered non-arbitrable? Has there been any jurisprudence in this regard in recent years?**

A dispute is considered non-arbitrable in Uganda where it offends the public policy of Uganda or where a particular law provides a specific mechanism for dispute resolution. Section 34(2)(b) of the ACA empowers the court to set aside arbitral awards where the subject matter is not capable of settlement by arbitration under the law of Uganda or where the award conflicts with the public policy of Uganda.

High Court of Uganda in the case of *Arbitration Cause No. 04 of 2022 - Smile Communications Uganda Limited -versus- ATC Uganda Limited* noted that a claim may be considered non-arbitrable if it falls outside the scope of the parties' arbitration agreement or if no arbitration agreement as such was ever formed or, if formed, is nevertheless invalid under the applicable law. According to the above decision, a matter is considered to be non-arbitrable if mandatory laws provide that certain issues are to be decided only by courts. Common examples of non-arbitrable matters include certain categories of disputes of a criminal nature, disputes relating to rights and liabilities which give rise to or arise out of criminal offences; matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; guardianship matters; insolvency and winding up matters; testamentary matters (grant of probate, letters of administration and succession certificate); and eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction. In the same vein, matters relating to special rights or liabilities which are (i) created under a statute; or (ii) the determination of which lies within the exclusive jurisdiction of specific courts or tribunals (other than regular civil courts), are not arbitrable. The Court also recognized a second category of non-arbitrable disputes, namely, actions for enforcement of rights *in rem*, which are unsuited for arbitration and can only be adjudicated by courts or public tribunals. In the case of *Civil Appeal 14 of 2011; Heritage Oil & Gas Ltd -versus- Uganda Revenue Authority*, the Court held that the reference of a tax dispute to international arbitration would be improper. In the case of *Civil Appeal No. 12 of 2004; Rabbo Enterprises (U) Ltd -versus- Uganda Revenue Authority*, the Supreme Court confirmed the supremacy of the Tax Appeals Tribunal as the forum with original jurisdiction to hear tax disputes, in line with Article 152(3) of the Constitution of Uganda.

Generally, in practice, non-arbitrable matters include tax disputes, criminal matters, land disputes regarding fraud, family and divorce matters, constitutional disputes and matters where a statute specifically provides for a dispute resolution mechanism other than arbitration. Generally, in practice, non-arbitrable matters include tax disputes, criminal matters, land disputes regarding fraud, family and divorce matters, constitutional disputes and matters where a statute specifically provides for a dispute resolution mechanism other than arbitration.

13. **Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?**

Yes. In *High Court Miscellaneous Application No. 0021 of 2021; Lakeside Dairy Limited versus International Centre for Arbitration & Mediation Kampala and Midland Emporium Ltd*, the Court confirmed that when determining the law governing the arbitration agreement, a court will look firstly to the parties' agreement as to the choice of law governing the arbitration agreement, and in the absence of an express agreement on the choice of law, the prevailing position is that the court will resort to the system of law most closely connected to the arbitration agreement.

14. **How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?**

Under s. 28 of the ACA, the arbitral tribunalcan decide the dispute in accordance with the rules of law chosen by the parties as applicable to the substance of the dispute, however, if there is no choice of the law by the parties, the arbitral tribunal is enjoined to apply the rules of law it considers to be appropriate given all the circumstances of the dispute.

Further, in the absence of such express agreement, the courts will resort to the system of law most closely connected to the agreement of the parties. This will include where the contract was executed or performed, or where the parties are domiciled.

15. **In your country, are there any restrictions in the appointment of arbitrators? Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?**

The appointment of Arbitrators is generally left to the agreement of parties, upholding the principle of party autonomy. The arbitral law limits itself to guidance on how the parties can exercise their autonomy. The law envisages that parties may agree to appoint any number or arbitrators and where this is not done then there will be a sole arbitrator.

ACA further requires that an appointing authority has due regard to the qualifications required of an arbitrator as per the Agreement of the parties and have regard to all considerations to achieve appointment of an impartial and independent arbitrator. Section 11(1) of ACA expressly prohibits the preclusion of any person from being appointed as an arbitrator by reason of nationality except where the parties agree to that.

On the other hand, Rule 20 of the ICAMEK Rules specifically highlights that a sole arbitrator shall not be of the same nationality as any of the parties, where the parties are of different nationalities except with the specific written consent of the parties. The rules also widen the scope to include corporate bodies and a sole arbitrator cannot be of the same nationality as majority shareholders in a Company.

16. **Are there any default requirements as to the selection of a tribunal?**

ACA empowers the parties to an arbitration agreement to agree on the number of arbitrators and the selection. However, where parties fail to agree on the choice or selection of an arbitrator; -

a) section 10 of the ACA provides for the appointment of a sole arbitrator by the appointing authority.

b) where the appointing authority fails to discharge its duty to appoint, the courts will normally intervene to aid the process based on an application by one of the parties. This function of the court is pursuant to its mandate to support and facilitate the arbitration. Similarly, in Lakeside Dairy Limited v ICAMEK and another, the Court observed that, pursuant to its mandate to facilitate arbitration Court can intervene to appoint arbitrators for the parties where there is an impasse. Relatedly, court's power to intervene in the selection of arbitrators may be limited by the agreement of the parties as to any qualifications of an arbitrator and to such other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

c) where there is a challenge by a party to an arbitrator, the appointing authority will determine the challenge in the absence of a challenge procedure agreed by the parties; and

d) where there is a failure or impossibility of a selected arbitrator to act in the discharge of their mandate to act as an arbitrator, Section 14 of the ACA mandates the appointing authority to terminate the appointment.

17. **Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?**

The general rule is that Court must not intervene during arbitration except as permitted under the ACA (section 9). The limited instances in which the court can intervene include, issues of jurisdiction to the extent permissible under the ACA. For example, the Court intervened in a jurisdiction challenge in the case of *Miscellaneous Cause No. 44 of 2018; MTN Uganda Limited -versus- VAS Garage Limited*. The Court held that the tribunal lacked jurisdiction because the arbitration clause was inoperative and incapable of being performed, the dispute having been already determined in another forum. Court can also intervene to issue interim measures of protection. Section 6 of the ACA expansively empowers the court to grant interim measures of protection provided there is a pending or active arbitral proceeding. The mandate of the court under this section is not limited to the seat of arbitration.

Under Section 27 of the Act, the arbitral tribunal, or a party with the approval of the arbitral tribunal, may also request court's assistance in taking evidence, and the Court may execute the request within its competence and according to its rules on taking evidence.

18. **Can the local courts intervene in the selection of arbitrators? If so, how?**

A court in Uganda may intervene in the selection of arbitrators where the appointing authority fails to discharge its duty to appoint. This function of the court is in line with its mandate to facilitate arbitration.

However, a court's power to intervene in the selection of arbitrators may be limited by the agreement of the parties as to any qualifications of an arbitrator and to such other considerations as are likely to secure the appointment of an independent and impartial arbitrator. In *East African Development Bank -versus- Ziwa Horticultural Exporters Ltd High Court Misc Cause No. 1048 of 2000*, although the Court recognised its limited jurisdiction under Section 10 of the ACA (now Section 9, ACA), it observed that there may be circumstances in which the appointing authority (CADER in this case) may not be able to perform its functions under the ACA.

Most recently, in the case of *Lakeside Dairy Ltd -versus- International Centre for Arbitration & Mediation Kampala and Midland Emporium Ltd MA No. 0021 of 2021* the Court observed that, in meeting its obligation to give effect to parties' intention to arbitrate disputes, it can step in to appoint arbitrators for the parties where there is a deadlock.

19. **Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?**

Section 12 of ACA permits parties to challenge the appointment of the arbitrator only if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality and independence or if the arbitrator does not possess qualifications agreed upon by the parties. There is no clear definition in the ACA of independence, impartiality or disclosure of potential conflict of interest, apart from the reference to circumstances likely to give rise to justifiable doubts as to independence or impartiality. However, existing institutional rules such as the CADER (Arbitration) Rules require arbitrators to provide a statement of impartiality. The arbitrator is required to state that they are able to serve as an independent arbitrator and that they have no past or present direct relationship with any parties or their counsel, whether financial, professional or any other kind of relationship in relation to which disclosure would be called for. The arbitrator is also required to declare in writing their impartiality as to all the parties.

Relatedly, the ICAMEK (Arbitration) Rules 2018 require an arbitrator to sign a statement of acceptance, availability, impartiality and independence, in addition to disclosing to the Registrar any facts or circumstances known to them that may give rise to justifiable doubts as to their impartiality or independence. Furthermore, an arbitrator's mandate may be terminated under Section 14(1)(a) of the ACA by reason of inability to perform the functions of their office.

The ACA (under section 13) allows the parties to agree on the procedure for challenging the appointment of an arbitrator. However, if such agreed is not reached, a party must, within 15 days of becoming aware of the composition of the arbitral tribunal or after

becoming aware of any circumstances that form a basis for challenging the appointment of an arbitrator, send a written statement of the reasons to the appointing authority. Unless the arbitrator who is being challenged withdraws from the office or the other party agrees to the challenge, the appointing authority is by law required to decide on the challenge within 30 days from the receipt of the statement.

20. **What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?**

The ACA limits the intervention of court to circumstances that are expressly provided for by the law. Commercial Court tends to quickly dispose of applications arising out of arbitral proceedings.

21. **Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?**

Yes, there has been a recent decision of the High court on the arbitrator's duty to disclose. In the case of *Smile Communications Uganda Limited -versus- ATC Uganda Limited* **(supra)** court held that,

"The most rudimentary requirement of arbitration proceedings is the independence, neutrality and impartiality of the arbitrator(s) appointed by the parties. The right to an impartial and independent judge also exists in arbitration. As arbitration requires adjudication on rights of the parties involved, principles of natural justice play a critical role in avoiding any potential risk of miscarriage of justice. "Nemo iudex in causa sua," meaning that "no person should be a judge in his own cause," is a cardinal principle of natural justice, regardless of whether the proceedings are judicial or quasi-judicial in nature. This principle intends to avoid any reasonable apprehension of bias that may arise during any arbitral process."

The Institutional rules of the ICAMEK developed in 2018 require an arbitrator to sign a statement of acceptance, availability, impartiality, and independence, in addition to disclosing to the Registrar any facts or circumstances known to them that may give rise to justifiable doubts as to their impartiality or independence. The arbitrator is also required to declare in writing their impartiality as to all the parties.

22. **Has there been any recent decisions in your country disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?**

Yes, recently, the Commercial Court underscored the arbitrator's duty to disclose. In the case of *Smile Communications Uganda Limited -versus- ATC Uganda Limited***,** court held that an arbitrator is under a continuing duty to disclose any circumstances which, from the perspective of a reasonable third person, are likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator is under a duty to disclose all circumstances which may reasonably call into question his or her independence in the mind of the parties and should particularly inform the parties of any relationship which is not common knowledge, and which could be reasonably expected to have an impact on his judgment in the parties' eyes.

Court further stated that an arbitrator must, as a general rule, disclose three sets of circumstances: (i) a prior involvement in the dispute in some other capacity; (ii) any direct or indirect financial interest in the outcome of the dispute; and (ii) any past or present relationship with a party, an affiliate of a party, counsel to a party, another arbitrator, a witness or expert. Anticipated future relationships during the course of the proceedings should also be disclosed.

23. **What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?**

A "truncated tribunal" is one that consists of three or more arbitrators, always an odd number, in which one of the arbitrators refuses to participate in all or part of the proceedings. In such circumstances, section 15 of the ACA provides that a substitute arbitrator shall be appointed in accordance with the procedure that was applicable to the appointment of the arbitrator being replaced.

Where a sole arbitrator or the presiding arbitrator is replaced, any hearing previously held shall be held afresh. However, where an arbitrator is being replaced other than a sole arbitrator or a presiding arbitrator, any hearings previously held may be held afresh at the discretion of the arbitral tribunal. Similarly, an order or ruling made before the replacement of an arbitrator is not invalidated solely because there has been a change in the composition of the tribunal (section 15(3) ACA) unless agreed by the parties.

24. **Are arbitrators immune from liability under local laws?**

The ACA does not expressly provide for immunity of arbitrators, and this has overtime been highlighted as an area for reform.

25. **Is the principle of competence-competence recognized in your country?**

The principle of competence-competence is recognized in Uganda and has also been codified by section 16 of the ACA. The provision empowers an arbitral tribunal to rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. This is also provided for in Rule 36 of the ICAMEK Rules which also empowers an arbitrator to give such ruling on arbitration either as a preliminary issue or at the end of the substantive proceedings. The courts will normally intervene in issues of jurisdiction to the extent permissible under the ACA. The courts do not review negative rulings on jurisdiction by arbitral tribunals.

The import of this principle has been highlighted in the recent decision in the case of *Arbitration Cause No. 04 of 2022 - Smile Communications Uganda Limited versus ATC Uganda Limited* – the Commercial Division of the High Court noted that the basis of competence-competence is that a tribunal is not bound by the parties' legal positions on jurisdiction. The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.

26. **What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?**

The approach of court is to enforce Section 5 of ACA. More recent developments show the strict application by the courts of the ACA to matters concerning arbitration in a manner that upholds its central theme of facilitating rather than interfering in matters of arbitration. A stay of legal proceedings is governed by Section 5 of the ACA. A Judge or Magistrate before whom proceedings are being brought in a matter which is the subject of an arbitration agreement.

The Court's approach to exercise of discretion was discussed in *British American Tobacco Uganda Limited -versus- Lira Tobacco Stores HCMA No. 924 of 2013*. In that case, the judge had to determine an application brought under Section 5 of the ACA for a reference of the dispute brought through litigation for resolution by arbitration in accordance with the parties' agreement. Court held that it had no discretionary powers under Section 5(1) of the ACA not to refer the dispute to arbitration.

In the case of *SCCA No. 18 of 20002; Fulgensius Mungereza -versus- Price Waterhouse Coopers (PwC) Africa*, the appellant pleaded inability to go to arbitration in London on account of poverty. The Supreme Court held that poverty was not a sufficient ground for exercising any discretion to refuse to order a stay of litigation. According to the Court, the appellant's inability to afford arbitration did not render the arbitration agreement incapable of being performed.

Further, an application for stay in favour of a reference to arbitration must be in writing, the Supreme Court in *SCCA No. 49 of 1995; Shell (U) -versus- AGIP (U) Limited,* summarised the requirements for the court's exercise of its discretion under Section 5 of the ACA as follows:

a) the presence of an arbitration agreement that is valid, operative and capable of being performed;

b) the presence of pending stay of legal proceedings in Court commenced by a party who is privy to the arbitration agreement against another party to the agreement;

c) the stay of legal proceedings concerns a dispute so agreed to be referred;

d) the application for a stay of legal proceedings is filed after appearance by the applying party, and before that party has delivered any pleadings or taken any other step in the proceedings; and

e) the party applying for a stay was and is ready and willing to do all the things necessary for the proper conduct of the arbitration.

In light of the above and on the authority of the High Court case of *Miscellaneous*

Application No. 310 of 2012; Daniel Delestre & others -versus- Hits Telecom Uganda Limited, Courts have consistently held that where proceedings are commenced in Court in breach of the arbitration agreement, the only order that could be made on application of either party is that the dispute shall be resolved through arbitration and not the process of the Court. Where the Court orders the dispute embodied in the proceedings before the Court to be referred to arbitration, the pending suit lapses and the Court file is closed. The progressive approach taken by the Ugandan courts has been towards staying legal proceedings in favour of arbitration, which is consistent with the UNCITRAL Model Law.

27. **How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?**

Under Section 23 of the ACA, arbitral proceedings are commenced by a statement of claim. The table below sets out the notable limitation periods of which parties to an arbitration ought to be aware:

Activity	Details
Appointment of Arbitrators	Parties have 30 days to appoint an arbitrator in case of three arbitrators. If a party fails to appoint an arbitrator within 30 days, the appointing authority steps in. The appointing authority must act within 30 days to appoint the arbitrator.
Grounds for Challenge	A party must submit a written statement of reasons for the challenge within 15 days of becoming aware of the relevant circumstances. The appointing authority decides on the challenge within 30 days of receiving the statement.
Correction or interpretation by the arbitral tribunal	Within 14 days after receipt of the arbitral award
Arbitral tribunal's correction on its own initiative	Within 30 days after the date of the arbitral award
Request for additional arbitral award	Within 30 days after receipt of the arbitral award

Application for setting aside	Within 1 month after receiving the arbitral award or disposal of a request
Extension of time for correction, interpretation, or additional award	Up to 14 days, if necessary
A party objecting to a filed or registered award	Ninety days of notice, apply to set aside the award and lodge objections.
Party served with objections	Within fourteen days, lodge cross-objections served on the original objector.

28. **What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?**

Under Section 34(3) of the ACA, it is one month

29. **In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?**

In case the head commercial agreement did not embed a waiver of sovereign immunity clause then state immunity will be invoked.

Recently, Uganda passed the Public Finance Management (Amendment of Schedule 4) Instrument 2023 which has the effect of precluding the pledging of certain assets as security for government loans. In case of an arbitration that has a connection with such precluded assets, then state immunity can be invoked.

30. **What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?**

A respondent cannot be compelled to participate in an arbitration by the local courts. Under Section 25(b) of the ACA the arbitral tribunal is empowered to continue the proceedings without treating the failure by itself as an admission of the claimant's allegations.

31. **Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?**

The ACA is silent on the circumstances in which an arbitral tribunal may assume jurisdiction over parties that are neither party to an arbitration agreement nor

signatories to the contract containing the arbitration agreement. The question is normally resolved by construing the arbitration agreement or by reference to the applicable arbitration rules governing the arbi- tration. For instance, the only situation envisage is under Rule 10 of the ICAMEK Rules relating to Joinder of Additional Parties. .

The High Court in *Miscellaneous Application No. 647 of 2018; USAFI Market -versus- Kampala Capital City Authority* held that the arbitral tribunal faced with a request for a third party to join or intervene in an arbitration will look first to the arbitration agreement to see what, if anything, the contracting parties contemplated with respect to third parties.

32. **Can local courts order third parties to participate in arbitration proceedings in your country?**

Under Section 9 of the ACA, the local court's intervention is facilitative and can only interfere in as far as the ACA permits. Other than that, the courts have only played a facilitative role.

33. **What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?**

Section 6 of the ACA permits a party to an arbitration agreement to apply to the court, before or during arbitral proceedings, for an interim measure of protection, and gives the court discretion to grant that measure. Additionally, the ACA empowers an arbitral tribunal to grant interim reliefs unless the parties agree otherwise. Such interim relief is binding on the parties to the arbitration. These may include injunction orders, preservations orders and freezing orders.

34. **Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?**

There are no reported cases of anti-suit and/or anti-arbitration injunctions in our jurisdiction.

35. **Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?**

Under Section 27 of the ACA, arbitrators may, with court assistance, order the production of documents, or require the attendance of witnesses (either before or at the hearing). However, the Act or the Rules are not elaborate on the evidentiary matters in arbitration. Court's assistance, however, is limited by Section 9 of the ACA which permits court's intervention in as far as the ACA permits.

36. **What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?**

While Uganda does not have stand alone ethical codes and other professional

standards applicable to to counsel and arbitrators conducting arbitral proceedings proceedings, in some cases, parties apply, International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration, IBA Guidelines on Party Representation in International Arbitration and IBA Rules of Ethics for International Arbitrators. These have been widely accepted and applied in Ugandan seated arbitrations.

37. **In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?**

The ACA does not expressly deal with the question of confidentiality. However, as a matter of practice, arbitral proceedings or their constituent parts are treated as confidential in Uganda seated arbitrations. Parties usually agree to confidentiality although the arbitral proceedings may be disclosed in subsequent proceedings where disclosure is necessary for purposes of implementation and enforcement. Recently, institutional rules have created the duty and obligation of confidentiality. For instance, Rule 51 of the ICAMEK Rules creates and obligation of confidentiality and extends it to the parties, arbitrator, and Centre.

38. **How are the costs of arbitration proceedings estimated and allocated?**

Unless otherwise agreed, under section 31 (9)(a) of the ACA, the arbitral tribunal has the powers to determine and apportion the costs and expenses of an arbitration (e.g. the legal and other expenses of the parties related to the arbitration) in the award or any additional award. In determining costs, the tribunal usually follows the prevailing principle that costs follow the event unless there are reasons for a tribunal to exercise its discretion to the contrary. These costs are recoverable by a successful party.

Subject to the agreement of the parties and in the absence of an award or additional award determining and apportioning the costs, under Section 31(9) of the ACA, each party is responsible for the legal and other expenses of that party and for an equal share of the fees and expenses of the arbitral tribunal and any other expenses relating to the arbitration.

39. **Can pre- and post-award interest be included on the principal claim and costs incurred?**

The ACA is silent on pre and post award interest, however, once claimed and proved, the tribunal usually grants its. The basis for an award of interest is contractual and would normally be based on the principle that a party has been prevented from using their money and the other party has had the use of the money and obtained a benefit.

40. **What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?**

Section 31 of the ACA requires that the award must be in writing and signed by the

arbitral tribunal. Subject to the agreement of the parties, the tribunal is required to render a reasoned award.

The courts in Uganda will normally recognise and enforce an arbitral award except for where the limitations under Section 34(2) and (3) of the ACA apply. Under Section 35 of the ACA an arbitral award will be recognised as binding and upon application in writing to the court enjoined to enforced it upon receiving the duly authenticated original arbitral award or a duly certified copy of it; and the original arbitration agreement or a duly certified copy of it. Relatedly, if the arbitral award or arbitration agreement is not made in the English language, the party is supposed to furnish a duly certified translation of it into the English language.

41. **What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?**

Enforcement procedure is subject to expiry of the time for making an application to set aside the award under Section 34 of the ACA or the refusal of such an application. The Application for setting aside has to be made within 30 days from the date on which the party making that application had received the arbitral award. If a party has made an application for correction and interpretation or for an additional award under Section 33 of the ACA, the 30 days within which to apply to have the arbitral award set aside starts to run from the date a request under Section 33 of the ACA has been disposed of.

The party is supposed to file a motion inviting the court to recognize and enforce award. This application is heard inter parties and there is not expedited procedure in our jurisdiction. Rule 4 of the ACA provides that any party fil- ing an award shall serve notice of the filing or registering of an award on the other parties and shall forthwith certify the date and manner of service of notice in writing to the registrar of the High Court.

42. **To what extent is a foreign arbitration award enforceable?**

Foreign awards are enforceable in Uganda in the same manner as domestic awards. The ACA incorporates the 1958 New York Convention and the ICSID Convention under parts III and IV of the ACAA respectively. ACA provides for the enforcement of foreign awards by application to the High Court. Ordinarily means of execution of court decree apply.

43. **Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?**

Section 47(1) of the ACA stipulates that an ICSID Convention award shall be of the same force and effect for the purposes of enforcement as if it had been a judgment of the court. A New York Convention award is treated as binding for all purposes on the parties between whom it was made and it is recognised and enforced pursuant to Section 35 of the ACA, whereby it is deemed to be a decree of the court of a foreign seat of arbitration.

The prevailing view is that foreign awards are to be enforced through the same procedure and standard provided under Section 35 of the ACA. Section 35(2) of the ACA sets out the procedures and standards for enforcing an award.

44. **Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts.**

There are no prescribed limits to the type of remedies that an arbitral tribunal may award, provided that a proper reference to arbitration has been made and the award is within the terms of the reference to arbitration and the decisions contained in the award are on matters within the scope of the reference to arbitration.

45. **Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?**

Arbitral awards are deemed to be final and binding on all the parties**.** Under Ugandan arbitration law, there is no provision for automatic right of appeal against an arbitration award on the merits. Under Section 38 of the ACA, an appeal of a domestic arbitration can only be made to the court on questions of law where the parties have agreed as such. This position is confirmed in the decision of the supreme court in *SCCA No. 06 of 2016 Babcon Uganda Ltd -versus- Mbale Resort Hotel Ltd.*

The Award can only be challenged through setting aside procedures. The arbitral award can be set aside on grounds of*;* -

a) A party to the arbitration agreement was under some incapacity.

b) The arbitration agreement is not valid under the law to which the parties have subjected it or, if there is no indication of that law, the law of Uganda.

c) The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable to present his or her case

d) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration or contains decisions on matters beyond the scope of the reference to arbitration; except that if the decisions on matters referred to arbitration can be separated from those not so referred, only that part of the arbitral award which contains decisions on matters not referred to arbitration may be set aside;

e) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless that agreement was in conflict with a provision of this Act from which the parties cannot derogate, or in the absence of an agreement, was not in accordance with this Act;

f) the arbitral award was procured by corruption, fraud or undue means or there was evident partiality or corruption in one or more of the arbitrators; or

g) the arbitral award is not in accordance with the Act.

h) The court can also set aside the award under section 34 of the ACA if it finds that; th court finds that the subject matter of the dispute is not capable of settlement by arbitration under the law of Uganda; or the award is in conflict with the public policy of Uganda.

The application for setting aside must be made within one month from the date of the award and must be heard interparty.

Where the parties have reserved the right of appeal on a point of law as provided under Section 38 of the ACA, procedure for appealing is set out under Section 38(4) of the ACA, which provides that an appeal shall be made within the time limit and in the manner prescribed by the rules of the High Court or the Court of Appeal.

46. **Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?**

Parties can agree to exclude appeals in domestic arbitration on points of law but cannot agree to expand the scope of appeal beyond points of law under Section 38 of the ACA. The grounds for challenging an award by setting it aside cannot be expanded or excluded by agreement of the parties. The grounds for setting aside are strictly limited within the provisions of Section 34 of the ACA. In the case of *HCCS no. 002 of 2006; SDV Transami Ltd -versus- Agrimag Ltd & Another* Court observed that the Court can only set aside an award in accordance with the provisions of Section 34 of the ACA. The same decision confirms the position that a dissatisfied party can only appeal against an award on questions of law where there is an agreement to do so. The right of waiver under section 4 of the ACA does not seem to extend to the challenge of the award. Relatedly, the statutory provisions providing for the challenge of an award by way of setting aside are not subject to the agreement of the parties.

47. **To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?**

Principally, after registration and recognition, arbitral awards in Uganda are enforced in the manner and mode like court judgments. Where the State is involved, it may successfully raise sovereign immunity. Assets of Government are also protected from execution under the Government Proceedings Act, Cap 77. Section 19 of the Government Proceedings Act provide that payments in satisfaction of court decisions must in compliance with articles 153 and 154 of the Constitution of the Republic of Uganda. The articles provide that payments from the consolidated funds must be authorized by Parliament through Appropriation Acts of Parliament. The State is likely to raise the state immunity defence in the same spirit if enforcement is within Uganda. Recently, Uganda passed the Public Finance Management (Amendment of Schedule 4) Instrument 2023 which has the effect of precluding the pledging of certain assets as security for government loans. In case of an arbitration that has a connection with such precluded assets, then state immunity can be invoked.

Domestic state entities have a separate corporate personality status and do not enjoy the same immunity from civil proceedings.

48. **In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?**

Third parties can be bound by an arbitration agreement or award where; they are privy to a contract, the contract expressly allows for joinder or intervention of third parties, specific rules provide a mechanism for third parties to be bound by an arbitration agreement or arbitral award, or they have participated in the arbitral proceedings.

49. **Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?**

In Uganda, third-party funding is generally prohibited in litigation as being against the rules of champerty and maintenance. Whilst a similar restriction regarding third-party funding does not exist in arbitration, the prohibition in litigation may extend to arbitration due to public policy considerations against champertous agreements.

50. **Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?**

The ACA does not envisage emergency arbitration procedures. However, rule 39 of the ICAMEK (Arbitration) Rules 2018 provide for emergency arbitrators. These arbitrators' decisions are binding on the parties to the arbitration until the formation of an arbitral tribunal. The type of orders or reliefs available to emergency arbitrators are similar to those orders that an arbitral tribunal may make under the arbitration agreement. Notwithstanding the existence of the emergency arbitrator, the courts can still intervene only to the extent permitted under the ACA.

51. **Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?**

No such criterion has been set by the ACA or any institutional rules.

52. **Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?**

There have not been any intentional and deliberate measures in Uganda taken to promote diversity in the choice or arbitrators and counsel. Both are left to the parties to exercise their autonomy as they wish. Most times expertise and integrity are big considerations for the parties on both fronts. Emphasis has been on independence, impartiality, or disclosure of potential conflict of interest, apart from the reference to circumstances likely to give rise to justifiable doubts as to independence or impartiality.

53. **Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?**

There are none in this regard. However, an award that has been set aside by the courts in the seat of arbitration can be enforced in Uganda. As a matter of Ugandan law, any New York Convention award that would be enforceable under the ACA is to be treated as binding for all purposes on the persons between whom it was made. In the absence of the setting aside of proceedings on the limited grounds under Section 34 of the ACA, it follows that an award set aside in a foreign seat may be enforced in Uganda. Where there are ongoing proceedings to set aside an arbitral award in the courts of the seat of arbitration, the courts in Uganda may suspend enforcement proceedings pending a resolution of the proceedings to avoid uncertainty and inconsistency of decisions.

54. **Has there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?**

There have not been any recent court decisions in Uganda considering the issue of corruption in the context of arbitration. However, Section 34 of the ACA highlights procuring of an award by way of corruption as one of the grounds for which court may set aside an award. The party alleging corruption bears the evidential burden to prove such allegations.

55. **Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?**

Following the Covid-19 pandemic and the increase digital penetration in Uganda, there has been increased incorporation of provisions for the use of audio-virtual hearings in arbitration agreements. This has also been influenced partly by the Africa Arbitration Academy Protocol on Virtual Hearings in Africa. Arbitration seated in Uganda have of recent adopted virtual hearings through technology enabled platforms. This is usually prior to the commencement of the proceedings.

Further, Rule 63 of the ICAMEK Rules recognizes that parties may decide to conduct online arbitration proceedings. The rule provides some guidance in relation to what amounts to sufficient service and exchange of documents amongst the parties in case of adoption of virtual hearings. The Rules specifically envisage the parties to have the necessary facilities to accommodate an online arbitration.

On the other hand, Section 3(3)(b) of the ACA stipulates the form of an arbitration agreement and therefore provides a basis for parties to agree to conduct proceedings virtually through a separate agreement prior to the commencement of proceedings. The ACA has not been amended for a long time and perhaps this is one of the reasons why some of these reforms have not been incorporated in this governing law.

56. **In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?**

The insolvency of a party does affect the enforceability of the arbitration Agreement. Section 37 (1) of the ACA provides that such an arbitration agreement may be

enforceable if the trustee in bankruptcy adopts the contract. It is important to note that these provisions are restricted to circumstances where the bankrupt person is a Ugandan or the Ugandan law applies.

57. **Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?**

There has not been any development yet with regard to disputes on climate change and/or human rights.

58. **Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?**

No. Carbon trade and carbon credits have not yet been canvassed in Uganda's Courts.

59. **Is consolidation allowed under local laws?**

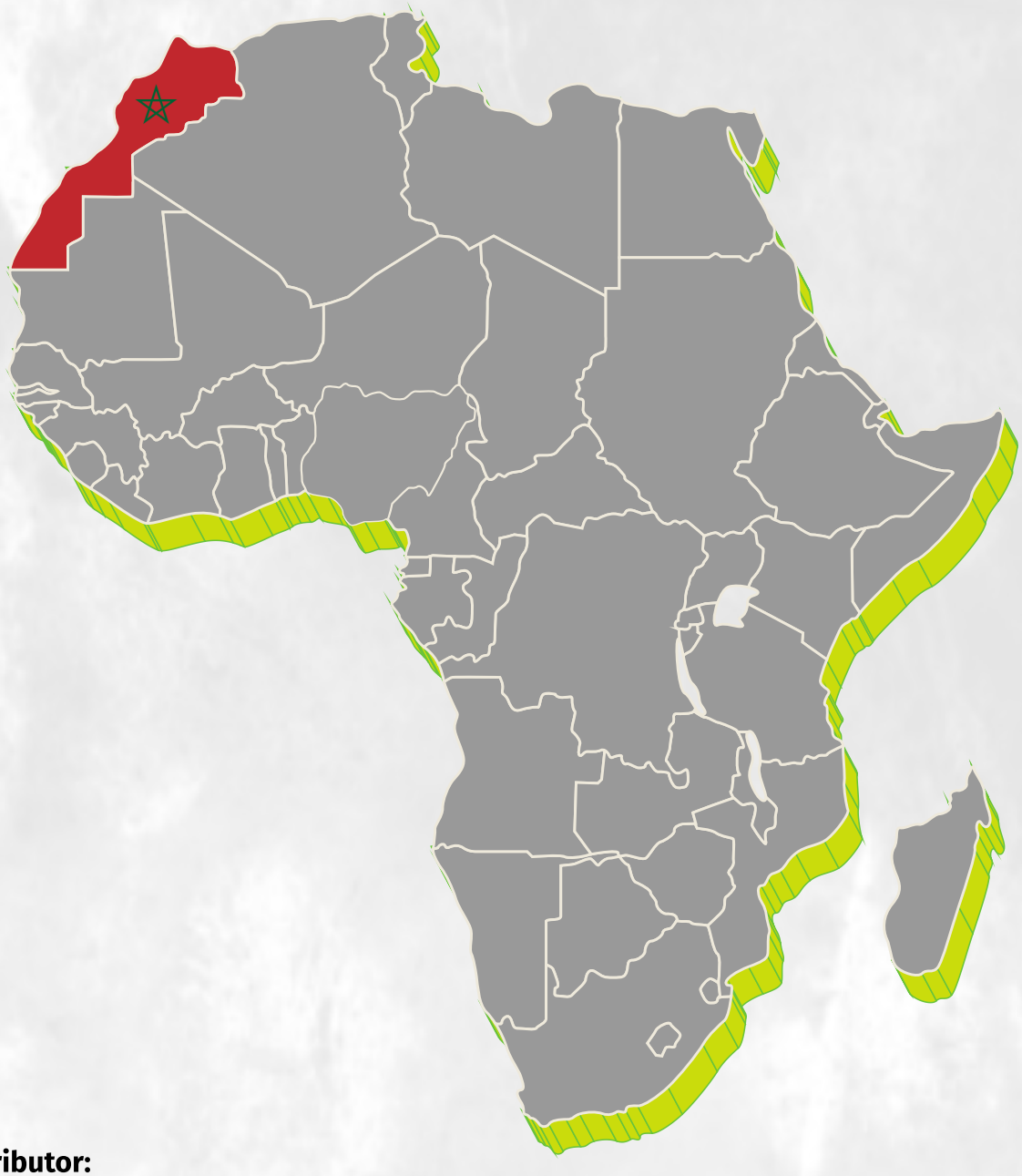
There is no express provision in the ACA that addresses consolidation. However, an arbitration seated in Uganda can consolidate separate arbitral proceedings. This would be based on express agreement of the parties, or it may be permitted by institutional rules governing the arbitral proceedings. For instance, Rule 13 of the ICAMEK (Arbitration) Rules, 2018 allows for two or more arbitrations to be consolidated into a single arbitration, where the parties have agreed to consolidation; all of the claims in the arbitrations are made under the same arbitration agreement; the claims in the arbitrations are made under more than one arbitration agreement; the arbitrations are between the same parties, the disputes in the arbitrations arise in connection with the same legal relationship; or the arbitration agreements are compatible.

60. **What is the regime for enforcement of ICSID awards in your country?**

Parts IV of the ACA recognizes an ICSID Convention award rendered pursuant to the ICSID Convention. Under Section 46(1) of the ACA, a person seeking enforcement of an ICSID Convention award shall be entitled to have the award registered in the court subject to proof of the prescribed matters and to other provisions of this part.

Similarly, Section 47(1) of the ACA stipulates that an ICSID Convention award shall be of the same force and effect for the purposes of enforcement as if it had been a judgment of the court. It is generally taken to be the case that an ICSID award is enforceable through the same procedure provided under Section 35 of the ACA.

Morocco



Contributor:



Dr. Ilias Segame

1. What legislation applies to arbitration in your country? Are there any mandatory laws? What are their effects?

Arbitration is now regulated under Law 95-17, which pertains to arbitration and conventional mediation, as promulgated in the Official Bulletin on June 13, 2022. Additionally, other binding legal statutes must be considered. In alignment with the provisions outlined in the Dahir of 9 Ramadan 1331 (August 12, 1913), which instituted the Code of Obligations and Contracts, and as subsequently amended and supplemented, particularly under Article 62, all individuals and legal entities possessing legal capacity are authorized to engage in arbitration agreements. These agreements facilitate the resolution of disputes emanating from rights that are within their autonomous control. However, this is subject to the limitations, forms, and procedures prescribed by the Law 95-17 concerning arbitration and conventional mediation.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Morocco formally acceded to the New York Convention as evidenced by its accession date of February 12, 1959, and the subsequent entry into force of this convention on June 7, 1959. The formal instrument validating Morocco's accession is encapsulated in Dahir No. 1-59-266, dated 21 Chaabane 1379 (February 19, 1960). Additionally, Morocco has stipulated a reciprocity reservation in its adherence to this convention. This reservation necessitates that Morocco will apply the Convention's provisions only to the recognition and enforcement of awards made in the territory of another contracting state, adhering to the principle of reciprocal treatment.

3. What other arbitration-related treaties and conventions is your country a party to?

Morocco formally executed the signature of the ICSID Convention on October 11, 1965, demonstrating its commitment to this significant international agreement pertaining to investment disputes. Subsequently, Morocco deposited its instrument of ratification on May 11, 1967, which is a crucial procedural step in confirming its adherence to the convention's tenets. The ICSID Convention ultimately came into force for Morocco on June 10, 1967, marking the formalization of its obligations and benefits under this international legal framework.

Morocco is also a signatory to 85 bilateral investment treaties, 59 of which are currently in force and 19 multilateral investment treaties.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

The Moroccan arbitration law is principally influenced by the tenets delineated in the 1985 version of the UNCITRAL Model Law. While certain supplementary elements are

incorporated within the Moroccan framework, these additions do not constitute substantial deviations from the foundational principles established in the 1985 UNCITRAL Model Law.

5. Are there any impending plans to reform the arbitration laws in your country?

No

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

CIMAC (Centre International de Médiation et d'Arbitrage de Casablanca)
CMA (Cour Marocaine d'arbitrage)
CMAC (Centre de Médiation et d'Arbitrage de Casablanca)
CIMAR (Centre International de Médiation et d'Arbitrage de Rabat)
CIAMA (Cour Internationale d'Arbitrage Maritime et Aérien)
MIZAN

The rules of the arbitral institutions mentioned above have never been amended.

7. Is there a specialist arbitration court in your country?

No

8. What are the validity requirements for an arbitration agreement under the laws of your country?

The arbitration convention must invariably be established in written form, either by an authentic act, under private seal, or through a protocol drafted before the designated arbitral tribunal, or by any other means mutually agreed upon by the parties.

To avoid invalidation, the arbitration clause must be explicitly and unambiguously stipulated in writing, either within the primary agreement or in a document to which the primary agreement refers.

Additionally, for the preservation of its validity, the arbitration agreement is required to specifically determine the dispute's subject matter. Failure to identify the dispute's subject matter would result in the nullification of the agreement.

9. Are arbitration clauses considered separable from the main contract?

The arbitration clause is recognized as an autonomous agreement, distinct and

independent from the other clauses of the contract. Consequently, the nullity, rescission, termination, cessation, revocation, or any other form of extinguishment of the contract's effects, for any reason whatsoever, does not impinge upon the validity of the arbitration clause contained within the said contract, provided that the arbitration clause is inherently valid.

10. Is there anything particular to note in your jurisdiction with regard to multi-party or multi- contract arbitration?

In scenarios involving multiple parties within the claimant or defendant groups, and if members from either group neglect to appoint their arbitrator within a fifteen-day period subsequent to receiving a request from the opposing party for such an appointment, the president of the competent court shall intervene to make this appointment upon the request of one of the parties.

This provision is applied only under circumstances where the arbitral tribunal has not been pre-appointed, and in instances where the criteria and timeline for the selection of arbitrators have neither been predetermined nor agreed upon by the parties.

11. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

Extending an arbitration agreement to parties who have not signed it is not permissible. This principle is explicitly articulated in Article 60 of Law 95-17, which provides that arbitral award, even when accompanied by an exequatur decision, cannot be enforced against third parties. However, these third parties retain the right to file an opposition, as a third party, under the conditions outlined in the Code of Civil Proceedings. This legal recourse is available before the competent court as though the arbitration agreement did not exist. This provision upholds the principle that arbitration agreements bind only the signatory parties, and third parties cannot be involuntarily subjected to such agreements.

Moreover, on October 3, 2022, in the case of Ynna Holding v. Five FCB, the Court of Cassation reversed a previous judgment that had held Ynna Holding, the parent company of Ynna Asment, liable, despite Ynna Holding's non-signatory status to the contract established in 2007 between Ynna Asment, its subsidiary, and the French firm Five FCB. This decision by the Supreme Court underscores the legal principle that non-signatories to a contract cannot typically be held accountable for obligations stipulated within that contract.

12. Are any types of disputes considered non-arbitrable? Has there been any jurisprudence in this regard in recent years?

Yes. Under Moroccan law, certain matters are deemed non-arbitrable and cannot be subject to arbitration. Specifically, the arbitration agreement cannot be utilized to

resolve disputes pertaining to the status and capacity of persons, or personal rights that exist outside the realm of a transactional framework. Moreover, disputes arising from unilateral actions undertaken by the State, local authorities, or other entities vested with public power privileges are precluded from arbitration. However, financial disputes resulting from such actions may be an exception, and thus, can be included in an arbitration agreement. Notably, this allowance does not extend to disputes related to the enforcement of tax laws, which remain outside the ambit of arbitration.

13. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

Not that I am aware of.

14. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The arbitral tribunal is mandated to resolve disputes in accordance with the legal rules agreed upon by the parties involved. When parties have not reached an agreement on the applicable legal rules for adjudicating the merits of the dispute, the arbitral tribunal is required to apply the objective legal rules that it deems most pertinent to the dispute at hand. In all cases, the tribunal must adhere to the stipulations of the contract under dispute and consider the established usages, customs, and precedents between the parties.

These provisions are equally applicable to international arbitration. In such cases, the arbitral tribunal is obliged to conform to the contract's provisions and take into account the relevant international trade customs and usages. This approach ensures that the tribunal's decision is grounded in the contractual framework and informed by recognized practices in international trade.

15. In your country, are there any restrictions in the appointment of arbitrators? Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?

In domestic arbitration within Morocco, the arbitral tribunal may be composed of one or multiple arbitrators. The parties involved possess the liberty to determine the number of arbitrators and the method of their appointment, including the selection of the chairman. This determination can be made either in the arbitration agreement itself or by referring to the arbitration rules of the chosen institution.

If the parties cannot agree on the number of arbitrators, the default number is set at three. In cases involving multiple arbitrators, the total number must be odd, as an even number renders the arbitration void.

The role of an arbitrator is exclusively reserved for a natural person who is fully competent and possesses a minimum level of experience and scientific expertise necessary for fulfilling the responsibilities of an arbitrator. This individual must not have been subject to a final judgment for acts that contravene honour, probity, or good morals. Additionally, they must not have faced any disciplinary action resulting in removal from an official position or any of the financial sanctions outlined in Title VII of Book V of Act No. 15.95 of the Commercial Code, or by deprivation of their right to engage in business or any of their civil rights.

In the event that the agreement specifies a legal entity as the arbitrator, this entity's role is limited to organizing and ensuring the smooth conduct of the arbitration process. However, it does not possess the authority to resolve the dispute, which must be assigned to an arbitral tribunal comprising one or more natural persons.

For international arbitration, the parties enjoy unrestrained autonomy under the law to select arbitrators, without any legal restrictions.

16. Are there any default requirements as to the selection of a tribunal?

Article 23 of Morocco's Law No. 95-17 provides for a default procedure for the appointment of arbitrators in the event that the method initially agreed upon by the parties fails.

In situations where the arbitral tribunal has not been pre-appointed, and the procedure and timeline for the arbitrators' selection are either not determined or contested by the parties, the following procedures are to be implemented:

1) For a tribunal consisting of a single arbitrator, the appointment shall be made by the president of the competent court upon the request of one of the parties.

2) In the case of a tribunal composed of three arbitrators, each party shall appoint one arbitrator. The two arbitrators thus appointed are then responsible for selecting the third arbitrator. Should a party fail to appoint their arbitrator within 15 days of receiving a request from the other party, the president of the competent court will undertake the appointment upon request from one of the parties. Furthermore, if the two appointed arbitrators cannot agree on the third arbitrator within 15 days following the appointment of the latter of them, the president of the competent court shall make this appointment through an order that is not subject to appeal, upon the request of one of the parties or either of the arbitrators. The presiding arbitrator of the tribunal shall be the one chosen by the first two arbitrators or appointed by the president of the competent court.

3) In instances involving multiple claimants or respondents, where the members of one group fail to jointly appoint an arbitrator within 15 days following a request from the opposing group, the president of the competent court shall

appoint the arbitrator upon request from one of the parties.

This procedure is similarly applicable when the arbitral tribunal consists of more than three arbitrators.

The president of the competent court is tasked with ensuring that the arbitrator appointed via a non-appealable order meets the requirements specified in Law No. 95-17, as well as any conditions agreed upon by the parties, including the language of arbitration. This appointment is made after summoning the parties.

Additionally, the president of the competent court is authorized to resolve any difficulties related to the constitution of the arbitral tribunal, irrespective of which party initiated the appointment. Decisions made in this regard are not subject to appeal.

17. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

Yes, State courts in Morocco are empowered to offer assistance at various stages of the arbitration process, as delineated in specific articles of the relevant law. This assistance encompasses several critical aspects:

1) **Constitution of the Arbitral Tribunal and Related Difficulties (Article 23):** State courts play a role in forming the arbitral tribunal and can address any challenges encountered during this process.

2) **Granting of Provisional or Protective Measures (Article 19):** Courts have the authority to issue provisional or protective measures, which are vital for safeguarding the parties' interests during the arbitration proceedings.

3) **Extension of the Arbitration Deadline (Article 48):** Courts can extend the timeline for arbitration, ensuring that all issues are adequately addressed within a reasonable timeframe.

4) **Rectification, Interpretation, or Addition to the Arbitral Award (Article 56)**: In situations where the arbitral tribunal is no longer able to reconvene, state courts can intervene to rectify, interpret, or make additions to the arbitral award.

These provisions underscore the supportive role of state courts in facilitating a smooth and effective arbitration process, ensuring that legal and procedural obstacles are efficiently managed.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

A court may intervene in the selection of arbitrators under specific circumstances, as delineated below:

1) In instances where the parties appoint an even number of arbitrators, completing the arbitral tribunal necessitates the selection of an additional arbitrator. This selection should be made either in accordance with an agreement between the parties or, if such agreement is absent or ineffective, by an order issued by the president of the competent court.

2) The court's intervention is also required if the arbitral tribunal has not been pre-appointed and the parties have not established the manner and date for the appointment of the arbitrators, or in cases where there is a disagreement between the parties regarding these matters.

In both cases, the court's involvement is pivotal in ensuring the proper constitution of the arbitral tribunal, thereby upholding the integrity and effectiveness of the arbitration process.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

An arbitrator may be subject to challenge under the following circumstances, as outlined in the relevant legal provisions:

1) If the arbitrator has been convicted in a judgment that has attained res judicata status for any of the offenses specified in Article 11 of Law 95-17, unless they have been subsequently rehabilitated.

2) The presence of a direct or indirect personal interest in the dispute that benefits the arbitrator, their spouse, or their ascendants or descendants.

3) The existence of a familial or marital relationship between the arbitrator or their spouse and one of the parties, extending up to the fourth degree, or between the arbitrator and one of the parties' lawyers.

4) Ongoing or recently concluded (within the past two years) legal proceedings between one of the parties and the arbitrator, their spouse, their ascendants or descendants, or between the arbitrator and one of the parties' attorneys.

5) The presence of a subordinate relationship between the arbitrator or their spouse, ascendants, or descendants and one of the parties, or their respective family members, or between the arbitrator and one of the parties' lawyers.

6) The existence of a well-known friendship or animosity between the arbitrator and one of the parties, or between the arbitrator and one of their lawyers.

7) A situation where the arbitrator is either a creditor or debtor to one of the parties or one of their lawyers.

8) Instances where the arbitrator has previously engaged in advocacy, made

claims, or testified as a witness in the dispute being adjudicated by the arbitral tribunal.

9) If the arbitrator has previously acted as a guardian or legal representative of one of the parties or one of their lawyers, as applicable.

As for the procedure, the applicant must present their request in writing to the arbitrator subject to the challenge. This should occur within eight days from the date the applicant became aware of either the constitution of the arbitral tribunal or the circumstances that justify the challenge. If the arbitrator does not voluntarily withdraw within three days of receiving the request, the challenger must then submit their request to the president of the competent court. This court should be located either at the place of arbitration or, if the place of arbitration is undetermined, at the domicile or residence of the challenged arbitrator.

The president of the competent court, or their delegate, then adjudicates the challenge request. This involves summoning the parties and the arbitrator subject to the challenge for a hearing, to be held within ten days. The ruling on this matter is made through an order that is not subject to appeal.

Should an arbitrator be successfully challenged, the entire arbitration procedure in which they participated, including any awards they issued, is considered null and void. This ensures the impartiality and fairness of the arbitration process by addressing potential conflicts of interest or bias.

20. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceeding by frequent court applications?

Generally, once the arbitral tribunal asserts its competence, the arbitration proceedings are only subject to suspension by the tribunal itself. This is based on the principle that actions undertaken in state courts should not impede or delay the proper execution of the arbitration procedure.

However, a specific risk exists under Moroccan law that may disrupt the flow of ad hoc arbitration procedures. Notably, the order of the arbitral tribunal that rules on its own jurisdiction or the validity of the arbitration agreement is now open to appeal. This appeal must be filed within fifteen days of its issuance and is submitted to the president of the competent court, who then issues an order, after summoning the parties, that is not open to further appeal. Such a measure can interrupt the arbitration proceeding from its inception and condition its continuation on the order of the state courts. The definitive nature of this process has the potential to terminate the arbitration procedure prematurely.

This scenario creates a state of legal uncertainty and insecurity, particularly since the law does not clarify whether the arbitral tribunal is required to suspend its proceedings in such circumstances. This ambiguity potentially undermines the efficiency and predictability of the arbitration process.

21. Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?

There is no particular development.

22. Has there been any recent decisions in your country concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

Not that I am aware of.

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

Law 95-17 facilitates the constitution of the arbitral tribunal through a series of measures. These measures may be derived directly from the arbitration agreement itself, or by reference to the rules of an arbitral institution. The agreement or rules can specify the arbitrator(s), outline the terms of their appointment, and provide for their replacement if necessary.

In cases where proactive action is required, the law permits the most diligent party to approach:

1) The president of the commercial court, who will also have the authority to declare the arbitral award enforceable if the arbitration occurs within Morocco.

2) The president of the Casablanca commercial court, in cases where the arbitration takes place abroad but the parties have stipulated the application of Moroccan law pertaining to arbitration.

Therefore, in the absence of any prior agreement of the parties, any challenges related to the establishment of the arbitral tribunal can be addressed by seeking intervention from state courts. This provision ensures a mechanism for resolving procedural impasses in the constitution of the arbitral tribunal, thereby maintaining the efficacy and integrity of the arbitration process.

24. Are arbitrators immune from liability under local laws?

No, an arbitrator may be subject to civil liability under the following circumstances:

1) If the arbitrator unjustifiably withdraws from their mandate or does so without a legitimate cause. This withdrawal, particularly if it lacks reasonable justification or is devoid of a legally recognized excuse, can potentially disrupt the arbitration process and result in legal repercussions for the arbitrator.

2) The arbitrator's failure to adjudicate a request to correct a material error or the interpret an award is also grounds for civil liability. An arbitrator is obligated to address and resolve any requests pertaining to material errors in the award or its interpretation, and neglecting this duty can have legal consequences.

It should be noted that arbitrators are also bound by professional secrecy subject to the application of the provisions provided for by criminal law.

These situations emphasize the arbitrator's responsibility to adhere to their professional obligations and the potential legal liabilities that may arise from failing to fulfill these duties adequately.

25. Is the principle of competence-competence recognized in your country?

Yes, Article 32, paragraph 2, of Law 95-17 mandates that, before proceeding to assess the substantive aspects of a case, it is incumbent upon the arbitral tribunal to make a preliminary ruling, through an order, on the validity and the scope of its jurisdictional authority. This ruling can be initiated either suo motu (on its own initiative) or upon the request of one of the parties involved. Additionally, the tribunal is required to determine the validity of the arbitration agreement. This procedural step is essential to confirm the tribunal's competence to hear the case and the enforceability of the arbitration agreement, thereby ensuring the legal soundness of the arbitration process.

26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Article 18 indicates that if a dispute, already under the purview of an arbitral tribunal due to an existing arbitration agreement, is brought before a state court, the court is obligated to declare the case inadmissible upon request of the defendant, provided this request is made before the court rules on the substance of the case. This declaration of inadmissibility is contingent upon the completion of the arbitration process or the annulment of the arbitration agreement.

In instances where the arbitral tribunal has not yet been involved, the competent court is similarly required to declare inadmissibility upon the defendant's request, except in cases where the arbitration agreement is evidently invalid.

It is essential for the defendant to make this request for inadmissibility before engaging in any defense related to the merits of the case. The competent court is not permitted to declare inadmissibility automatically; it must be specifically requested.

Furthermore, as outlined in this article, the court is required to issue a separate judgment on the inadmissibility request prior to making any ruling on the merits of the case. Importantly, this judgment on inadmissibility is only appealable alongside the court's final judgment on the merits of the dispute. This provision ensures the

primacy of arbitration agreements and prevents parallel legal proceedings in state courts on matters already subject to arbitration.

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

Article 30 of Law 95-17 indicates that the establishment of an arbitral tribunal is considered complete only when the appointed arbitrator(s) have accepted the mission entrusted to them. This acceptance is required to be documented in writing, which can be done either by signing the arbitration agreement (compromise) or by drafting an official mission statement.

Moreover, upon accepting their mission, the arbitrator must provide a written declaration of any circumstances that might raise questions regarding their impartiality and independence. This is a critical step to ensure the fairness and integrity of the arbitration process.

Importantly, the appointed arbitrators are obliged to formally declare their acceptance of the arbitration mission within a period of fifteen (15) days from the date they are notified of their appointment.

28. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?

Under Moroccan law, an arbitral award rendered in the context of international arbitration can be subject to an action for annulment, unless the parties have agreed otherwise (Article 82). This right to appeal becomes effective immediately upon the pronouncement of the award or within fifteen days following its notification (Article 83).

If the period specified for the annulment action, as mentioned in Article 83, elapses without such action being taken, any subsequent request for recognition and enforcement (exequatur) of the award should be granted, except in cases where recognition or enforcement contradicts national or international public order (Article 79). This order of recognition or enforcement is eligible for appeal before the competent Commercial Court of Appeal. The appeal must be filed within fifteen days from the notification of the order (Article 81).

29. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

State immunity is not a factor during the earlier stages of arbitration. Primarily, state immunity comes into consideration when there is an attempt to attach or seize state assets as part of the enforcement of an arbitral award contingent upon the court

issuing an exequatur order. In this phase, the assets of the state are protected from forced execution, seizure, or attachment, thereby upholding the principle of state immunity.

30. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

Article 40 provides that in the event of failure of one of the parties to be present, the respondent in this situation, at one of the sessions or to produce the documents and means of proof requested of him, without valid reason, it is the responsibility of the arbitral tribunal to continue the arbitration procedure and render an award on the dispute in light of the evidence available to it.

31. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Under the principle of the relative effect of contracts, a third party is not permitted to participate in arbitration proceedings unless they are a signatory to the arbitration agreement and all parties involved in the arbitration consent to their participation. The authority of the arbitral tribunal is derived from the mutual agreement of the parties involved in the arbitration; therefore, the tribunal does not have the unilateral discretion to permit the involvement of third parties in the proceedings.

32. Can local courts order third parties to participate in arbitration proceedings in your country?

Under Moroccan law, local courts cannot order third parties to participate in arbitration proceedings.

33. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Article 19 of Law 95-17 indicates that the existence of an arbitration agreement does not preclude the parties from seeking judicial intervention through summary proceedings, either before the commencement or during the course of the arbitration procedure. This legal provision allows parties to request any provisional or protective measures as outlined in the Code of Civil Procedure. Furthermore, the parties retain the right to retract such measures in compliance with the same procedural provisions.

This article ensures that parties engaged in arbitration retain the ability to seek immediate judicial relief for urgent matters, thereby providing a safeguard for the protection of their rights and interests during the arbitration proceedings.

34. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Moroccan law does not provide for anti-suit and or anti-arbitration injunctions.

35. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

Article 37 of Law 95-17 states that if evidence pertinent to an arbitration case is in the possession of one of the parties, the arbitral tribunal has the authority to request such evidence. This request can be made either on the tribunal's own initiative or at the behest of one of the parties involved in the arbitration. However, in the event that the party in possession of the evidence refuses to comply with this request, the law does not prescribe any specific sanctions for such non-compliance.

This provision underscores the arbitral tribunal's power to seek evidence critical to the case, while also highlighting a gap in legal recourse should a party refuse to cooperate in the evidence-sharing process.

Besides, local courts cannot compel the attendance of witnesses and will not order disclosure/discovery.

36. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

Moroccan arbitration law does not prescribe any distinct ethical rules for legal counsel involved in arbitration. However, lawyers who are members of the Moroccan bar are required to adhere to the ethical standards applicable to their profession. These standards are delineated in Law No. 28-08, which governs the organization of the legal profession in Morocco.

As for arbitrators, please refer to the answer to question 15 above.

37. In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

Arbitral proceedings conducted in Morocco are characterized by confidentiality, as provided by Law No. 95-17. This means that hearings and meetings related to the arbitration are not open to the public. Additionally, the deliberations of the arbitrators are kept secret, as outlined in Article 50 of the law. Arbitrators are obligated to maintain professional secrecy, with any breach subject to the applicable

provisions of criminal law, as per Article 31 of Law No. 95-17.

Moreover, the publication of the arbitral award, or any excerpts from it, is permissible only with the express consent of the parties involved in the arbitration, as stated in Article 54 of the same law. This legal framework, established by Law No. 95-17, ensures that the privacy and confidentiality of the arbitration process are rigorously maintained, safeguarding the interests and sensitive information of all parties involved.

38. How are the costs of arbitration proceedings estimated and allocated?

The arbitral award determines the fees of the arbitrators, the costs of the arbitration, and how these costs should be divided between the parties (Art. 52). In situations where there is no consensus between the parties and the arbitrators on the arbitrators' fees, the arbitral tribunal will make an independent decision to set these fees.

This independent decision concerning the arbitrators' fees is communicated to all relevant parties by the arbitral tribunal using all available means of notification. If there is any dispute regarding the decision on fees, it can be appealed to the president of the competent court within 15 days of its receipt. The president's order on this matter is final and cannot be appealed.

Regarding the recovery of a party's own legal fees in the context of arbitration under Law No. 95-17, the law does not specify particular provisions. Therefore, the allocation of these costs will be governed by the arbitration rules that the parties have chosen to follow. This approach allows for flexibility and adherence to the agreed-upon rules of arbitration.

39. Can pre- and post-award interest be included on the principal claim and costs incurred?

Law No. 95-17 does not specify a method for calculating interest on arbitration claims. However, in practice, Moroccan courts typically apply an interest rate of 6%. This rate is relevant for pre- and post-award interest calculations on the principal claim and any associated costs incurred. This approach ensures a standardized application of interest in the absence of specific legal provisions within the arbitration law framework.

40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

The arbitral award is rendered by the arbitral tribunal after deliberation and is determined by a majority of votes. Each arbitrator is required to cast a vote either in

favor of or against the proposed award. The deliberations among the arbitrators are conducted in secrecy.

The award itself must be documented in writing, either on paper or electronically. It needs to reference the arbitration agreement and include a concise statement of the facts, the claims and arguments of the parties, the exhibits presented, a summary of the issues to be resolved, and the operative part of the decision addressing these issues.
The award is required to provide the rationale upon which it is based, except in cases where the parties have explicitly agreed otherwise in the arbitration agreement, or the applicable law does not necessitate the inclusion of reasons. However, in disputes involving a public law entity, the award must always state the underlying reasons.

The award must also contain the following information:

1) The names, nationalities, capacities, and addresses of the arbitrators who issued it.
2) The date of issuance and the location where it was made.
3) The full names or company names of the parties, as well as their domiciles or registered offices, and the names of their legal representatives or assistants, if applicable.

Additionally, the arbitral award must determine the arbitrators' fees, the arbitration expenses, and how these costs are to be shared between the parties. In the absence of an agreement between the parties and the arbitrators regarding the fees, the arbitral tribunal will independently decide on them. This decision on fees is appealable to the president of the competent court, whose decision is final and not subject to further recourse.

The arbitral award should be signed by each arbitrator, generally on each page, although this is not mandatory. In cases involving multiple arbitrators, if a minority refuses to sign, the other arbitrators must record this fact and the reasons for the refusal. Nonetheless, the award retains the same validity as if all arbitrators had signed it.

The arbitral tribunal must deliver a copy of the award to each party within seven days of its pronouncement. The award should be filed at the Commerce Court and, if issued in a language other than Arabic, must be translated into Arabic by a sworn translator.

41. What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

There is no specific timeframe for the recognition and enforcement of an award. Article 67 provides that an arbitral award is eligible for enforcement only after receiving an exequatur, which is an order granted by the president of the competent court within the jurisdiction where the award was rendered. This process is conducted under emergency procedures but involves summoning the parties and their counsel.

Under the new reform, bringing a motion for the recognition and enforcement of an award on an ex parte basis is not available.

42. To what extent is a foreign arbitration award enforceable?

In Morocco, the judicial stance towards the recognition and enforcement of arbitral awards is typically positive and aligns with the principles of the New York Convention. Precisely, the enforcement of international arbitral awards in Morocco is governed by the provisions of Article 77. This article states that international arbitral awards are recognized and enforced within Morocco, provided they do not contravene national or international public order. The responsibility for this enforcement lies with the president of the commercial court in the jurisdiction where the awards were rendered. In cases where the seat of the arbitration is located abroad, the enforcement falls under the jurisdiction of the president of the commercial court in the place of execution. This process is carried out after the summoning of the parties involved.

In practice, under Moroccan law, the existence of an arbitral award is verified through the presentation of either the original award and the arbitration agreement, or certified copies of these documents. Additionally, if these documents are in a foreign language, they must be accompanied by a translation into Arabic. This translation must be performed by a translator officially approved by the courts. This requirement is specified in Article 78, ensuring that all relevant documents are accessible and understandable within the legal framework of Morocco, thereby facilitating the process of recognition and enforcement of arbitral awards.

43. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

In Morocco, the level of scrutiny applied to national arbitral awards differs from that for international awards, particularly in terms of the grounds for annulment. National arbitral awards are subject to a more stringent and detailed level of control and may be annulled under the following grounds:

1) If the award was made in the absence of an arbitration agreement, based on a void agreement, or after the expiration of the arbitration deadline.

2) If the arbitral tribunal was constituted irregularly, the sole arbitrator was appointed irregularly, or the agreement of the parties was not respected.

3) If the arbitral tribunal failed to comply with the mission conferred upon it, made rulings on matters outside the scope of the arbitration, exceeded the limits of the arbitration agreement, or declared itself incompetent when it was actually competent. However, if parts of the award concerning the questions submitted to arbitration can be separated from those not submitted, the annulment applies only to the latter.

4) When the provisions of Articles 50, 51, and 52 were not adhered to.

5) When one of the parties was unable to present its defense due to not being duly informed of the appointment of an arbitrator, the arbitration procedures, or for any other reason related to the obligation to respect the rights of defense.

6) If the arbitral award was made in violation of a public order rule.

7) In cases of non-compliance with procedural formalities agreed upon by the parties or failure to apply a mutually agreed upon law to the subject of the dispute.

For the grounds for annulment of international arbitral awards, please refer to the answer to question 45 below.

44. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts

In the context of domestic arbitration under Moroccan law, there is a provision for a minimum amount of compensation in cases where there is an abusive appeal to set aside an arbitration award. Article 64 of Law No. 95-17 specifies that if the competent court of appeal either rejects an application for annulment, declares it inadmissible, or generally does not rule in favor of the application, it is then required to order the enforcement of the arbitral award ex officio. The judgment of the court in this context is final.

Furthermore, if the court of appeal, in situations covered by the first paragraph, determines that the appeal is abusive, it is mandated to order the appellant to pay compensation for the damages incurred by the respondent. This compensation cannot be less than 25% of the amount awarded in the arbitration award.

For international arbitration, while there are no specific provisions parallel to the domestic context, Article 75 of Law No. 95-17 states that when arbitration is subject to Moroccan law, the provisions of this law apply. This is subject to any special agreements between the parties and the special provisions of the chapter on international arbitration. Thus, it can be inferred that if the international arbitration is governed by Moroccan law, the same 25% compensation threshold for abusive appeals, as mentioned in domestic arbitration, may be applicable.

45. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Arbitral awards and orders that grant recognition or enforcement of arbitral awards, can be challenged through specific legal actions: an action for annulment in the case of the arbitral award, and an appeal in the case of the recognition or enforcement order from local courts. The grounds for these challenges are as follows:

1) The arbitral award was issued without an arbitration agreement, or the agreement was invalid, or the award was made after the expiration of the arbitration deadline.

2) The composition of the arbitral tribunal was irregular, or the sole arbitrator was appointed in an irregular manner.

3) The arbitral tribunal issued a ruling that did not adhere to the scope of its assigned mission.

4) The rights of defense were not observed during the arbitration process.

5) The recognition or enforcement of the award is in conflict with national or international public order.

46. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

Article 82 indicates that an arbitral award rendered in Morocco concerning international arbitration can be subject to annulment proceedings, unless the parties involved mutually agreed otherwise. As a result, parties to an arbitration agreement have the discretion to relinquish their right to seek annulment of the award. This waiver can be incorporated into the arbitration agreement or agreed upon at any point during the arbitration proceedings.

47. To what extent might a state or state entity successfully raise a defense of state or sovereign immunity at the enforcement stage?

Please refer to the answer to question 29 above.

48. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

Please refer to the answer to question 11 above.

49. Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

No

50. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Moroccan arbitration law does not explicitly address the concept of emergency arbitration. As a result, the enforcement of orders issued by an emergency arbitrator, which take the form of arbitral awards, is subject to the exequatur procedure outlined in Article 67. This procedure necessitates convening all parties involved, which may undermine the efficacy and expediency typically associated with emergency arbitration measures. The requirement for a contradictory debate, inherent in this process, may not align with the swift and effective nature expected from decisions made by an emergency arbitrator.

51. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

Moroccan law does not include specific provisions for expedited arbitration procedures. However, certain arbitration institutions offer parties the option to opt for an accelerated process for resolving their disputes. The availability of this expedited route typically depends on specific conditions and the value of the dispute at stake.

For instance, the arbitration rules of the Casablanca International Mediation and Arbitration Centre (CIMAC) specify in Article 43.1 that, as an exception to the standard procedure outlined in the Rules, and unless there is an agreement to the contrary by the parties, the Court may opt for a more rapid approach known as the “Expedited Procedure.” This Expedited Procedure can be particularly appropriate in cases where the disputed amounts do not exceed two hundred thousand (200,000) Euros, or due to other specific circumstances of the dispute. It is important to note that this option is only available for disputes arising under an Arbitration Agreement signed after these Rules have come into effect, and it entails an explicit relinquishment of the right to a hearing as provided for in Article 27.1.

Similarly, MIZAN ADR Centre, in article 1 paragraph 4 of its accelerated arbitration rules, states that these Rules apply if: a) The parties explicitly refer to them in their arbitration agreement, and b) The value of the dispute as stated in principal by the Claimant does not exceed ten million (10,000,000) Moroccan dirhams, or its equivalent in foreign currency at the official exchange rate of Bank Al-Maghrib, regardless of any counterclaim submitted by the Defendant in accordance with article 4 of the Regulations, or c) The parties agree to these Rules regardless of the dispute's value.
These provisions demonstrate how specific arbitration institutions in Morocco have developed frameworks to accommodate expedited procedures, catering to the needs of parties seeking a faster resolution of their disputes under certain conditions.

52. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

No specific measures have been taken in this regard.

53. Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

Not that I am aware of.

54. Has there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

Not that I am aware of.

55. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

Yes, there has been a recent development regarding virtual hearings from a legislative standpoint. Indeed, article 33 of Law No. 95-17 stipulates that in situations where the physical presence of all arbitrators is unfeasible, the arbitral tribunal is authorized to conduct meetings remotely, utilizing modern communication technologies. This provision is contingent upon the agreement of the parties involved in the arbitration. Furthermore, Article 35 of the same law introduces the option for parties engaged in a dispute to submit their applications and responses electronically. This adaptation acknowledges the increasing reliance on digital communication in legal processes.

Additionally, Article 51 of Law No. 95-17 permits the issuance of arbitral awards in electronic form. This inclusion reflects a progressive approach to arbitration, accommodating the evolving digital landscape and the need for flexible, technology-driven solutions in legal proceedings.

Regarding arbitral institutions, the MIZAN ADR Center has established digital arbitration rules and digital accelerated arbitration rules, which are implemented through an online platform. This platform enables the comprehensive management of arbitration proceedings entirely online. To assist users in navigating and utilizing this digital platform effectively, MIZAN ADR Center has also provided a step-by-step user guide. This guide is designed to help parties involved in arbitration familiarize themselves with the digital arbitration process, thereby facilitating a more efficient and user-friendly approach to dispute resolution.

56. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

In the context of ongoing arbitration proceedings in Morocco, if one or more of the parties involved become subject to insolvency proceedings, the arbitration process continues with the inclusion of the appointed trustee or receiver. The introduction of the trustee or receiver into the arbitration proceedings is a measure that ensures the continuation of the arbitration despite the insolvency status of a party. This approach upholds the ongoing arbitration process while accommodating the legal implications of the insolvency proceedings.

57. Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

No particularly notable development to raise.

58. Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?

No particularly notable development to raise.

59. Is consolidation allowed under local laws?

Under Moroccan arbitration law, Moroccan arbitration law does not explicitly address the issue of consolidation of arbitration proceedings. While not expressly prohibited, the practical implementation of consolidation will likely encounter various challenges that necessitate cooperation among all involved parties. The foundational principle here is that the arbitral tribunal's jurisdictional authority emanates from the parties' consent as encapsulated in the arbitration agreement. Therefore, the tribunal may cede jurisdiction over a dispute if the parties choose to revoke their arbitration agreement. Similarly, subject to the unanimous agreement of the parties, the tribunal may adjudicate on related claims which have been concurrently referred to another jurisdiction, whether arbitral or state, for a comprehensive resolution of the dispute.

60. What is the regime for enforcement of ICSID awards in your country?

In Morocco, an ICSID award is recognized without any requirement for a review of the merits of the case. The enforcement process typically involves presenting the ICSID award to a competent Moroccan court, which is expected to enforce it in the same manner as it would a domestic court judgment. The Moroccan court does not re-adjudicate or re-examine the case but rather focuses on the procedural aspects of enforcement.

However, it's important to note that while the enforcement of ICSID awards is generally straightforward due to the provisions of the ICSID Convention, practical challenges

can sometimes arise. These might include issues related to the conversion of the award amount into local currency or the identification of assets within the jurisdiction for enforcement purposes. Additionally, the enforcement may be subject to the general constraints of Moroccan law, including any limitations imposed by Moroccan public policy considerations.

South Africa



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1. What legislation applies to arbitration in your country? Are there any mandatory laws? What is their effect?

The resolution of disputes by arbitrations is regulated by two pieces of legislation in South Africa, namely:

- the Arbitration Act No, 1965 ("**Arbitration Act**") which governs the settlement of domestic disputes by arbitration tribunal according to the terms of written arbitration agreement and for the enforcement of the awards of such tribunals; and
- the International Arbitration Act, 2017 ("**International Arbitration Act**"), which is the *lex arbitri* for all foreign or international arbitrations seated in South Africa.

The above pieces of legislation regulate the arbitration processes that the parties elect to follow in the resolution of disputes.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Yes, South Africa has been a signatory party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 3 May 1976. The New York Convention has been domesticated and is incorporated as schedule 3 to the International Arbitration Act.

No, South Africa acceded to the Convention without reservation.

3. What other arbitration-related treaties and conventions is your country a party to?

South Africa is not a signatory to any other arbitration-related treaties and conventions. However, South Africa is party to several Bilateral Investment Treaties ("**BITs**") in terms of which South Africa consents to the referral of investment disputes to be settled through arbitration.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

Yes, the International Arbitration Act is based on the UNCITRAL Model Law (as amended in 2006). In particular:

- Section 6 of the International Arbitration Act incorporates the UNCITRAL Model Law into South African law.
- Schedule 1 of the International Arbitration Act restates the UNCITRAL Model Law with some adaptions.

No, there are no significant differences between the International Arbitration Act and the UNCITRAL Model Law.

5. Are there any impending plans to reform the arbitration laws in your country?

The International Arbitration Act is a relatively new piece of legislation governing international arbitrations in South Africa so there are no impending plans to reform it.

In relation to domestic arbitrations, the Arbitration Act, which applies exclusively to domestic arbitrations, is in the process of being reformed. This process is aimed at amending the Arbitration Act to create harmonization between the South African international and domestic arbitration legislation.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The Arbitration Foundation of Southern Africa ("**AFSA**") is the commonly used arbitral institution in South Africa as it may also play a role of an administrator of the arbitration proceedings in terms of its rules. AFSA has separate set of rules for domestic and International arbitrations. The international rules came into force in June 2021..

7. Is there a specialist arbitration court in your country?

No. There is no special court for arbitration.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

For domestic arbitrations: section 1 of the Arbitration Act provides that an arbitration agreement is "*a written agreement providing for the reference to arbitration of an existing dispute or any future dispute relating to a matter specified in the agreement, whether an arbitrator is named or designated therein or not*".

For international arbitrations: article 7 of the UNCITRAL Model Law, as incorporated on the International Arbitration Act defines an arbitration agreement as an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. Similar to domestic arbitrations, the arbitration agreement under the International Arbitration Act is also required to be in writing.

9. Are arbitration clauses considered separable from the main contract?

Yes. An arbitration clause is typically treated as a separate and an independent agreement with its own existence and governed by the selected *lex arbitri* by the parties.

10. Is there anything particular to note in your jurisdiction with regard to multi-party or multi- contract arbitration?

No. Parties may consent to multi-party or multi-contract arbitration.

11. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

As far as we are aware, there is no court decision on binding non-signatories to an arbitration agreement. However, similar to the position adopted in other UNCITRAL jurisdictions there are legal/contractual theories (estoppel, stipulation, group companies theory etc) that may result in non-signatories be held bound by or permit to rely upon an arbitration agreement.

12. Are any types of disputes considered non-arbitrable? Has there been any jurisprudence in this regard in recent years?

Domestic Arbitration: In terms of section 2 of the Arbitration Act, a reference to arbitration is not permissible in respect of any matrimonial cause or any matter incidental to any such cause. Under common law, arbitration may not be used in criminal proceedings.

International Arbitration: Section 2 of the Arbitration Act will also apply to the international Arbitration Act considering that section 7 provides that parties are entitled to dispose of a dispute through arbitration unless if such a dispute is not capable of determination by arbitration under any the laws of South Africa. Section 7 of the International Arbitration Act further provides that a dispute will not be arbitral if the arbitration agreement is contrary to the public policy of South Africa.

13. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

No, there is no such decision. The general principles of choice of law will be applicable.

14. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

In the absence of the parties having agreed to the law applicable to the substance of the dispute, Article 28(2) of the UNCITRAL Model Law, as incorporated in the International Arbitration Act is applicable. It provides that the law will be determined by the conflict of laws rules considered applicable. On this score, a court must first determine if any tacit choice of law exists. If no tacit choice exists, the court will determine which legal system is most closely connected to the agreement. A South African court is therefore obliged to have regard to the international origin of the Model Law and the need to promote uniformity and the observance of good faith.

The current position in South Africa may be summarized as follows: the arbitral tribunal must apply the law expressly or impliedly chosen by the parties. In the absence of such choice, the law which is most closely connected with the arbitration agreement. This would arguably usually be either the place where the contract was concluded or was to

be performed.

15. In your country, are there any restrictions in the appointment of arbitrators? Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?

In accordance with Article 10 and 11 of the of the UNCITRAL Model Law, as incorporated in the International Arbitration Act parties are at liberty to determine who may be nominated and/or appointed to arbitrate their dispute. Typically, the parties usually list the requirements of a potential arbitrator in the arbitration agreement. The arbitrators are then selected either by agreement between the parties or, in the absence of agreement, in accordance with the rules elected to govern the arbitration proceedings.

16. Are there any default requirements as to the selection of a tribunal?

No, there are no default requirements as to the selection of a tribunal.

17. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

Yes, the court's will assist arbitration proceedings. This is typically for a) the appointment arbitrator/s where no provision in the arbitration agreement for an institutional appointment of an arbitrator (Article 11(4) of UNCITRAL Model Law), b) appoint substituted arbitrator, c) interim court measures (Article 17J of UNCITRAL Model Law).

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Yes, a court may order the removal of an arbitrator whose appointment is challenged by a party in accordance Article 13 of UNCITRAL Model Law or in accordance with Article 14 of UNCITRAL Model Law a court may order the termination of the mandate of an arbitrator that has become *de jure* or *de facto* unable to perform his/her functions or for other reasons fails to act without undue delay.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Domestic Arbitration: Yes. In terms of Section 13 of the Arbitration Act the appointment of an arbitrator, unless a contrary intention is expressed in the arbitration agreement, shall not be capable of being terminated except by consent of all the parties to the reference.

The court may at any time on the application of any party to the arbitration, on good cause shown, set aside the appointment of an arbitrator or remove him from office.

International Arbitration: Article 12 of UNCITRAL Model Law, as incorporated in the International Arbitration Act sets out the grounds for challenging the appointment of

an arbitrator. An arbitrator may be challenged only if circumstances exist that give rise to justifiable grounds as to his impartiality or independence or if the arbitrator does not possess qualifications agreed to by the parties.

20. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

South African courts rarely interfere or intervene in arbitration proceedings seated in their jurisdiction. A mere court application will not suspend the arbitration proceedings unless agreed by the parties.

21. Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?

No.

22. Has there been any recent decisions in your country concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

No. There has been no recent decisions concerning arbitrators' duties of disclosure.

There has however been decisions concerning an arbitrator's duty to disclose the record of arbitration proceedings in subsequent court applications to challenge the award. In *Zamani Marketing and Management Consultants Proprietary Limited and Another v HCI Invest 15 Holdco Proprietary Limited and Others* (32026/2019) [2020] ZAGPJHC 5; 2021 (5) SA 315 (GJ) (11 February 2020), the court held that the notes by the arbitrators do not form part of the record of proceedings. The court found that the arbitrators' note bears no relationship with the award and that the award sets out all the reasons for the decision. As such, arbitrators cannot be compelled to disclose their notes in a review application to challenge their award.

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

The legal framework and/or rules by arbitral institutions do not regulate such eventuality. Parties to the arbitration will have the right to agree with the remaining arbitrators to proceed with the arbitration.

24. Are arbitrators immune from liability under local laws?

The Arbitration Act does not provide immunity to arbitrators, however, typically rules of institutions such as the AFSA and the Association of Arbitrators (Southern Africa) usually provide such immunity.

Section 9(1) of the International Arbitration Act provides that an arbitrator is not liable for any act or omission in the discharge or purported discharge of that arbitrator's functions as arbitrator unless the act or omission is shown to have been done in bad faith.

25. Is the principle of competence-competence recognized in your country?

Article 16 of the UNCITRAL Model Law, as incorporated on the International Arbitration Act, codifies the concept of competence-competence and provides that an arbitral tribunal can rule on its own jurisdiction, including on any objections with respect to the existence or validity of the arbitration agreement.

In the domestic arbitrations, the principle of competence-competence was first recognized and applied in the case of *Canton Trading 17 (Pty) Ltd t/a Cube Architects v Fanti Bekker Hattingh* N O (479/2020) [2021] ZASCA 163; 2022 (4) SA 420 (SCA) (1 December 2021).

26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

The parties to an arbitration agreement may refer the matter to court without having taken it to arbitration. If the opposing party does not agree with referring the matter, it may raise a special plea for the suspension or dismissal of the court proceedings. In an instance where a special plea is raised, the approach adopted by local courts in South Africa is to direct that the parties refer the matter to arbitration in accordance with the arbitration agreement. The exception to this approach is when a party is seeking urgent interim relief from the court.

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

The dispute resolution provisions contained in the agreement between the parties set out the steps to the followed for referring a dispute to arbitration. The steps are typically as follows:

- The aggrieved party sends a notice of breach to the defaulting party.
- If the defaulting party fails to remedy the breach within the stipulated time period then the aggrieved party sends a notice referring the dispute to arbitration.
- If the arbitration agreement provides that a particular institution administer the arbitration, the parties attend to administrative matters such as the appointment of an arbitrator and payment of administrative fees etc.,
- The initiating party must deliver a statement of claim together with their supporting documents and complete the necessary forms of the relevant institution.
- Once the parties have paid their portion of the administrative fees, the institution typically appoints an arbitrator, if not appointed by agreement, to preside over

the arbitration proceedings.

Claims may be time-barred through the operation of prescription. The Prescription Act, 1969 provides that a contractual claim is extinguished by prescription if the creditor fails to enforce his claim within three years of the date on which the debt became due. The debt is not deemed to be due until the creditor has knowledge of the identity of the debtor or could have acquired such knowledge by the exercise of reasonable care.

28. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?

There are no limitation periods prescribed in which a party make seek to recognize and enforce an international arbitration award,

An application for setting aside an award may not be made after three months have elapsed from the date on which the party making that application had received the award as per the provisions of Article 34(3) of the UNCITRAL Model Law, as incorporated on the International Arbitration Act.

29. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

In terms of Section 10(1) of the Foreign States Immunities Act, 1981, a foreign state which has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration, shall not be immune from the jurisdiction of the courts of South Africa in any proceedings which relate to the arbitration.

30. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

No. Arbitrations are voluntary in nature. Should a party elect not to participate in the arbitration proceedings, the other party may proceed to finality with the arbitration in the absence of the other party in accordance with the elected rules.

31. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Yes, for both domestic and international arbitrations third parties may voluntarily join arbitration proceedings if there is a written arbitration agreement concluded between the parties.

The rules of most international arbitration institutions do include rules providing for the joinder of additional parties. Generally, the principle is that there can be no joinder of an additional party without the agreement of all the parties, including the additional party.

32. Can local courts order third parties to participate in arbitration proceedings in your country?

No. Local courts may not order third parties to participate in arbitration proceedings. Arbitrations are voluntary in nature.

33. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Yes. Local courts may issue interim measures such as urgent interdicts pending the constitution of the tribunal.

34. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Yes, parties may institute anti-suit as explained in paragraph 26 above. Anti-arbitration injunctions are also available to the parties in an instance where the arbitrator's jurisdiction is challenged.

35. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

Generally, there are no mandatory rules which apply for the production of written and/or oral witness testimony. Typically, this would be governed by the rules elected by the parties. The use of witness statements with cross examination is common. Oral direct examinations are also common. Arbitrators are however free to adopt such procedures as they regard as appropriate for the resolution of the dispute before them, unless the arbitral agreement precludes them from doing so. They may therefore receive evidence in such form and subject to such restrictions as they may think appropriate to ensure, the just, expeditious, economical and final determination of the dispute.

Witnesses may be subpoenaed in terms of section 16 of the Arbitration Act for domestic arbitration and Article 27 of the UNCITRAL Model Law, as incorporated on the International Arbitration Act for international arbitrations.

36. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

There are no specific provisions regarding the ethical duties of arbitrators. However, an award made by an arbitrator who has not been independent, neutral and impartial is liable to be set aside by way of review proceedings.

37. In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

The Arbitration Act does not automatically render domestic arbitral proceedings confidential whereas Section 11 of the International Arbitration Act cater for the confidentiality of arbitral proceedings where such proceedings are held in private, save for arbitrations involving a public body, which as a matter of course must be held in public, unless there are compelling reasons for the contrary. The UNCITRAL Model Law is silent on confidentiality.

The AFSA Rules of International Arbitrations pertinently preserve confidentiality and have a chapter dedicated to confidentiality. They for example provide that decisions of the AFSA International Court are confidential and that the parties undertake as a general principle to keep confidential all awards in the arbitration, together with all materials in the arbitration created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain. They however recognise that confidentiality is not absolute and make exceptions for disclosure where it is required of a party by legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a state court or other legal authority.

There is therefore no uniform consensus on the confidentiality of arbitrations and the principle has been said not to be sacrosanct. The High Court has for example not hesitated to order discovery of documents emanating from arbitral proceedings in *Transnet v MV Alina II* (AC 104/09; AC 03/10) [2013] ZAWCHC 124; 2013 (6) SA 556 (WCC) (5 September 2013) and *Replication Technology Group and Others v Gallo Africa Limited In re: Gallo Africa Limited v Replication Technology Group and Others* (08/36580) [2009] ZAGPJHC 8; 2009 (5) SA 531 (GSJ) (15 April 2009).

38. How are the costs of arbitration proceedings estimated and allocated?

The costs of arbitration are generally determined by the administering tribunal. The costs are determined on a sliding scale depending on the value of the claim. Ordinarily, the parties are liable for their equal share (50/50) of the arbitration costs.

39. Can pre- and post-award interest be included on the principal claim and costs incurred?

Yes

40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e., substantiated and motivated?

For domestic arbitration, the substantive requirements of an arbitral award are that the award should be certain, final, possible, lawful and *intra vires*. Such award may, after due notice to the other party, be made an order court and enforced in the same manner as any judgment or order to the same effect. The formal requirements for an award in terms of the Arbitration Act are the following:

- The award must be in writing and signed by all the members of the arbitration

tribunal.

- The award must be made within four months of the hearing or within any extended period allowed by the parties or the court.
- The award is required to be delivered by the arbitration tribunal, the parties or their representatives being present or having been summoned to appear.

For international arbitrations, Section 17 of the International Arbitration Act provides that the party seeking the recognition or enforcement of a foreign arbitral award must produce the original foreign arbitral award and the original arbitration agreement in terms of which the award was made, both authenticated for use in the high court, or certified copies of the award and the agreement and sworn translations of those documents

41. What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an *ex parte* basis?

Depending on whether the enforcement application is opposed or not and the availability of hearing dates, the estimated timeframe for the recognition and enforcement of an award will depend on the court rolls in a specific division of the High Court. A party may proceed on the basis of urgency provided that there are sufficient grounds to justify the application being placed on the urgent court roll.

The recognition and enforcement of an arbitration award is made by way of application however such application is not made on an *ex parte* basis and must be made on notice to the other party.

42. To what extent is a foreign arbitration award enforceable?

There is strong support for arbitration in South Africa and the courts will generally enforce domestic and international arbitration awards, subject to the provisions of the International Arbitration Act. Section 16 of the International Arbitration Act provides that subject to the court discretion to refuse to recognize or enforce arbitral award in terms of section 18, an arbitration agreement and a foreign arbitral award must be recognised and enforced in the South Africa. It further provides that a foreign arbitral award must, on application, be made an order of court and may then be enforced in the same manner as any judgment or order of court.

Section 18 of the International Arbitration Act provide that courts may refuse to recognize or enforce a foreign arbitral award if:

- The court finds that:
  - a reference to arbitration of the subject matter of the dispute is not permissible under the law of South Africa; or
  - the recognition or enforcement of the award is contrary to the public policy;
- the party against whom the award is invoked, proves to the satisfaction of the court that:
- party to the arbitration agreement had no capacity to contract under the law

applicable to that party;

- the arbitration agreement is invalid under the law to which the parties have subjected it, or where the parties have not subjected it to any law, the arbitration agreement is invalid under the law of the country in which the award was made;
- that he or she did not receive the required notice regarding the appointment of the arbitrator or of the arbitration proceedings or was otherwise not able to present his or her case;
- the award deals with a dispute not contemplated by, or not falling within the terms of the reference to arbitration, or contains decisions on matters beyond the scope of the reference to arbitration;
- the constitution of the arbitration tribunal or the arbitration procedure was not in accordance with the relevant arbitration agreement or, if the agreement does not provide for such matters, with the law of the country in which the arbitration took place; or
- the award is not yet binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.

43. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Yes.

In terms of Section 33(1) of the Arbitration Act, domestic arbitral awards may be set aside where:

- any member of an arbitration tribunal has misconducted himself in relation to his duties as arbitrator;
- an arbitration tribunal has committed any gross irregularity in the conduct of the arbitration proceedings or has exceeded its powers; or
- the award has been improperly obtained.

Article 34 of the UNCITRAL Model Law provides that an international arbitral award may be set aside where:

- a party to the arbitration agreement under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the Republic;
- the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his or her case;
- the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration; or
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties.

44. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

The Arbitration Act does not impose any limits on the types of remedies that are available in arbitration. However, one of the requirements for the enforcement of an arbitration award is that the enforcement must not be contrary to public policy. Generally, the policy of South African law and practice is that for both the breach of contract and the assessment of the quantum of damages, the injured party is entitled to no more than compensation for the damages actually suffered by him. The award of punitive damages in such instances is alien to the South African legal system. However, it has been held that the mere fact that awards are made on a basis not recognised in South Africa does not entail that they are necessarily contrary to public policy. Whether an award is contrary to public policy depends largely on the facts of each case.

45. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

No. Arbitration awards are not appealable unless the parties agree so and even then such an appeal lies with an appeal tribunal and not local courts.

Arbitral awards can only be set aside by a court on review and set out in paragraph 43 above.

46. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

There is no right of appeal. Parties are able to and typically exclude an appeal in arbitration proceedings.

There is a right to set aside an award on review as set out in paragraph 43 above. As to whether parties can waive statutory rights is unsettled in South African law and may depend on the facts of each case.

47. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

Please refer to paragraph 29 above.

48. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

Third parties or non-signatories are not bound by an award where they were not a party to the arbitration agreement.

49. **Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?**

No.

50. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Yes

For example, Article 11(1) of the AFSA International Arbitration Rules provides that a party that needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal may make an application for such measures before, concurrent with, or following the filing of a request, but prior to the constitution of the arbitral tribunal, to the secretariat for the appointment of an arbitrator to conduct emergency proceedings pending the constitution or expedited constitution of the arbitral tribunal.

Article 11(5) of the AFSA International Arbitration Rules state that any emergency decision may be confirmed, varied, discharged or revoked, in whole or in part, by order or award made by the arbitral tribunal, once constituted, upon application by any party or upon its own initiative.

Decisions made by emergency arbitrators constitute interim awards are enforceable in the normal course.

51. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

Yes.

For example, the AFSA Rules for Expedited Arbitration. Yes.

52. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

Parties are at liberty to elect and appoint whichever arbitrator, however, there are instances where parties attempt to diversify the choice of arbitrators and counsel.

53. Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

Yes.

The recent reported decisions in *Momoco International Limited v GFE-MIR Alloys and Minerals SA (Pty) Ltd* (55273/2021) [2023] ZAGPJHC 764 (2 June 2023) and *GFE MIR Alloys and Minerals SA (Pty) Ltd v Momoco International Limited* (55273/2021) [2023] ZAGPJHC 946 (24 August 2023) dealt with an opposition to an application for the recognition and

enforcement of arbitration award obtained in the People's Republic of China on the grounds of public policy.

54. Has there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

No. But a party wishing to rely on corruption must not only plead it but must also prove it clearly and distinctly. The onus is the ordinary civil onus of balance of probabilities, bearing in mind that corruption is not easily inferred.

55. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

Yes, due to the Covid-19 pandemic, there has been an increase in virtual arbitration hearings and proceedings which mitigates the costs of the arbitration process. i.e., parties do not have an extra expense of renting a venue for parties to convene the arbitration hearing.

Both AFSA and the Association of Arbitrators have developed protocols for remote hearings.

56. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

Depending on whether a party is in business rescue or liquidation. If a party is in business rescue, there is moratorium on institution of legal proceedings or enforcement of an arbitration agreement against that party until they come out of business rescue. A party with an award may submit the claim to the business rescue practitioner.

If a party is in liquidation, the claim must be filed with the appointed liquidator and notice must be given to the appointed liquidator of the intention to proceed the claim against the party in liquidation.

57. Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

Ordinarily due to the nature of these disputes and the public interest, they are instituted in local courts and not by way of arbitration. Recent examples include the seismic survey judgments such as *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others* (3491/2021) [2022] ZAECMKHC 55; 2022 (6) SA 589 (ECMk) (1 September 2022); *Sustaining The Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others* (3491/2021) [2021] ZAECGHC 118; [2022] 1 All SA 796 (ECG); 2022 (2) SA 585 (ECG) (28 December 2021) and *Border Deep Sea Angling Association and Others v Minister of Mineral Resources and Energy and Others* (3865/2021) [2022] ZAECMKHC 38 (7 June 2022).

58. Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?

No. Please refer to paragraph 57 above.

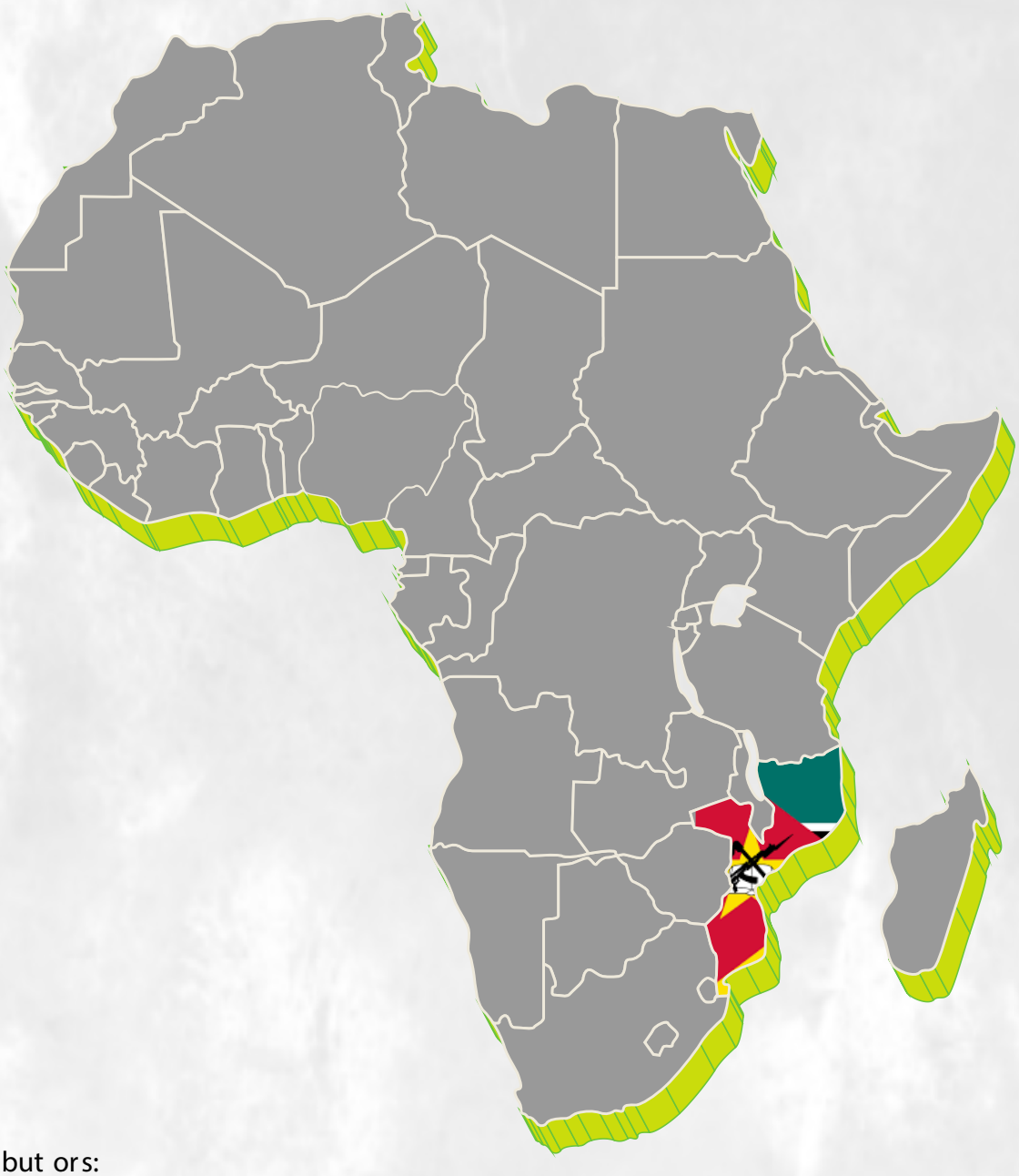
59. Is consolidation allowed under local laws?

Yes. Parties may consolidate matters by way of application.

60. What is the regime for enforcement of ICSID awards in your country?

The ICSID awards may be recognised and enforced in accordance with the New York Convention read with the International Arbitration Act.

Mozambique



Contribut ors:



Dimetrio Manjat e



Pascoal Bié

Notice: All legal provisions for which the law is not specified are related to the Law on Arbitration, Conciliation and Mediation (Law no. 11/99 of 8 July).

1. What legislation applies to arbitration in your country? Are there any mandatory laws? What are their effects?

Arbitration in Mozambique is governed by the following legislation:

a) Law no. 11/99 of 8 July, so called Law on Arbitration, Conciliation and Mediation, which came into force on 12 August 1999. This is the main law containing provisions on domestic and international arbitration.

b) Law no. 15/2011 of 10 August, also know as "Public-Private Partnerships Law", provides that in order to speed up the settlement of disputes and safeguard the dynamics of business economic life, especially for the satisfaction of collective needs, the public-private partnership contract may prioritize dispute resolution through mediation and arbitration, under the provisions of the law.

c) Law no. 7/2014 of 28 February 2014, concerning administrative litigation procedures, contains some provisions related to arbitration for matters pertaining to administrative contracts and non-contractual civil liability of the Public Administration or of the heads of its bodies, officials or agents for damages arising from acts of public management.

d) Law no. 20/2014 of 18 August, also known as "Mining Law", requires that the mining contract to be concluded between the government and the holder of a prospecting and exploration license and mining concession must contain clauses on dispute resolution mechanisms, including provisions on the resolution of disputes by arbitration.

e) Law no. 21/2014 of 18 August 2014, also designated as "Oil Law", contains provisions on arbitration as the preferable mean of dispute resolution according to ICSID rules or others agreed by the parties.

f) Decree no. 30/2016 of 27 July 2016, that approves the Regulation of the Labor Mediation and Arbitration Commission.

g) Law no. 12/2022 of 11 July 2022, also know as the "Electricity Law":

- requires that, apart from the mini-grid concession contract, the concession contract must include clauses on dispute resolution mechanisms, including international arbitration, if applicable.
- If disputes between authorization holders, or between authorization holders and consumers involving regulatory matters cannot be resolved by agreement, the disputed matter may be submitted to arbitration,

mediation and conciliation. Disputes between the state and the concession holder involving foreign direct investment, arising from the activity covered by the concession, including investment and its regime shall be settled by arbitration, under terms to be established in the title of the concession, upon written notification by one party, in accordance with:

- the rules of the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States, as well as the rules of ICSID.
- the ICSID Additional Facility Rules and Regulations, if the foreign entity does not meet the nationality conditions laid down in in Article 25 of the Convention.
- ICC Arbitration Rules.
- *Ad hoc* arbitration rules, with arbitrators being designated according to UNCITRAL Abitration Rules.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Mozambique is a signatory to the New York Convention (adopted by the Resolution of the Council of Ministers no. 22/98, of 2 June 1998, entered into force on 9 September 1998). The country declared a reservation to the general obligations of the Convention based on reciprocity for awards rendered within a territory of other Contracting State.

3. What other arbitration-related treaties and conventions is your country a party to?

Mozambique is also a signatory to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (adopted by Resolution no. 10/92, of 25 September 1992, by the Mozambican Parliament and entered into force on 7 July 1995).

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

Mozambican Law on Arbitration (Law no. 11/99 of 8 July) is not an adoption of the UNCITRAL Model Law but was inspired by it. There are some differences to point out, namely:

a) Although the LACM focuses on domestic commercial arbitration, it may also apply to: (1) international transactions if the parties in dispute so agree and (2) other non-commercial relationships, not excluded by specific provisions of law from commercial arbitration and involving

rights within the power of disposal of the holder (Article 5). This is the case for administrative arbitration, which may be adopted in contractual relationships with the State or a public entity as a party vested with *jus imperii* (public authority) or enjoying immunity. State and public entities must be authorized to enter into arbitration agreements by special law (Article 6), which is the case of Law No. 7/2014 of 28 February 2014, already mentioned.

b) The LACM is also applicable to mediation and conciliation (Articles 60–66 of Title III), and certain rules regarding arbitration are applicable, with adjustments on a case-by-case basis, to conciliation and mediation, if not excluded by the parties or by another law (Article 62).

c) The LACM provides that an arbitration agreement is deemed to be waived tacitly in cases where the defendant party in a court proceeding does not raise the objection that the case is governed by an arbitration agreement (Article 13).

d) Article 14 of the LACM provides for expiration of an arbitration agreement due to the non-constitution of the arbitral tribunal or the arbitral award not having been issued.

e) The LACM provides that an arbitration agreement is deemed null and void if it violates the provisions of the LACM regarding legitimacy, scope and exclusions in arbitration proceedings (Article 15, referring to Articles 5 and 6).

f) The LACM establishes minimum requirements of eligibility for appointment as arbitrator, i.e., to be a natural person and to have legal capacity (Article 19).

g) Under the LACM, arbitrators are deemed to have accepted the appointment both if they agree and if they do not state otherwise in writing within five days from the notification (Article 20(3)).

h) Under Article 21(3) of the LACM, an arbitrator must not be the same individual that has served as mediator in the same dispute, unless otherwise agreed by the parties to the dispute or the appointment is to become the presiding arbitrator.

i) Specific provisions regarding the ethical conduct of arbitrators are set out in Article 22 of the LACM.

j) In case of an arbitrator's resignation or refusal during the course of an arbitral proceeding, the proceeding is interrupted and resumes upon appointment of the new arbitrator (Article 23(7).

k) The inclusion of provisions on costs and arbitrators' fees (Article 24 LACM).

l) The LACM formally states the principles of alternative methods of dispute resolution, namely: party autonomy, flexibility, privacy and confidentiality of proceedings, independence and impartiality of arbitrators and conciliators; speedy resolution of disputes; equal treatment (also stated in the Model Law); use of oral hearings; and adversarial proceedings where the parties have the right to be heard (Article 2).

5. Are there any impending plans to reform the arbitration laws in your country?

Mozambican Law on Arbitration (Law no. 11/99 of 8 July) is currently under revision (not yet submitted to the Parliament).

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The arbitral institutions existing in Mozambique are:

a) Centro de Arbitragem Conciliação e Mediação - CACM (Arbitration, Conciliation and Mediation Center), a private entity, created under the auspices of the Confederation of Trade Associations (CTA). The center is located in Maputo city (the capital of Mozambique). CACM rules were approved upon its creation in 2002 and have been updated in 2016.

b) Centro de Mediação e Arbitragem Laboral – CEMAL (Labor Mediation and Arbitration Center), a public entity, aimed to have offices in all the provinces of Mozambique. CEMAL arbitration rules were amended in 2016.

7. Is there a specialist arbitration court in your country?

We don't have a specialist arbitration courts in Mozambique.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

To be valid, the arbitration agreement:

a) Must be in writing, being an arbitration clause within a contract or a separate agreement.

b) Must refer to matters that are arbitrable. In other words, it must relate to a legal relationship, whether contractual or not, which is not excluded to arbitration by special law provisions.

9. Are arbitration clauses considered separable from the main contract?

The arbitration clauses are considered separable (autonomous) from the main contract. The nullity of the main contract doesn't automatically imply the nullity of the arbitration clause (article 11 of the Arbitration Law).

10. Is there anything particular to note in your jurisdiction with regard to multi-party or

multi- contract arbitration?

No particular aspect to be pointed out with regard to multi-party or multi-contract arbitration in Mozambique.

11. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

Mozambican legislation has no specific provisions regarding the binding nature of arbitration agreements on third parties or non-signatories. We have no record of a recent court decision on the matter.

12. Are any types of disputes considered non-arbitrable? Has there been any jurisprudence in this regard in recent years?

Yes, according to the Mozambican Arbitration Law, disputes involving non-disposable or non-negotiable rights, and disputes that are exclusively subject by special law to the jurisdiction of a judicial court (Article 5 of the Arbitration Law). We have no record of any recent court decision on the matter.

13. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

We have no record of any recent court decisions in Mozambique specifically concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the parties.

14. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

In Mozambique, the law applicable to the substance of a dispute can be agreed by the parties in the arbitration agreement as long as there is no violation of good customs and public order principles of Mozambican law. If there is no agreement of the parties on the law applicable to the substance, the tribunal applies the legislation in force (Article 34). As for the choice of law rules, the Mozambican Arbitration Law does not explicitly provide a specific set of rules.

15. In your country, are there any restrictions in the appointment of arbitrators? Are there

any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?

There is no restrictions in the appointment of arbitrators in Mozambique. The Arbitration Law doesn't specify any requirement relating to number, qualifications, and characteristics of arbitrators. As long as the individual has legal capacity he can serve as an arbitrator. The arbitrator is not required to be a national of or licensed to practice in Mozambique (Article 19 of the Arbitration Law).

16. Are there any default requirements as to the selection of a tribunal?

The Arbitration Law does not provide for any default requirements as to the selection of a tribunal.

17. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

Yes, the local courts can intervene to assist arbitration proceedings seated in the country, for example to order interim measures (Article 12 § 4 of the Arbitration Law).

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Yes, the local courts can intervene in the selection of arbitrators in Mozambique. The local courts may intervene in the selection of arbitrators where the parties haven't agreed on the rules to appoint the arbitrators. Local courts intervention will be sought if parties don't agree on the appointment of an arbitral institution aimed at administering the dispute. The Law doesn't provide for a deadline for appointing arbitrators, which has contributed to the delay in appointing and starting arbitration.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Yes, the appointment of an arbitrator can be challenged (Article 23 of the Arbitration Law). The Law doesn't directly specify the grounds for challenging the appointment of an arbitrator. So, this can be done under several general grounds, namely lack of independence; lack of impartiality; conflict of interest; unethical behavior; misconduct; or failure to comply with the applicable arbitration agreement; any justifiable doubts concerning the arbitrator's impartiality. The procedure for such challenge can be agreed by the parties. In the absence of such agreement, the party willing to challenge

the arbitrator must submit, in writing, the grounds for challenging the arbitrator, within 15 days of the notice of appointment of the arbitrator. If the arbitrator that is being challenged does not resign, the tribunal has jurisdiction on the issue.

20. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceeding by frequent court applications?

It is less likely that a local court can intervene to frustrate an arbitration seated in Mozambique due to the principle of *competence de la competence*. Consequently, it is less likely that a party is successful delaying proceedings by frequent court applications.

21. Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?

We have no record of any recent developments concerning the duty of independence and impartiality of the arbitrators in Mozambique. Rules on these matters are provided in the Arbitration Law.

22. Has there been any recent decisions in your country concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

We have no record of any recent decision concerning arbitrators' duties of disclosure in Mozambique.

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

In the case of a truncated tribunal (due to any reason) the proceedings are suspended until a replacing arbitrator is appointed following the rules of the appointment of a substitute arbitrator (Article 23 § 7 of the Arbitration Law).

24. Are arbitrators immune from liability under local laws?

The Arbitration Law does not provide for specific provisions on the liability of arbitrators for their actions or omissions. Thus, arbitrators are not immune. They are liable in general terms of law.

25. Is the principle of competence-competence recognized in your country?

Yes, the principle of competence-competence is recognized in Mozambique to the extent that:

a) the arbitration agreement implies a waiver by the parties to initiate legal proceedings on the matters or controversies submitted to arbitration (Article 12 § 1 of the Arbitration Law).

b) the arbitral tribunal before which an action relating to a matter covered by an arbitration agreement has been brought, if one of the parties so requests by the time it makes its first submissions on the merits of the case, shall refer the parties to arbitration, unless it finds that the arbitration agreement has lapsed or is unenforceable (Article 12 § 2 of the Arbitration Law).

c) Even in cases where a claim referred to in the preceding paragraph has been submitted to the court, arbitration proceedings may be initiated or continued and an award rendered while the matter is pending before the court (Article 12 § 3 of the Arbitration Law).

d) the Arbitration Law provides for full autonomy of the tribunal with least interference of the courts in the arbitration proceedings. However, the Law does not specify the competence of the tribunals to rule on their own jurisdiction when this is challenged.

26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Under the terms of the Mozambican Code of Civil Procedure code, the commencing of litigation in breach of an arbitration agreement is one of the grounds for the dismissal of a lawsuit. So, courts tend to dismiss the case when a breach of an arbitration agreement occurs.

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

The parties can agree on how and when the arbitral proceedings are considered to have commenced. In the absence of such agreement, the Arbitration Law provides that the arbitral proceedings shall commence on the date on which the request to refer that

dispute to arbitration is received by the respondent (Article 25).

28. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?

The limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside Mozambique's jurisdiction is 30 days.

29. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

If the arbitration agreement is valid, the state or state entity cannot invoke immunity in connection with commencement of arbitration. The acceptance of the arbitration agreement is, based on good faith, considered as a waiver of immunity by the state.

30. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

I f the respondent fails to participate in the arbitration, for instance, not submitting the statement of defense, the tribunal will proceed with the arbitration without considering the fault itself as an acceptance of the claimant's allegations (Article 30 § 2,b) of the Arbitration Law).

31. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

The Arbitration Law does not include provisions on joinder (by third parties). However, given the contractual nature of arbitration, and the parties ability to agree on the rules governing the proceedings, we understand that if parties have agreed to intervention by third parties, such intervention is permissible. The agreement is binding on the arbitral tribunal.

32. Can local courts order third parties to participate in arbitration proceedings in your country?

The Arbitration Law does not give to the local courts the right to order third parties to

participate in arbitration proceedings.

33. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

The Arbitration Law gives power to the local courts (Article 12, § 4) and to the tribunal (Article 33) to order interim measures without specifying the nature of such. Thus, we understand that, in principle, all kinds of interim measures that are compatible with the specific case are possible. Local courts have the power to issue interim measures pending the constitution of the tribunal (Article 12, § 4).

34. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Anti-suit and anti-arbitration injunctions are not explicitly provided for under Mozambican Arbitration Legislation. However, the Mozambican Code of Civil Procedure provides for a non-specified injunction that can be issued by local courts after assessing the grounds that are brought by the applicant. Such application may include anti-suit and anti-arbitration injunctions. We have no records of any case where enforceability of such injunctions has been tested.

35. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

The Arbitration Law provides that the parties may agree on evidentiary matters (Article 29, § 1). If not agreed by the parties, evidentiary matters are to be treated according to the Civil Code and the Code of Civil Procedure (Article 32, § 1). Local courts will play a role in obtaining evidence and will be bound by its own jurisdiction and will follow the evidentiary rules provided for in the Code of Civil Procedure. Local courts can compel witnesses to participate in arbitration proceedings.

36. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

Counsels are bound to the ethical codes and professional standards provided for by the Bar Association Statute (Law no. 28/2009, of 29 September 2009). Arbitrators are

bound to the ethical codes and professional standards provided for by the Arbitration Law (Article 22) and institutional rules such as the rules of CACM (Arbitration, Conciliation and Mediation Centre).

37. In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

Privacy is one of the principles of arbitration in Mozambique, and it consists of guaranty of confidentiality of the proceedings to the parties involved (Article 2, § 2, c of the Arbitration Law). The Law does not elaborate on the scope of such confidentiality and does not specify who is bound by the obligations. Thus, we understand, on the one hand, that all information brought to the proceedings which is not public, will be considered as confidential. On the other hand, all the intervenient (parties, arbitrators, institutions, witnesses and so on) are bound by the confidentiality obligation.

38. How are the costs of arbitration proceedings estimated and allocated?

The remuneration of the arbitrators and other parties involved in the proceedings, as well as the other costs of the proceedings and their allocation between the parties, must be fixed in the arbitration agreement or in a subsequent document signed by the parties, or result from the arbitration rules chosen by the parties or by whoever they delegate or by the court at the request of one of the parties (Article 24 (1) of the Arbitration Law).

In the absence of an agreement between the parties, the rules of the Arbitration Act apply. Costs include the arbitrators' fees and expenses, the administrative costs of the proceedings and the costs of gathering evidence (Article 24 (2) of the Arbitration Law). For the purposes of calculating costs, the President of the tribunal or the sole arbitrator shall set a value for the proceedings, corresponding to the immediate economic utility of the claim formulated by the claimant and on the basis of which the arbitrators' fees shall be calculated (Article 24 (3) of the Arbitration Law). Administrative costs, arbitrators' expenses, and the costs of producing evidence must be determined by their actual cost (Article 24 (4) of the Arbitration Law).

39. Can pre- and post-award interest be included on the principal claim and costs incurred?

If the parties have chosen to apply to the merits rules of law that allow interest to be charged, this should be included in the arbitration award. The same will happen if the parties have not agreed on the law applicable to the merits, in which case the tribunal will have to apply the rules of constituted law, which, in the case of Mozambique, allow interest to be charged.

40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

The procedures for recognition and enforcement of an award in Mozambique are different for domestic and foreign awards. Domestic awards have the same value as local courts awards. Thus, they do not require recognition and are enforceable in the same manner as local courts awards, following this procedure:

a) The applicant (who seeks for enforcement) must submit an application for enforcement in the relevant local court.

b) The defendant is served notice to pay or designate assets for attachment within a specified period.

c) If the defendant fails to make the payment within the specified period, the court returns the right to designate assets to the applicant.

d) After the assets are designated for attachment, the court proceeds with the seizure of these assets and makes payment to the petitioner. The debtor's bank balances may also be attached.

Foreign awards follow the following procedures for recognition and enforcement:

a) The Supreme Court of Mozambique has jurisdiction to rule on the recognition and enforcement of foreign arbitral awards. Foreign arbitral awards are enforced by the following procedure (as provided in Chapter VII LACM):

b) Recognition of foreign arbitral awards by the Supreme Court is required prior to enforcement (which is ordered to take place through the competent state court).

c) Accompanying documentation includes: a request for recognition; a certification by the arbitral tribunal stating that the award is conclusive and final (i.e., has res judicata) and has been filed at the relevant arbitration court or

institution; the arbitral award itself (in original or certified copy); the original or certified copy of the main agreement with the arbitration clause or the arbitration agreement, as applicable; and any ancillary documents. All such documents must be submitted together with their sworn Portuguese translation and certified by the Mozambican consulate in the country of origin.

d) Following recognition of the foreign arbitral award by the Supreme Court, enforcement takes place through the competent provincial or Maputo City Court.

41. What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

There are no specific timeframes for the recognition and enforcement of an award in Mozambique. The time for a decision on recognition and enforcement may vary. We estimate that the proceedings may take from six to twelve months. No expedited procedure is available. A party cannot bring a motion for the recognition and enforcement of an award on an *ex parte* basis.

42. To what extent is a foreign arbitration award enforceable?

After the recognition procedure, a foreign arbitration award is as enforceable as domestic arbitration awards or other rendered by national courts.

43. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Yes. While foreign arbitration awards require a review procedure for recognition and enforcement, domestic arbitration awards do not require such procedure. The latter are directly enforceable following the same procedure applicable to national courts awards.

44. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts

The law does not impose limits on the available remedies. The arbitration award will always be enforceable if it meets the criteria foreseen by the law, namely (Article 1096 of Code of Civil Procedure):

a) There is no doubt as to the authenticity of the document containing the judgment or the reasoning of the decision.

b) The award is considered res judicata under the law of the country in which it was rendered.

c) The jurisdiction of the foreign court was not determined by fraud and the case does not fall within the exclusive competence of the Mozambique courts.

d) The exception of *lis pendens* or *res judicata* cannot be invoked regarding a case between the same parties before a Mozambique court, unless it was the foreign court that prevented jurisdiction.

e) The defendant was properly summoned to the proceedings in accordance with the law of the country of the court of origin, and the principles of fair hearing and equality of the parties were observed.

f) Recognition of the award would not be manifestly incompatible with the principles of international public order of the Mozambican state.

g) Where it has been handed down against a Mozambican, the award does not offend the provisions of Mozambican private law, under the Mozambican conflict of law rules.

45. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Arbitration awards can be challenged in local courts in Mozambique through an application for the setting aside. With regards to the **grounds** pursuant to the Arbitration Law (Article 44), the arbitral award can only be set aside by the court in cases where:

a) the party seeking setting aside pleads and proves that:

I. a party to the arbitration agreement was legally incapacitated; or

ii. that the arbitration agreement is not valid under the law to which the parties made it subject or, in the absence of any indication in this regard, under the law of the Mozambican State; or

iii. a party was not duly informed of the appointment of an arbitrator

or of the arbitral proceedings or it was impossible for it to assert its rights for any other reason; or

iv. the award concerns a dispute not referred to in the *compromis* or not covered by the arbitration clause, or contains decisions which go beyond the terms of the *compromis* or arbitration clause, it being understood, however, that if the provisions of the award relating to matters submitted to arbitration can be dissociated from those not submitted to arbitration, only that part of the award which contains decisions on matters not submitted to arbitration may be annulled; or

v. the constitution of the arbitral tribunal or the arbitral proceedings do not comply with the parties' agreement, unless that agreement is contrary to a provision of the Arbitration Law which the parties cannot derogate from, or, in the absence of such an agreement, does not comply with the Arbitration Law; or

b) the court finds that:

i. the subject matter of the dispute is not capable of being decided by arbitration under the Law of the Mozambican State; or

ii. the award is contrary to the public policy of the Mozambican State.

The **procedure** to be applied to requesting the set aside of the award is as follows:

a) The application to set aside the decision must be lodged before the arbitral tribunal that rendered the decision, within thirty days of its notification or of the notification of the decision that rectified, interpreted or supplemented it.

b) The opposing party must be notified of the request for annulment in order to respond, if it so wishes, within 30 days.

c) Once this period (30 days) has elapsed and within a maximum of forty-eight hours, the arbitral tribunal shall refer the case to the competent court.

d) Before referring the case to the competent court, the tribunal must rule on the admissibility of the grounds.

e) The arbitral tribunal must reject an appeal filed out of time or based on grounds

other than those provided for by law. If the arbitral tribunal rejects the request for setting aside, the claimant may appeal to the court.

f) Once the application for annulment has been received, the court may, where appropriate and at the request of one of the parties, suspend the proceedings to set aside the award for such period as it may determine, in order to give the arbitral tribunal the opportunity to resume the arbitral proceedings or to take any other measure that the court deems likely to remove the grounds for annulment.

g) At the end of the period referred to in the previous paragraph, the court must examine the claim and issue a decision, and may, if necessary, use evidence admitted by the Civil Procedural Law.

h) The decision handed down by the court is final, which means it cannot be appealed.

46. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

According to the Mozambican Arbitration Law (Article 47), the right to request the setting aside of the arbitral award is non-waivable.

47. To what extent might a state or state entity successfully raise a defense of state or sovereign immunity at the enforcement stage?

If the enforcement is sought against a state or state entity bound by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards or against a state or state entity that have given its valid consent to arbitration, we see no room for a successful defense against enforcement, on the grounds of state or sovereign immunity.

48. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

The Mozambican Arbitration Law does not establish provisions regarding the potential binding of third parties or non-signatories by an award. Due to the efficacy of the arbitration agreement, it is understood that the award will only be binding on the parties involved. Similarly, based on these principles, it is understood that a third party

cannot challenge the recognition of an award

49. Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

We have no records of any recent court decision considering third party funding in connection with arbitration proceedings in Mozambique or related to Mozambique.

50. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Emergency arbitrator relief is not available in Mozambique. The Arbitration Law doesn't have any provisions on the emergency arbitrator.

51. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

There are no arbitral laws or arbitration institutional rules in Mozambique providing for simplified or expedited procedures for claims under a certain value.

52. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

We are not aware of any rules or initiatives in Mozambique aimed at promoting diversity in the choice of arbitrators and counsels in the context of arbitration proceedings. However, the Mozambican Bar Association has a gender policy and is actively concerned with the promotion of diversity.

53. Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

We have no records of any recent court decisions in Mozambique considering the setting aside of an award that has been enforced in another jurisdiction or vice versa.

54. Has there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

We have no records of any recent court decisions in Mozambique considering the issue of corruption in arbitration proceedings.

55. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

There is only one arbitral institution in Mozambique (CACM). The institution hasn't implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations. There has been no recent development regarding virtual hearings.

56. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

The insolvency of a party can impact the enforceability of an arbitration agreement considering that the insolvency legal regime (Decree-law no. 1/2013 of 4 July) establishes that the declaration of insolvency or the granting of the request for judicial reorganization suspends the course of all actions and enforcements against the debtor, including the actions of the private creditors of the solidary shareholder (Article 9 (1)).

57. Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

We have no records of any recent developments in Mozambique pertaining to disputes on climate change and/or human rights in the context of arbitration.

58. Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?

We have no records of any recent developments in Mozambique pertaining to carbon trade and carbon credits in the context of arbitration.

59. Is consolidation allowed under local laws?

Neither Mozambican Arbitration Law, nor CACM rules provide rules on consolidation in arbitration proceedings. However, considering that parties may agree on the arbitration procedure we understand that the arbitration agreement may include the consolidation procedure.

60. What is the regime for enforcement of ICSID awards in your country?

Mozambique doesn't have specific rules aimed at the enforcement of ICSID awards. Being a party to the ICSID Convention, Mozambique agreed to recognize and enforce an ICSID award. The procedure for enforcement is governed by the rules provided by the Code of Civil Procedure, where the award must be treated for purposes of enforcement like a final decision of a local court.

Angola



Contribut or:



Dr. Lino Diam vutu

1. **What legislation applies to arbitration in your country? Are there any mandatory laws? What is their effect?**

The main law that deals with arbitration is Law no. 16/03 of July 25, 2003 (Law on Voluntary Arbitration (LVA). The LVA contains 52 articles, divided into eight chapters, covering matters related to the: (a) arbitration agreement; (b) composition of the arbitral tribunal; (c) arbitral procedeure; (d) arbitral awards; (e) contesting awards; (f) enforcement of awards; (g) international arbitration; (h) final and transitory provisions. Article 27 of Law no. 3/22, of March 17, 2022, assigns jurisdiction in matters of appeals against arbitration awards, review and confirmation or recognition of foreign awards to the Civil Chamber of the Court of Appeal. There are other laws in different sectors that refer to arbitration as a means to resolve conflicts arising from the same. With regard to land rights (property right, customary useful domain, surface right and precarious occupation right), Article 79 of Law no. 9/04, of November 9, 2004, Law of Land, subject to arbitration any disputes arising over the transfer or constitution of land rights. In labor matters, the Labor Procedure Code, Law no. 2/24, of March 19, 2024 provides in its Article 178 that collective labor disputes are preferably resolved through alternative means of dispute resolution : arbitration, mediation and conciliation. In matters of tax disputes, Article 92 of the Tax Procedure Code, approved by Law no. 22/14, of December 5, 2014, states that « the parties to tax contracts can only agree to arbitration on issues related to the interpretation, validity, non-existence and execution of its clauses ». Tax contracts can be concluded when determining the taxable amount, both in terms of tax benefits. Law no. 41/20, of December 23, 2020, On Public Contracts established in its Article 351 arbitration as a means of resolving disputes arising form the execution of public contracts. Articles 185 to 189 of the Administrative Litigation Procedure Code (Law no. 32/22, of September 1, 2022) allow arbitration to resolve (a) issues related to contracts, including the assessment of administrative acts relating to their execution,(b) non-contractual civil liability issues, including the enforcement of the right of return, (c) questions related to acts that can be revoked without grounds for their invalidity, (d) questions about concessionary public services. The effect of this legislation is the favoring of arbitration and the expansion of the field of arbitrability of disputes in the Angola's law system.

2. **Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?**

Yes. Angola ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on March 6, 2017. In accordance with the principle of reciprocity contained in Article 1(3) of the New York Convention, the Republic of Angola has made a reservation according to which the Convention will only apply to awards rendered in the territory of other contracting states.

3. **What other arbitration-related treaties and conventions is your country a party to?**

Angola has been a member of ICSID of 1965 since 2022. By Resolution 63/21 of September 1, 2021, the National Assembly of the Republic of Angola approved Angola's accession to the Convention on the Settlement of Investment Disputes between States

and Nationals of Other States (Washington Convention). The Angolan government deposited the instrument of ratification with the ICSID on September 21, 2022. The Convention entered into force for Angola on October 21, 2022.

4. **Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?**

The Angolan Voluntary Arbitration Law is based on the 1985 version of the UNCITRAL Model Law [and the Portuguese Arbitration Law in its 1986 version]. First of all, the LVA distinguishes between two types of arbitration agreement: the arbitration clause (*cláusula compromissória*) and the arbitration commitment (*compromisso arbitral*). When the parties agree to dispense with the courts and submit their disputes to arbitration, they sign an arbitration agreement, which can take the form of either an arbitration clause or an arbitration commitment. An arbitration clause is a clause inserted in a given contract in which the parties agree that disputes arising from that contract will be settled by arbitration, and is signed before any specific dispute arises. The arbitration commitment is an autonomous contract, signed after a dispute has arisen between the parties, in which they agree to submit it to arbitration, defining the conditions and terms under which the arbitration will take place. It should be noted that even if the parties have already submitted a dispute to a court, they can always opt for arbitration as long as the court decision has not been handed down, simply by signing an arbitration agreement.The other deviation from the Model Law relates to recognising the negative effect of jurisdiction. In fact, the UNCITRAL Model Law does not recognise the negative effect of the jurisdiction rule. Article 8(1) of the UNCITRAL Model Law allows the court seised of a dispute covered by an arbitration agreement to reject a plea based on the arbitration agreement if it finds that the agreement has lapsed, is inoperative or cannot be enforced, which implies an assessment of the validity of the arbitration agreement.

5. **there any impending plans to reform the arbitration laws in your country?**

Yes, the Government has been working towards a possible revision of the Law on Voluntary Arbitration. To this end, a commission has been set up to reform the LVA.

6. **What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?**

Arbitration institutions in Angola includes:
(a) CREL – Centre for Extrajudicial Dispute Resolution;
(b) HARMONIA – Integrated Centre for Studies and Conflict Resolution;
(c) CAAL – Angolan Centre for Arbitration Disputes;
(d) CAAIA – Arbitration Centre of the Industrial Association of Angola ;
(e) ARBITRAL IURIS
(f) The Centre for Strategic Studies of Angola
(g) The Centre for Mediation And Arbitration of Angola

Most of these centres were established between 2011 and 2012. Most of them are in the early stages of operation.

7. **Is there a specialist arbitration court in your country?**

With regard to the appointment of arbitrators in situations where one of the parties involved in arbitration proceedings fails to appoint one, the Presiding Judge of the District Court of the place of arbitration has exclusive jurisdiction. The Court of Appeal has jurisdiction over the annulment and appeal of arbitral awards, as well as the recognition of foreign arbitral awards. Law no. 3/22, of March 17, 2022, assigns jurisdiction in matters of appeals against arbitration awards, review and confirmation or recognition of foreign awards to the Civil Chamber of the Court of Appeal (Article 27).

8. **What are the validity requirements for an arbitration agreement under the laws of your country?**

Article 3(1) of the LVA deals with the form of the arbitration agreement, stipulating that it must be concluded by a private document signed by the parties, or by a notarised or authentic document if this is determined by special law, under penalty of nullity (Article 294 of the Civil Code). Arbitration represents a derogation from the jurisdiction of the courts, which constitute the ordinary jurisdiction in Angola. For this reason, the will of the parties in an arbitration agreement must be expressed unequivocally. As a rule, the arbitration clause and the arbitration agreement are contained in a written contract signed by both parties. But, exceptionally, the arbitration clause may not be included in a single contractual document but may result from an exchange of correspondence between the parties, in which they agree that disputes concerning them will be referred to arbitration. If the exchange of correspondence takes place by fax or e-mail, it seems that it should be accepted that the documents do not have to be signed by the author - the LVA should be interpreted to accommodate the most modern forms of communication. This exchange of correspondence should clearly attest to the parties' negotiating declarations (proposal and acceptance), either expressly or tacitly, proving that they intended to conclude an arbitration agreement. Pursuant to Article 4(1) of LVA, the Arbitration Convention is null and void when: (a) it does not take the form prescribed by law; (b) it is concluded in contravention of the mandatory rules of Article 1 of the LVA; (c) the arbitration clause does not specify the legal facts from which the disputed relationship should arise; (d) the arbitration agreement does not determine the subject matter of the dispute and it is not possible to determine it in any other way.

9. **Are arbitration clauses considered separable from the main contract?**

According to Article 4(2) of the LVA, the nullity of the contract does not imply the nullity of the arbitration agreement, unless it is shown that the contract would not have been concluded without the agreement.

10. **Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?**

In the case of multi-party arbitrations, there must be consent from each party to be involved in the same arbitration. In the case of several contracts entered into by the parties, there must also be a compatible arbitration clause in each of them.

11. **In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?**

There is no legal provision on this issue, but legal doctrine suggest that it may be possible under certain circumstances. The main circumstances outlined by legal doctrine include: (a) Theory of the group of companies; (b) Economic unity of the group company; (c) Stipulation in favour of others; (d) Representation or mandate relationship ; (e) Apparent representation or apparent mandate; (f) Subrogation.

12. **Are any types of disputes considered non-arbitrable? Has there been any jurisprudence in this regard in recent years?**

The use of voluntary arbitration as a means of resolving disputes requires, under the terms of Article 1(1) of the LVA, the verification of the following conditions: (i) the legal capacity of the parties, (ii) that the subject matter of the dispute concerns available rights and (iii) that the use of voluntary arbitration has not been excluded by special law. All rights available to the parties can be submitted to arbitration, i.e. those that they can constitute, modify, extinguish and waive. The availability of a right must be assessed taking into account the specific issue in dispute. As a rule, issues of a criminal nature, relating to family law, bankruptcy and labour law are not arbitrable, since our legislator has removed them from the scope of availability of the parties. On the other hand, the majority of civil and commercial matters will be arbitrable, namely disputes between companies and their shareholders, between shareholders, relating to the civil liability of directors, contracts for the purchase and sale, lease, supply and provision of services, consumer rights, copyright, insurance and reinsurance.

13. **Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?**

No.

14. **How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?**

The Arbitral Tribunal shall decide the dispute in accordance with the law chosen by the parties to be applied to the substance of the case. Any designation of the law or legal system of a given State shall be deemed, unless expressly stated otherwise, to directly designate the substantive legal rules of that State and not its conflict of laws rules. In the absence of a designation by the parties, the court shall apply the law resulting from the application of the conflict-of-laws rule that it deems applicable in the case. The court may decide in equity or by amicable settlement only when expressly authorised by the

parties. In any event, the Arbitral Tribunal shall take into account the customs and practices of international trade applicable to the subject matter of the arbitration agreement.

15. **In your country, are there any restrictions in the appointment of arbitrators? Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?**

The Arbitral Tribunal may be composed of a single arbitrator or several, always in odd numbers. If the number of arbitrators is not fixed in the Arbitration Agreement or in a subsequent writing signed by the parties, or does not result therefrom, the tribunal shall be composed of three arbitrators. Natural persons who are in full possession and exercise of their civil capacity may be appointed as arbitrators. Angolan law does not establish any limitations on the nationality of arbitrators. In the light of the LVA, there is nothing to prevent the parties from restricting the appointment of arbitrators to individuals of a particular nationality. In the event that the parties to the dispute are of different nationalities and it is necessary to appoint a sole arbitrator or a third arbitrator, it may be advisable to choose an arbitrator who is not of the nationality of any of the parties.

16. **Are there any default requirements as to the selection of a tribunal?**

Arbitrators must have full legal capacity, in general terms, and incapacitated persons (minors, interdicts and the disabled) cannot be arbitrators. In the case of international arbitrations, the question arises as to which law should be used to assess the arbitrator's capacity, whether the law of the arbitrator's nationality or the law of the place of arbitration. Unless the parties agree otherwise or the applicable regulations provide otherwise, the party wishing to submit the dispute to the Arbitral Tribunal must notify the opposing party. Notice of arbitration may be given by any means, provided that it is possible to prove receipt by the addressee. The notification must contain the following elements: (a) identification of the parties ; (b) the intention that the dispute be submitted to arbitration; (c) indication of the Arbitration Agreement; (d) the subject matter of the dispute, if this is not already stated in the Arbitration Agreement. If it is up to the parties to designate one or more arbitrators, the notification must include the designation of the arbitrator or arbitrators by the notifying party, as well as the invitation to the other party to designate the arbitrator or arbitrators it wishes to appoint. If the sole arbitrator is to be appointed by agreement of the parties, the notification shall contain the nomination of the proposed arbitrator and the invitation to the other party to accept it. If the appointment is to be made by a third party and has not yet been made, the party shall notify the third party to do so and shall communicate the appointment to both parties.

17. **Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?**

Yes.

18. **Can the local courts intervene in the selection of arbitrators? If so, how?**

Yes. In situations where one of the parties refuses to appoint the arbitrator it is responsible for appointing.

19. **Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?**

Whenever the parties or the arbitrators or third parties fail to appoint an arbitrator or arbitrators under the terms of the previous articles, their appointment shall be made by the President of the Provincial Court of the place fixed for the arbitration or, failing that, of the domicile of the claimant or by the Provincial Court of Luanda if the claimant's domicile is abroad. Appointment may be requested 30 days after the notification provided for in Article 13(2) of the LVA, in the cases referred to in paragraphs 4 and 5 of the same article, or within the same period, from the appointment of the last of the arbitrators to be chosen and appointed, in the cases referred to in Article 6(2) and Article 7(2), all of the LVA. The judicial authority referred to in paragraph 1 of this article shall decide, within 30 days and without appeal, on the appointment or appointments requested of it, after first hearing the parties, but always bearing in mind the need to appoint arbitrators who are independent, impartial and qualified as previously agreed by the parties.

20. **What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?**

According to Article 31 of LVA, It is up to the Arbitral Tribunal to rule on its own jurisdiction, even if, for that purpose, it is necessary to assess either the defects of the Arbitration Agreement or of the contract to which it refers, or the applicability of that convention to the dispute. The parties may only plead the lack of jurisdiction of the tribunal or the irregularity of its constitution until the defence to the case has been presented, or together with it, or at the first opportunity they have after becoming aware of a supervening fact that gives rise to any of the aforementioned defects. The decision of the Arbitral Tribunal by which it declares itself competent to decide the matter can only be analysed by the Judicial Court once the arbitral decision has been handed down, either in a challenge or by way of opposition to enforcement, under the terms of articles 34 and 39 of the LVA.

21. **Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?**

Anyone invited to act as an arbitrator has a duty to immediately inform the parties of any circumstances that may cast doubt on their impartiality and independence. This duty to inform both parties continues for the duration of the arbitration proceedings. An appointed arbitrator can only be rejected if there is a circumstance that could give rise to justified doubts about his impartiality and independence or if he manifestly does not possess the qualifications previously agreed by the parties. A party may only

refuse an arbitrator whom it has appointed or in whose appointment it has participated, for reasons known to it only after the appointment. In the absence of an agreement, the party wishing to refuse an arbitrator must set out the reasons for the refusal in writing to the Arbitral Tribunal within eight days of the date on which it became aware of the constitution of the Arbitral Tribunal or the date on which it became aware of any relevant circumstance and if the refused arbitrator does not excuse himself or resign, or if the other party does not accept the refusal, it is for the Arbitral Tribunal to decide on it. If the objection of refusal is rejected, the refusing party may, within fifteen days of the communication of the rejection, request the court or the authority or entity referred to in article 14 of the LVA to rule on the refusal, such decision not being subject to appeal and pending the decision of the court or authority or entity referred to in article 14 of the LVA.

22. **Has there been any recent decisions in your country concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?**

No. Arbitrators must, in carrying out their role of settling disputes, show themselves to be worthy of the honour and responsibilities inherent in them, and may not represent or act in the interests of the parties. They are obliged to decide independently, impartially, loyally and in good faith, and to contribute to guaranteeing a swift and fair process.

23. **What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?**

Yes. The decision of the Arbitral Tribunal by which it declares itself competent to decide the matter can only be analysed by the Judicial Court once the arbitral decision has been handed down, either in a challenge or by way of opposition to enforcement, under the terms of articles 34 and 39 of the LVA.

24. **Are arbitrators immune from liability under local laws?**

The LVA expressly provides for two situations that give rise to the arbitrator's civil liability: the first, in the event that the arbitrator has accepted the appointment and unjustifiably refuses to exercise his function (Article 9(3) of the LVA, applicable to necessary arbitration by reference to Article 1528 of the Code of Civil Procedure); the second is if the arbitrator unjustifiably prevents the award from being made within the time limit set (Article 25(3) of the LVA) and, for necessary arbitration, Article 1527(2) of the Code of Civil Procedure. It should be understood that the arbitrator's contractual liability is not limited to the two situations set out in the LVA, but applies to the violation of other contractual duties that cause damage to the party that appointed him (for example, if the arbitrator fails to communicate any fact that may constitute an impediment to the exercise of the function - Article 10(1) and (2) of the LVA. The arbitrator is presumed to be at fault under Article 799(1) of the Civil Code, and it is up to him to prove the contrary by demonstrating that the breach was not his fault. The arbitrator's civil liability cannot be defined so broadly as to originate from acts related to the exercise of the judicial function, which would infringe on the arbitrators'

autonomy and ultimately subjugate the arbitration award to the contract.

25. **Is the principle of competence-competence recognized in your country?**

Yes. According to Article 31 of LVA, it is up to the Arbitral Tribunal to rule on its own jurisdiction, even if, for that purpose, it is necessary to assess either the defects of the Arbitration Agreement or of the contract to which it refers, or the applicability of that convention to the dispute. The parties may only plead the lack of jurisdiction of the tribunal or the irregularity of its constitution until the defence to the case has been presented, or together with it, or at the first opportunity they have after becoming aware of a supervening fact that gives rise to any of the aforementioned defects. The decision of the Arbitral Tribunal by which it declares itself competent to decide the matter can only be analysed by the Judicial Court once the arbitral decision has been handed down, either in a challenge or by way of opposition to enforcement, under the terms of articles 34 and 39 of the LVA.

26. **What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?**

The judicial courts refer the parties to arbitration, and the procedural exception of preterition of an arbitral tribunal applies.

27. **How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?**

The process of setting up the arbitral tribunal is triggered by the notice to arbitrate, which one party sends to the other, informing them of their intention to initiate arbitration proceedings (Article 20(1) of the LVA). This is the general rule enshrined by the Angolan legislator in Article 13(1) of the LVA. But the process of setting up the arbitral tribunal can be initiated in another way if the parties have agreed to do so, namely by signing an arbitration agreement or if they have referred to the rules of an institutionalised arbitration centre which determine another way of proceeding. The notice of arbitration must be in writing and delivered by any means that allows proof of actual receipt by the addressee. Thus, notifications delivered by hand against a receipt signed by the addressee, by registered letter with acknowledgement of receipt and by fax against a receipt of delivery shall be deemed to have been made. Arbitration should not be oblivious to new technologies either and, given that the majority of communications today are made by e-mail, we believe that the notification for arbitration can be made by e-mail against receipt of delivery by the addressee. Whatever the method, what is indispensable is the certainty that the party has received the notification. This is because this notification has the effects of a summons and is therefore covered by constitutional guarantees relating to the right of defence and, in general, due process. From a procedural point of view, notification for arbitration will have the same effects as service of process or judicial notification, interrupting the limitation period for exercising a right (Article 323(1), by reference to 324(2), both of the Civil Code). This is the case if the parties have previously signed an arbitration clause,

and the arbitral tribunal is automatically constituted as soon as the notice to arbitrate is issued by one of the parties. If the parties have signed an arbitration agreement, the statute of limitations is interrupted from the moment it is signed (Article 324(1) of the Civil Code). The validity of the notice to arbitrate depends on its content complying with the rules set out in article 13 of the LVA. The notice must contain four mandatory elements: (i) an indication of the parties, (ii) a clear indication that it is the notifying party's intention to submit the dispute to arbitration, (iii) an indication of the arbitration agreement on which this intention is based and (iv) an indication of the arbitrator or arbitrators that it is responsible for appointing. The LVA does not set a time limit within which the arbitral tribunal must be constituted, and it is up to the parties to set this time limit in the arbitration agreement. However, we believe that if there is a dispute between the parties, the omission of the acts on which the constitution of the arbitral tribunal depends does not cause the arbitration agreement to lapse (which can only occur in the cases typified in Article 5 of the LVA). In this case, the interested party must request the intervention of the competent judicial court so that it can, under the terms of article 14 of the LVA, promote the appointment of the missing arbitrator(s).

28. **What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?**

The action for annulment (as well as the appeal against the arbitration award provided for in Article 36 of the LVA, if not rejected by the parties) is brought before the Court of Appeal within twenty days of the date of notification of the arbitration award. If the parties have not previously waived this right, the same appeals shall lie against the arbitral award as would lie if the award had been made by the Provincial Court. Appeals shall be lodged with the Court of Appeal and processed under the terms of the Code of Civil Procedure with the necessary adaptations, but the time limit for lodging an appeal shall be 15 days.

29. **In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?**

There is nothing specific about this.

30. **What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?**

The party wishing to initiate arbitration proceedings must notify the other party of the arbitration. Once the notification has been made, if the respondent does not appear in the proceedings to contest, does not appoint a representative or intervene in the proceedings in any way, the proceedings will continue as normal and the respondent will be judged by the arbitral tribunal in default, and must abide by the decision. It should be noted that the respondent, if it so wishes, can intervene in the proceedings at any time, but will have to accept them as they stand.

31. **Can third parties voluntarily join arbitration proceedings? If all parties agree to the**

intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Third parties voluntarily may request the Parties and the Tribunal to join arbitration proceedings. All parties must agree to the intervention of third parties. If all parties do not agree to the intervention, the tribunal can not allow it.

32. **Can local courts order third parties to participate in arbitration proceedings in your country?**

No.

33. **What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?**

If there is a well-founded fear of damage to rights, either party can ask the arbitral tribunal to take the most appropriate urgent measures to protect those rights. However, since the arbitral tribunal does not have enforcement powers, if the measure ordered is not complied with voluntarily, the requesting party will have to apply to the courts for enforcement. Article 22(1) of the LVA expressly confers on the arbitral tribunal the power to order provisional measures within the scope of the arbitral proceedings, including precautionary measures. This understanding is justified because there is no rule in the Angolan legal system that gives the courts exclusive power to order interim measures. The arbitral tribunal can only order interim measures if the parties have ruled out this possibility in the arbitration agreement. It is essential that the requesting party alleges and proves two requirements: (i) the *periculum in mora*, i.e. the well-founded fear or danger that their right cannot be satisfied, and (ii) the *fumus bonus iuris*, i.e. the serious probability of the existence of the right that the party wants to protect. Precautionary measures can be applied for before the main action is brought or during proceedings that are already underway, and are always dependent on the main action (Article 384(1) of the Code of Civil Procedure). If the precautionary measure must be applied for before the arbitration proceedings have been initiated, it must be applied for directly before the court, as indicated in Article 22(2) of the LVA. In fact, the urgency of the conservatory or anticipatory precautionary measure, aimed at guaranteeing the effectiveness of a right, may not be compatible with the time needed for the arbitral tribunal to be constituted, and the request for a precautionary measure before the court should not be denied on the grounds that the arbitral tribunal has been bypassed, under penalty of denial of justice. Article 382(1) of the Code of Civil Procedure stipulates that the precautionary measure will lapse if the main action is not brought within thirty days of its decree. We believe that this deadline should apply regardless of whether the action is judicial or arbitral. Article 22(2) of the LVA clearly gives the parties the option of choosing between the arbitral tribunal and the judicial tribunal to hear provisional measures, whether or not the arbitral action has already been brought.

34. **Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?**

No. Anti-suit and anti-arbitration injunctions are illegal.

35. **Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?**

All the evidence that is admissible in a court of law can be presented before the arbitral tribunal, namely documentary evidence, testimonial evidence, evidence by confession of the parties, expert evidence and evidence by judicial inspection. However, the arbitral tribunal does not have the power to impose the production of evidence on the parties or third parties, which is largely based on the willingness of the parties and third parties to co-operate. If, for example, one of the parties refuses to hand over documents in their possession to the tribunal or a certain person refuses to testify, it may be necessary to refer the production of evidence to the court, so that the court can exercise the coercive power necessary for the effective production of evidence.

36. **What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?**

Lawyers in arbitration proceedings are subject to the Code of Ethics and Deontology of the Angolan Bar Association, approved by the General Assembly of Lawyers on 20 and 21 November 2003. Arbitrators follow to the Code of Ethics and Deontology of Arbitrators annexed to the Arbitration Regulations of the Centre for Extrajudicial Dispute Resolution approved by Executive Decree no. 290/17 of 11 May.

37. **In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?**

In Angolan law, the doctrine defends that the arbitration procedure and the arbitration decision are confidential. No legal provision in the Angolan legal system expressly establishes the duty of confidentiality in arbitration. The doctrine understand that Article 15 of the LVA requires arbitrators to act loyally and in good faith during the proceedings, respecting the duty of confidentiality to which they are bound. This duty of confidentiality, which is imposed on all those involved in the arbitration process, must be respected not only during the process but also after it has ended. To this end, the arbitrator may not discuss matters relating to the proceedings outside the arbitral forum, in particular the production of evidence and documents submitted, or disclose any considerations that have been made within the tribunal in relation to the same, or speak to any of the parties without the presence of the other(s). The parties and arbitral institutions are also bound. The involvement of the State in arbitration, whether in the position of Complainant or Defendant, reverses the rule of confidentiality, making the award necessarily subject to disclosure for the general knowledge. Thus, in investment arbitrations such as ICSID arbitrations, the Center may, pursuant to its Article 48, publish the award without the consent of the parties, as one of the parties is a State or a legal person of Public right. On September 1, 2021, the National Assembly of the

Republic of Angola, through Resolution No. 63/21, of September 1, approved Angola's accession to the ICSID Convention. In this same order of ideas, article 41 of Executive Decree No. 290/17, of 11 May, of the Ministry of Justice and Human Rights, which approves the Regulation on Arbitration Procedures and the Code of Ethics and Professional Deontology of Arbitrators, linked to the Center for Extrajudicial Dispute Resolution (CREL), provides for the publicity of sentences: *"1. The award of arbitration on disputes in which one of the parties is the State or another legal person governed by public law is public, unless otherwise agreed by the parties. 2. The remaining arbitration awards are equally public, after being purged of elements identifying the parties, unless any of them expressly opposes the publicity"*. The reasons that support the publication of arbitral awards when one of the parties is the State or a legal person governed by public law are related to the transparency that should guide the State's action in general. The doctrine refers to the following: (a) Taxpayers' money is at stake in proceedings in which the State or legal persons governed by public law are parties; (b) The public interest is at stake in proceedings involving the State or legal persons governed by public law; (c) Public opinion and freedom of information are constituent elements of modern societies; (d) The political control by parliaments and other entities that represent citizens; (e) The public administration is subject to publicity principles for its decision-making processes.

38. **How are the costs of arbitration proceedings estimated and allocated?**

The determination of the arbitrators' remuneration must take into account the interests at stake (value of the dispute), the complexity of the dispute, the time spent and other exceptional or specific circumstances of the case. In the context of institutionalised arbitration, the arbitration rules provide for complex mechanisms which set the remuneration according to the amount of the claims made, while also taking into account the time the arbitrators devote to the case. In ad hoc arbitrations, the arbitrators are usually chosen directly by the parties and, in practice, by their lawyers. As the arbitration is organised jointly by the parties and the arbitrators, the amount of the fees must be agreed between the parties and the arbitrators; usually the arbitrators propose an amount that the disputants accept, refuse or negotiate. The determination of remuneration cannot be confused with its distribution. The determination of remuneration and its apportionment, in accordance with Article 23 of the LVA, is a matter subject to agreement between the parties and the arbitrators. In the absence of such a provision, the arbitrators would have the power to decide unilaterally in the award on the unequal distribution or assumption of the entire remuneration by one of the disputing parties.

39. **Can pre- and post-award interest be included on the principal claim and costs incurred?**

Yes.

40. **What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?**

The legal requirements for recognition and enforcement of an award are the New York Convention of 1958 requirements. According to Article 27(2) of the LVA, the arbitral award must state the reasons on which it is based, unless there is (i) an agreement to the contrary by the parties, (ii) a settlement in the course of the proceedings or (iii) the withdrawal of both the case and the claim. The statement of reasons consists of setting out the reasons of fact and law that justify the decision. The statement of reasons must, in principle, exist and be sufficient, i.e. it must allow each part of the operative part of the decision to be supported, and the operative part of the decision itself must respond to the parties' requests. The duty to give reasons for arbitration awards, as with judicial decisions, is based on the need to know the arbitrator's cognitive journey. Only in this way is it possible to assess whether the solution found for the claim is fair and also in accordance with the law and the will of the parties, the latter as set out in the arbitration agreement or arbitration commitment. On the other hand, a reasoned judgement is a decision with a common thread that unites all its points, making it coherent and harmonious. Without reasons, the arbitrators' final decision would be nothing more than a collection of disjointed ideas, criteria or intentions. The reasoning behind the arbitrators' final decision also allows the parties, in the event of an appeal or action for annulment, not to question the necessary syllogism of the judicial system in which it is clear that the award handed down is the corollary of the premises that make up the reasoning.

41. **What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an *ex parte* basis?**

One year. There is no expedited procedure. A party may bring a motion for recognition and enforcement award.

42. **To what extent is a foreign arbitration award enforceable?**

A foreign arbitration award is enforceable in Angola in the terms of the New York Convention of 1958.

43. **Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?**

Yes. The award to be recognized must not violate the international public order of Angola State. The domestic award can be set aside if it violate the public order *tout court*.

44. **Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts ?**

No.

45. **Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?**

Yes. The arbitral award may be annulled by the Court on any of the following grounds: (a) the dispute cannot be settled by arbitration; (b) it was made by an incompetent court; (c) the arbitration agreement has expired; (d) it was handed down by an irregularly constituted court; (e) it does not contain a statement of reasons; (f) there has been a violation of the principles referred to in Article 18 of the LVA and this has decisively influenced the resolution of the dispute; (g) the court has learnt about matters of which it was not entitled to be aware or has failed to rule on matters which it should have examined; (h) the court has failed to respect the principles of public policy of the Angolan legal order when judging according to equity and custom, under the terms of article 24 of the LVA. In domestic and international arbitration, the principle of non-appealability of the award is in force, unless the parties have previously waived their right to review the merits of the award.

46. **Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?**

Yes.

47. **To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?**

It is very likely that the state will invoke immunity from execution if the assets subject to execution are intended for the fulfilment of a sovereign mission of the State.

48. **In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?**

For third parties, the arbitration award is a legal fact that they cannot ignore, although it does not bind them. For example, the guarantor who will consider himself released because the arbitration award declares the debt extinguished.

49. **Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?**

No.

50. **Is emergency arbitrator relief available in your country ? Are decisions made by emergency arbitrators readily enforceable?**

Yes. In institutionalized arbitration, there is the figure of emergency arbitrator. The decisions made by emergency arbitrators are enforceable.

51. **Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?**

Yes, there are. No, it is recent.

52. **Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?**

Yes. We now have many female lawyers involved in arbitration proceedings: There are also more and more young people interested and involved in arbitration as arbitrators or secretaries of arbitral tribunals.

53. **Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?**

No.

54. **Has there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?**

No.

55. **Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?**

Yes. Virtual hearings are implemented by *ad hoc* and institutional arbitral tribunals.

56. **In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?**

Yes. The right of access to courts and the law is invoked by the judicial court to hear the case. In the case No. 1155/14-A, the Judge Carla Santos Cambanje of the 2nd Section of Civil and Administrative Chamber of the District Tribunal of Luanda considered in her decision dated June 26, 2019, that «*Given the impossibility of covering [such] expenses, the party would be unable to obtain justice for their case, that is, they would be prevented from having their right to access to justice satisfied in order to defend their legally protected rights and interests. If such a situation were verified, it would be unconstitutional to apply the rules that provide for the defendant from the case due to the preterition of the arbitral tribunal* ».

57. **Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?**

No.

58. **Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?**

No.

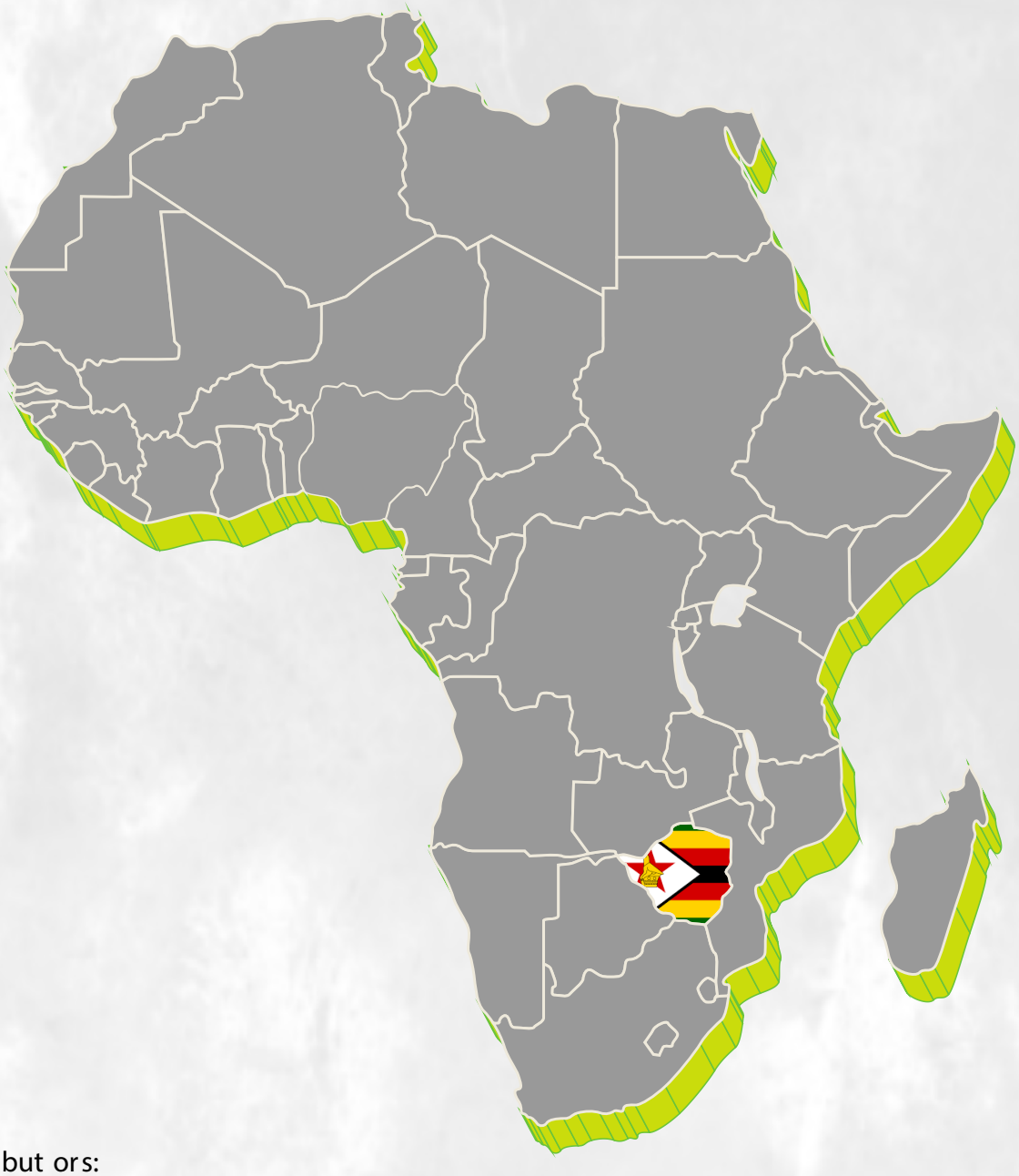
59. Is consolidation allowed under local laws?

Yes. The consolidation of arbitral proceedings is not expressly regulated by Angolan law. However, it is argued by the doctrine that it is admissible, provided that the parties and the arbitrators consent.

60. What is the regime for enforcement of ICSID awards in your country ?

Pursuant to Article 54 of the ICSID Convention, each Contracting State shall recognize the obligation of an award given in accordance with the Convention and shall ensure the execution in its territory of the pecuniary obligations imposed by that judgment as if it were a final decision of a court of that State. The party wishing to obtain the recognition and enforcement of an award in the territory of a Contracting State shall provide the competent court or any other authority which that State has designated for this purpose with a copy of the award authenticated by the Secretary General. Each Contracting State shall notify the Secretary General of the designation of the court or authority competent for this purpose and inform him of any subsequent modifications to such designation. The execution of the sentence is governed by the laws relating to the execution of sentences in force in the State in whose territory it is to take place.

Zimbabwe



Contribut ors:



Rona ld Mut asa



Nyasha Bright on Mun yuru



Simon C hivizhe

1. What legislation applies to arbitration in your country (Zimbabwe)

(i) Arbitration Act [Chapter 7:02] ("ZAA or Arbitration Act")
(ii) Arbitration (International Investment Disputes) Act [Chapter7:03]
(iii) Model law

2. Is your country a signatory to the New York Convention? Is there any reservation to the general obligations of the convention?

Yes, Zimbabwe ratified and enacted the New York Convention through the Zimbabwean Arbitration Act [Chapter 7:15] (the ZAA), which governs arbitration in Zimbabwe and largely mirrors the UNCITRAL Model Law on International Commercial Arbitration (the Model Law).

3. What other arbitration related treaties and conventions is your country a party to?

Zimbabwe is party to Geneva Protocol and Geneva Convention
New York Convention
International Centre for the settlement of Investment disputes (ICSID)

4. Is the law governing international arbitration in your country based on the UNCITRAL Model law?

Yes. The Model Law is applicable when both parties are private citizens for both domestic and international disputes. However, where one party is the State, ICSID rules apply.

5. Are there any impending plans to reform the arbitration laws in your country?

Not at present.

6. What arbitral institutions (if any) exist in your country? When were their rules amended? Are any amendments being considered?

Currently there are three (3) arbitral tribunal institutions in Zimbabwe namely, the Commercial Arbitration Centre (CAC), the Africa Institute of Mediation and Arbitration (AIMA), and the Alternative Dispute Solutions Centre (ADSC). None of the centres have formal, published Rules of their own.

7. Is there a special arbitration court in your Country?

Not at present.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

An arbitration agreement must be in writing, either as a clause in a contract or as a

separate contract. Article 7(2) of the UNCITRAL Model Law on International Commercial Arbitration (Model Law), which is incorporated into the Arbitration Act (Cap. 7:02), extends recognition of an agreement to instances where parties exchange letters, telegrams or other communication providing a record of the agreement.

9. Are arbitral clauses considered separable from the main contract?

Yes. An arbitration agreement between the parties is separable from the main contract. The arbitration agreement, as a rule is a procedural law contract. In contrast, the main contract is a substantive law contract. These two contracts are different from each other. Therefore, the fate of an arbitration agreement is not tied to the fate of main contract. At the same time, the fate of main contract does not depend on the fate of the arbitration agreement.

10. Is there anything particular to note in your jurisdiction with regard to multi-party or multi contract arbitration?

When dealing with multi-party or multi-contract arbitration in Zimbabwe, it is critical to ensure that the arbitration agreement in each interrelated contract is consistent and expressly allows for consolidation (i.e. the merger of separate arbitrations arising out of the same or interrelated contracts into a single set of proceedings) and joinder (i.e. the addition of a third party to an existing arbitration).

11. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

There is a shortage of local case-law on the issue of non-signatories being bound by an arbitration agreement. For instance, in Chartpril Enterprises (Pvt) Ltd and 2 Others v Elnour United Engineering Group (Pvt) Ltd (602 of 2021) [2021] ZWHHC 602 an argument regarding being a non-signatory was raised – however, the court did not decide the matter on this basis. The Courts repeatedly emphasise the consensual nature of arbitration – see e.g. Alliance Insurance v Imperial Plastics (Pvt) Ltd. & Another (SC 30/17).

12. Are any disputes considered non arbitrable? Has there been any jurisprudence in this regard in recent years?

Section 4(1) of the Arbitration Act (Cap. 7:02) lists the types of disputes that are not capable of determination by arbitration:

- agreements contrary to public policy;
- disputes that, according to any law, cannot be determined by arbitration;
- criminal cases;
- matrimonial causes or matters relating to status, unless the High Court gives leave for them to be determined by arbitration;
- save with the leave of the High Court, matters affecting the interests of a minor child or a person under a disability; and

- matters concerning a contract as defined in the Consumer Contracts Act (Cap. 8:03).

13. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such has been specified by parties?

This is a difficult question and will depend upon the circumstances of the case and the approach taken by the arbitral tribunal or national court considering the issue. This lack of clarity can lead to expensive satellite proceedings which would be unnecessary if the law governing the arbitration agreement were specified in the arbitration agreement.

The Court of Appeal laid down guidelines on this in the English case *of Sulamérica v Enesa*. Following the English common law rules around the determination of governing law generally, the governing law of an arbitration agreement is to be determined by undertaking a three-stage enquiry into express choice; implied choice; and closest and most real connection.

14. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

Pursuant to Section 3 of the Arbitration Act (Cap. 7:02), when the place of arbitration is Zimbabwe, the law of Zimbabwe applies. Subsection (2) applies when the place of arbitration is outside Zimbabwe (in which case, Articles 8, 9, 35 and 36 of the Model Law apply).

15. In your country, are there any restrictions in the appointment of arbitrators? Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?

No. Parties are free to agree on the procedure of appointing the arbitrator(s) subject to provisions of paragraph 4 and 5 of Article 11 of the Model law in the schedule to the Arbitration Act.
The Arbitration Act is silent on the qualifications and qualities of an Arbitrator. However, it is submitted that a good arbitrator must possess the qualities described below:

- Competence
- Independence
- Impartiality
- Character
- Writing skills
- Objectivity

16. Are there any default requirements as to the selection of a tribunal?

No. Parties at liberty to select a tribunal of their choice.

17. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

Yes, but in limited circumstances. Articles 5 of the Model Law in the Schedule to the Arbitration Act provides in matters governed by this model law in the schedule to the Arbitration Act, no court shall intervene except where so provided in this Model Law

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Local courts can intervene when the parties are not in agreement on the appointment of an arbitrator. Article 11(3)(B) of the Model Law in the Schedule to the Arbitration Act provides that in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed upon request of a party, by the High Court

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenges what is the procedure for such challenge?

Yes. When there is a conflict of interest, a lack of qualification, or a lack of independence, those are grounds for challenging an arbitrator's appointment.

A party (complainant) may send a written statement of the reasons for challenging the arbitrator within 15 days of becoming aware of any circumstances necessitating the arbitrator's removal. The written statement should be copied to the party for the sake of transparency.

20. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction, and can a party delay proceeding by frequent court application?

The risk of court intervention is minimal. The Model Law does not allow a court to intervene in an arbitration to frustrate or delay proceedings, but only to enforce or make effective an arbitration clause.

21. Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?

No. However, Zimbabwe follows Article 12(1) of the Model Law, which mandates that a person considered for an arbitrator role must disclose any circumstances that might raise justifiable doubts about their impartiality or independence. This duty continues throughout their appointment, requiring arbitrators to inform the parties without delay of any such circumstances, unless the parties are already aware of them.

22. Has there been any recent decisions in your country concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

No. However, similar to question 21, the requirements under Zimbabwean law for disclosure of potential conflicts of interest for arbitrators align with Article 12(1) of the Model Law. This law emphasises the ongoing responsibility of arbitrators to maintain

and disclose their independence and impartiality, similar to standards in other jurisdictions like the UK.

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

In the case of a truncated tribunal, if an arbitrator becomes unable to perform his duties or for other reasons fails to act without undue delay, his mandate terminates. If the sole or presiding arbitrator is replaced, any hearings previously held must be repeated. However, if an arbitrator other than a sole or presiding arbitrator is replaced, the repetition of any hearings previously held is at the discretion of the arbitral tribunal. This ensures the continuity of the arbitral proceedings while maintaining fairness and due process. See Article 15 of the Model Law.

24. Are arbitrators immune from liability under local laws?

The Act does not explicitly provide for arbitrators' immunity from liability. It focuses more on the appointment, challenge, and replacement of arbitrators (Articles 10-15) and their duties, including the duty to disclose any circumstances affecting their impartiality or independence (Article 12).

25. Is the principle of competence-competence recognized in your country?

Yes, the Act recognises the principle of competence-competence. Article 16 allows the arbitral tribunal to rule on its own jurisdiction, including objections related to the existence or validity of the arbitration agreement.

26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

As previously mentioned above, the courts must stay proceedings in matters subject to an arbitration agreement unless found to be null, void, inoperative, or incapable of being performed.

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

According to the Arbitration Act:
Commencement of arbitral proceedings:
Arbitral proceedings are formally commenced when one party (the claimant) sends a request for the dispute to be referred to arbitration to the other party (the respondent). This is outlined in Article 21 of the Arbitration Act, which states that arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Key provisions on limitation periods or time bars:
One crucial provision in the Arbitration Act concerning time bars is related to the challenge of an arbitration award. As per Article 34(3) of the Act, an application for

setting aside an arbitral award may not be made after three months have elapsed from the date on which the party making the application had received the award.

Additionally, parties engaging in arbitration should be aware of the stipulations in Article 16 regarding raising pleas concerning the arbitral tribunal's jurisdiction. A plea that the arbitral tribunal does not have jurisdiction should be raised not later than the submission of the statement of defense. Similarly, if a party believes that the arbitral tribunal is exceeding its authority, this must be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. However, the tribunal may admit a later plea if it considers the delay justified.

28. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?

Limitation Period for Challenging Arbitration Awards:
Article 34(3) of the Arbitration Act stipulates that an application to set aside an arbitration award must be made **within three months** from the date on which the party making the application received the award. This time frame is critical as it defines the window within which a party to the arbitration can legally seek to have the award vacated or challenged in Zimbabwe. This provision applies to both domestic and international arbitration awards rendered in Zimbabwe.

29. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

The Arbitration Act does not explicitly address the specific circumstances under which a state or state entity can invoke state immunity in connection with the commencement of arbitration proceedings. State immunity, a principle in international law, typically involves the exemption of a sovereign state or its political subdivisions, agencies, and officials from the jurisdiction of foreign national courts and from the enforcement of court judgments against them.

30. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

Non-participation of Respondent:
Article 25 outlines the actions an arbitral tribunal can take if a respondent fails to participate in the arbitration. Specifically, if the respondent fails to communicate their statement of defense, the arbitral tribunal is allowed to continue the proceedings without treating such failure as an admission of the claimant's allegations. The provision ensures that the arbitration process does not come to a halt due to the non-participation of one party.

Local courts compelling participation:
The Act does not explicitly provide for local courts to compel participation in arbitration proceedings. The local courts do not, therefore, compel participation. The principle of arbitration is generally rooted in the consent of the parties, and the role of courts is typically limited to supporting the arbitration process rather than compelling participation in it. Courts may intervene in specific aspects related to arbitration (such

as in the appointment of arbitrators or assistance in taking evidence) but not necessarily to force a party to participate in the arbitration proceedings themselves. This approach, naturally, aligns with the principle of party autonomy in arbitration, recognising that while arbitration is a consensual process, once parties have agreed to arbitrate, certain procedural safeguards are in place to ensure the process can continue even if one party chooses not to participate actively. It also underscores the distinction between arbitration and court proceedings, where the former is driven by the parties' agreement and the latter by statutory authority and court orders.

31. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

The Arbitration Act does not specifically address the issue of third-party intervention or voluntary joining in arbitration proceedings. In general, the participation of third parties in an arbitration process is governed by the principles of consent and contractual agreement. If not all parties agree to the third-party intervention, it is generally not permissible for the tribunal to allow it.

32. Can local courts order third parties to participate in arbitration proceedings in your country?

Court's role in ordering third party participation:
The Act does not explicitly empower local courts to order third parties to participate directly in arbitration proceedings. Arbitration, by its nature, is based on the agreement of the parties involved, and compelling a third party to participate in arbitration would typically require their consent or a contractual obligation to do so.

Assistance in evidence gathering:
However, Article 27 of the Arbitration Act does provide for the High Court to assist in the taking of evidence for the arbitration. This can include issuing subpoenas to compel the attendance of a witness before an arbitral tribunal to give evidence or produce documents. The High Court may also order any witness to submit to examination on oath before the arbitral tribunal or before an officer of the court or any other person for the use of the arbitral tribunal.

This does not, nonetheless, equate to compelling third parties to become parties to the arbitration or participate in the arbitration process as a disputing party.

33. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Interim measures by arbitral tribunal:
Article 17 of the Arbitration Act empowers the arbitral tribunal to order any party to take interim measures of protection as it may consider necessary concerning the subject matter of the dispute. This can include measures to preserve assets, evidence, or maintain or restore the status quo pending the determination of the dispute. The tribunal may also require any party to provide appropriate security in connection with such measures.

Court-issued interim measures:
The Act does not explicitly prohibit local courts from issuing interim measures pending the constitution of the tribunal. In practice, courts often have the power to issue interim measures in support of arbitration proceedings. This can be particularly important before the tribunal is constituted, as there might be a need to preserve the status quo or prevent actions that could render the arbitration ineffective.

34. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

An interdict in Zimbabwean law is analogous to an injunction in other jurisdictions. Article 9 of the Arbitration Act states that Zimbabwean courts have the authority to issue interim measures to support the arbitration process. This can include interdicts to prevent parties from initiating or continuing conflicting proceedings in court (anti-suit interdicts) or from starting or proceeding with arbitration contrary to an existing agreement or legal principle (anti-arbitration interdicts). Such measures would be in line with the principle of upholding the arbitration agreement and ensuring that the arbitration process is not undermined by parallel or conflicting legal proceedings.

These interim measures or interdicts would typically be granted to preserve the status quo and the integrity of the arbitration process, and they could be issued at any stage of the arbitration, including before the arbitral tribunal is constituted.

Applicability and enforcement:
In terms of Article 9(3), the High Court shall not grant an order or interdict unless—
(a) the arbitral tribunal has not yet been appointed and the matter is urgent; or
(b) the arbitral tribunal is not competent to grant the order or interdict; or
(c) the urgency of the matter makes it impracticable to seek such order or interdict from the arbitral tribunal;
and the High Court shall not grant any such order or interdict where the arbitral tribunal, being competent to grant the order or interdict, has determined an application therefor.

Regarding enforceability of such interdicts, Article 9(4) states that the decision of the High Court upon any request made in terms of paragraph above shall not be subject to appeal.

35. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

Rules governing evidentiary matters in Arbitration:
The Act itself does not provide specific rules governing the manner in which evidence is to be presented or evaluated in arbitration proceedings. Typically, these aspects are left to the discretion of the arbitral tribunal and may be influenced by the procedural rules agreed upon by the parties or stipulated by the arbitration institution overseeing the proceedings. Arbitral tribunals often have considerable flexibility in determining the admissibility, relevance, materiality, and weight of any evidence.

Role of local courts in obtaining evidence:
As previously mentioned, Article 27 of the Arbitration Act allows the arbitral tribunal or a party, with the approval of the arbitral tribunal, to request assistance from the High Court in taking evidence. This provision enables the tribunal to seek the court's help in cases where it might be challenging to obtain evidence without judicial authority.

Compelling witnesses by local courts:
Again, under the same Article 27, the High Court of Zimbabwe has the power to issue subpoenas to compel the attendance of witnesses to give evidence or produce documents before the arbitral tribunal. The High Court may also order any witness to submit to examination on oath before the arbitral tribunal or an officer of the court or any other person designated for this purpose. This means that, within its competence and according to its rules on taking evidence, the High Court can compel witnesses to participate in arbitration proceedings, thereby supporting the arbitration process where necessary.

36. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

Ethical codes and professional standards:
The Arbitration Act does not explicitly outline specific ethical codes or professional standards for counsel and arbitrators within the Act itself. However, the Act does set forth certain obligations and standards that arbitrators must adhere to, which imply ethical conduct.

Duties of Arbitrators:
Notably, Article 12 of the Act requires arbitrators to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence, both at the time of their potential appointment and throughout the arbitral proceedings. This requirement for disclosure underscores the importance of fairness, impartiality, and transparency, which are key ethical considerations in arbitration.

Professional standards for legal practitioners:
Counsel participating in arbitration proceedings in Zimbabwe are typically bound by the ethical standards and codes of conduct applicable to legal practitioners in terms of the Legal Practitioners Act (Chapter 27:07).

37. In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

The Act does not explicitly articulate specific rules regarding the confidentiality of arbitration proceedings. This is a common feature of the Model Law, which focuses more on procedural aspects of arbitration rather than confidentiality. However, in general, despite the absence of explicit provisions, parties to arbitration in Zimbabwe can agree on the confidentiality of their proceedings either through their arbitration agreement or through separate confidentiality agreements. Additionally, if the arbitration is administered by an arbitration institution, the rules of that institution

might have specific provisions regarding confidentiality. Parties generally expect that arbitration proceedings will be private and confidential. This includes the obligation not to disclose confidential information obtained during the arbitration to third parties. The scope of confidentiality can cover the existence of the arbitration, documents and evidence produced, witness statements, and the arbitration award, unless disclosure is necessary for the purpose of enforcement or is required by law.

38. How are the costs of arbitration proceedings estimated and allocated?

The Arbitration Act, aligning with the UNCITRAL Model Law, provides guidance on the estimation and allocation of costs in arbitration proceedings. However, it does not set out a detailed methodology for estimating these costs.

Article 31 of the Act addresses the allocation of costs and expenses related to arbitration. It specifies that the costs and expenses of arbitration, including legal and other expenses of the parties, the fees and expenses of the arbitral tribunal, and other expenses related to the arbitration, shall be fixed and allocated by the arbitral tribunal in its award. The award is required to specify the allocation of costs. Unless specified otherwise in the award, each party is responsible for their own legal and other expenses and an equal share of the fees and expenses of the arbitral tribunal, and any other expenses related to the arbitration.

39. Can pre- and post-award interest be included on the principal claim and costs incurred?

Article 31 of the Arbitration Act addresses the issue of interest in arbitration awards. It grants the arbitral tribunal the authority to award interest at a rate and for a period specified in the award. This provision applies to both pre-award interest and post-award interest on the principal claim and costs incurred.

Unless specified otherwise in the award, a sum directed to be paid by the award shall carry interest from the date of the award up to the date of payment at the same rate as a judgment debt.

The inclusion of interest in the arbitration award is enforceable in the same manner as the principal amount awarded, provided that the award, including the interest component, complies with the requirements of the Arbitration Act and other applicable laws.

40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

Legal requirements for recognition and enforcement:
The requirements for the recognition and enforcement of an arbitral award in Zimbabwe are generally aligned with the principles set out in the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This includes ensuring that the award was made by a competent arbitral authority under a valid arbitration agreement, that the parties were given proper notice and opportunity to present their

case, and that the award is not contrary to the public policy of Zimbabwe.

Requirement for a reasoned award:
Article 31 of the Arbitration Act stipulates that the arbitral award must state the reasons upon which it is based unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under Article 30. This provision ensures transparency and accountability in the arbitral decision-making process, allowing for a clear understanding of the tribunal's reasoning and facilitating judicial review if necessary.

Form and content of the award:
The award must be made in writing and signed by the arbitrator or arbitrators. In proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal suffice, provided the reason for any omitted signature is stated. The award must also state its date and the place of arbitration, and it is deemed to have been made at that place.

Enforcement procedure:
For an award to be enforced in Zimbabwe, it typically needs to be recognized as binding by a competent court, which may involve a separate application for enforcement. The court would review the award to ensure it meets the necessary legal and procedural standards before granting enforcement.

41 What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an *ex parte* basis?

An award is recognised as binding upon being handed down and enforced once an application for registration made to the High Court is granted. This takes an estimated time of 30 to 90 days, depending on whether or not the application is opposed by the other party.

42. To what extent is a foreign arbitration award enforceable?

As long as an award has been registered at the High Court, and the court has issued an order to that effect then it is enforceable to the fullest extent as law in the same way as any other local judgement.

43. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

No. The same standard is applied.

44. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts.

Our local law does not impose any limits on remedies. The High Court of Zimbabwe also has inherent jurisdiction to enforce all remedies.

45 Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

An arbitral award cannot be appealed, but it can be set aside or reviewed on the following grounds:

Where of the parties lacked capacity.

The agreement was considered null, according to the agreed upon applicable law.

The applicant was not informed of the appointment of an arbitrator or of the arbitral proceedings, or for some other cause was unable to present their case.

The dispute goes beyond the scope of what could be submitted for arbitration.

The procedure of the arbitration or the composition of the arbitral tribunal was not in accordance with the agreement.

The award was in conflict with public policy in Zimbabwe (ie. awards induced by either fraud or corruption, or those against natural justice.)

Within 3 months of receiving the award the aggrieved party can make an application for setting aside the award to the High Court and follow the ordinary course of High Court applications in Zimbabwe.

Alternatively, the court may decide to suspend this procedure to give the arbitral tribunal opportunity to resume its proceedings or take other courses of action that may satisfy the applicant.

46. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

No. This would be in conflict with Zimbabwean public policy as explained in Article 34(5) of the Model Law.

47. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

Only in very limited circumstances. Examples are in terms of the State Liabilities Act which grants a state immunity against execution or in respect of diplomatic missions that have immunity according to international law.

48. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

Local law is silent on this matter. However, where the award is registered as a judgement, it is only enforceable against those who are parties to the judgement.

49. Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

No.

50. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

This has not been tested in our jurisdiction. However, if the arbitration agreement provides for emergency relief it is possible that our courts may enforce

51. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

Expedited procedures are available according to the institution that has been chosen by the parties to the arbitration.

52. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

No. Parties are free to choose arbitrators in accordance to the terms of their agreement, regardless of age, race, gender or even nationality.

53. Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

No, there has not.

54. Has there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

Yes. Corruption is regarded as a criminal offence in Zimbabwe therefore the standard applied to such cases is that of proving that the offence happened beyond reasonable doubt and the burden of proof lies with the State.

55. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

No, such changes are yet to take place. Zimbabwean courts have introduced virtual hearings through the IECMS online platform, and these have been applied by all Superior courts, however such virtual hearings are yet to be uniformly applied by arbitral institutions.

56. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

Yes. Once a person is declared insolvent, local insolvency laws apply which enforce a ranking of debts according to whether or not the debt is secured. An arbitral award that has been registered as a judgement is ranked higher than one that is yet to be registered for enforcement purposes.

57. Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

No. Aside from climate change issues that take on a criminal nature and human rights considerations stated in the Arbitration Act, there haven't been further developments in this area.

58. Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?

Yes. Following the promulgation of the Carbon Credits Trading (General) Regulations of 2023, Zimbabwe has seen the establishment of a recognised regime in governing such disputes should they occur.

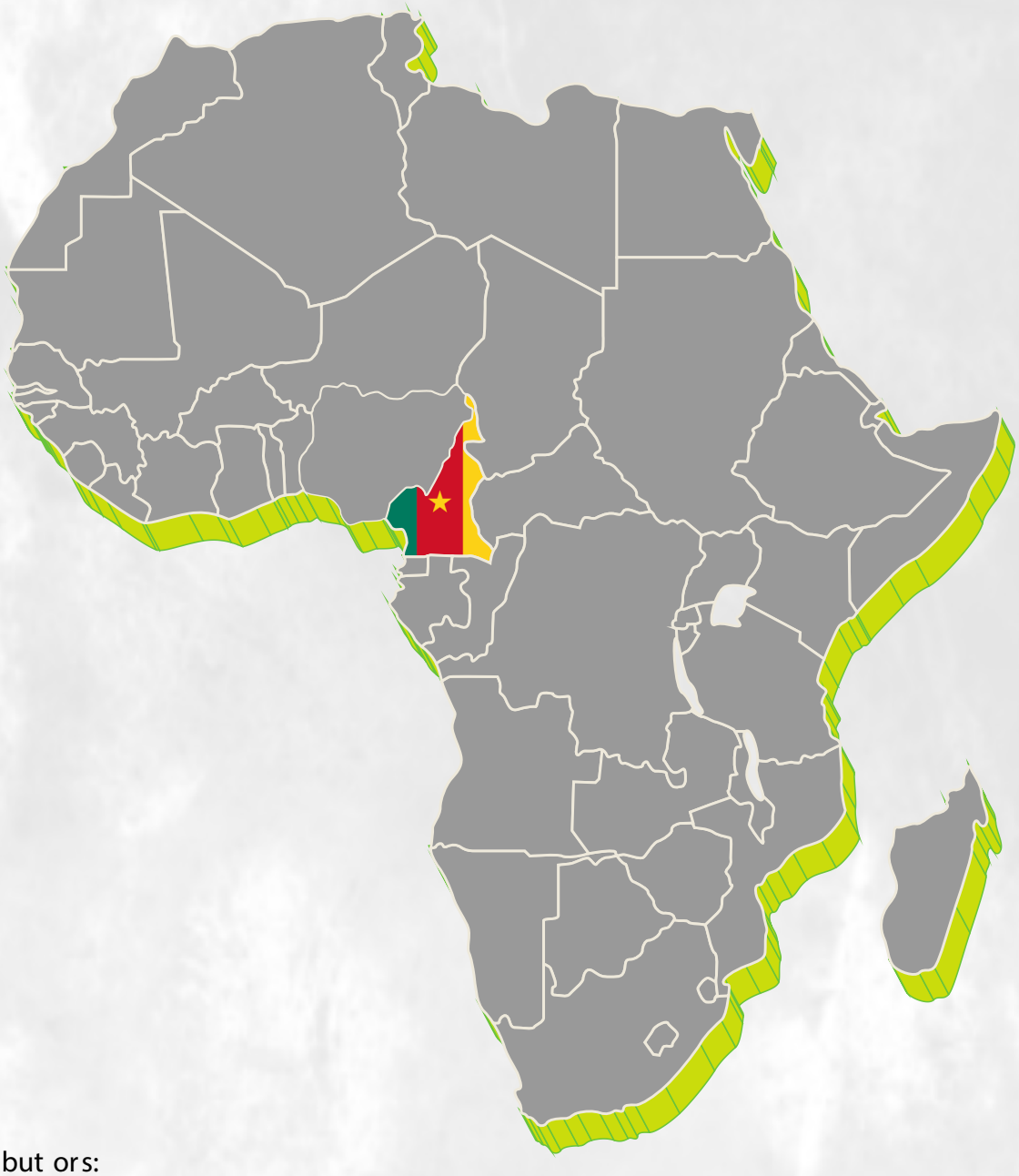
59. Is consolidation allowed under local laws?

Although local laws do not address this specifically, the general rule is that if consolidation of matter does not lead to an anomaly in the delivery of justice, or bias then it is permissible.

60. What is the regime for enforcement of ICSID awards in your country?

ICSID awards are locally enforced in the Zimbabwean court system, in accordance with the Arbitration (International Investment Disputes) Act (Cap. 7:03). The procedure for enforcement is that a certificate from the Secretary General of the International Centre for Settlement of Investment Disputes (ICSID) certifying the award, is first obtained before registration of the award as a judgment by the High Court of Zimbabwe.

Cameroon



Contributors:



Dr. Sylvie Bebohi Ebongo



Barrister Djofang Darly

1. What legislation applies to arbitration in your country? Are there any mandatory laws? What is their effect?

The legislation applicable to arbitration in Cameroon is mainly the Uniform Act on Arbitration Law (the "UAA" or Arbitration Act). The latter is completed by:

- Law n°2003/009 of 10 July 2003 to designate the competent courts mentioned in the uniform act on arbitration within the framework of the organization for the harmonization of business law in Africa (OHADA) treaty and to lay down conditions for referring matters to them.

- Law No. 2007/001 of 19 Apr. 2007 establish conditions for the enforcement of foreign judicial decisions and foreign arbitral awards made in countries not related to Cameroon by a bilateral or multilateral judicature convention.

- Some provisions of the Civil Procedure Code which are mandatory.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Cameroon has been a signatory to the New York Convention since the 19th of February 1988. She has not made any reservations to the general obligations of the convention.

3. What other arbitration-related treaties and conventions is your country a party to?

- 18 Bilateral investment Treaties

- International and Multilateral Conventions

  - ✓ New York Convention (1958) – 19 Feb 1988
  - ✓ ICSID convention (1965) – Signature: Sep 23, 1965, Deposit of ratification: Jan 03, 1967, Entry into force: Feb 02, 1967
  - ✓ MIGA Convention (1985)
  - ✓ Islamic Corporation for the Insurance of Investment Credit (1992)

- Treaties with investment provisions
  - ✓ Cameroon - United Kingdom Economic Partnership Agreement (2021) (in force since 19/07/2021)
  - ✓ EU - Cameroon EPA (2009) (in force since 04/08/2014
  - ✓ Cotonou Agreement (2000) (in force since 01/04/2003)
  - ✓ AU Treaty (1991) (in force since 12/05/1994)
  - ✓ ECCAS Treaty (1983) (in force since 18/12/1984)
  - ✓ OIC Investment Agreement (1981) (in force since 02-1988)
  - ✓ CEMAC Convention on Liberalization (1972) (in force since 22/12/1972)
  - ✓ CEMAC Investment (1965) (in force 01/04/1966)

https://investmentpolicy.unctad.org/international-investment-agreements/countries/34/cameroon

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

The law governing international arbitration in Cameroon, the OHADA Uniform Act on arbitration, is not completely based on the Model Law. It is a mix of the Model Law and some international arbitration law, such as the Swiss and the French International Laws, resulting from the reform of 2011.

5. Are there any impending plans to reform the arbitration laws in your country?

The UAA on arbitration which is arbitration Law in Cameroon was amended in 2017. There are no other plans to reform the arbitration laws in Cameroon so far. Some amendments are to be made to the local laws, completing the UAA in some aspects.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

- The Arbitration and Mediation Center of GICAM (CMAG) – Last amendment of the rules was in 2019
- The Arbitration and Mediation Center of CADEV – Last amendment of the rules was in 2018
- The Court of Arbitration and Mediation of the Cameroon Chamber of Commerce and Industry (CCIMC) - https://cam-ccima.org/ - Rules unavailable online.
- Regional Center for Arbitration and Mediation of the Financial Sector – RCAMF - https://www.ceraf.org/liste-des-documents-du-ceraf/- December 2021

7. Is there a specialist arbitration court in your country?

No

8. What are the validity requirements for an arbitration agreement under the laws of your country?

Must be written in the form of an arbitration clause or a submission agreement (article 3-1 Arbitration Act)

9. Are arbitration clauses considered separable from the main contract?

Yes, arbitration clauses are considered separable from the main based on the principle of separability. The rule derives from Art.4 of the Arbitration Act.

10. Is there anything particular to note in your jurisdiction with regard to multi-party or

multi- contract arbitration?

No, especially from the Arbitration Act itself. However multi-party or multi-contract arbitration can be held in Cameroon as it is provided for in the arbitration rules of some arbitration institutions. See Art. 8-3, 8-4 CCJA Arbitration Rules. Art. 21 CMAG Arbitration Rules.

11. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

In instances where:

- ✓ the arbitration agreement is extended to third parties or non-signatories e.g: in the case of a group of companies/between a parent company and a subsidiary
- ✓ the arbitration agreement is referenced in a document signed by a third party who did not sign the arbitration agreement themselves.

12. Are any types of disputes considered non-arbitrable? Has there been any jurisprudence in this regard in recent years?

- Family disputes
- Property disputes
- Security disputes
- Labour disputes

13. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

The question of the choice of law applicable to an arbitration agreement where no such law has been specified by the parties has not yet raised specific issues in our jurisdiction. Therefore, there are no recent court decisions on this point.

14. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The parties must choose the law applicable to the substance of their case; In case the parties didn't choose the said law, the arbitral tribunal shall apply the rules it deems appropriate by taking into consideration, international trade practices. This rule derives from Art. of the Arbitration Act.

There is no specific set of choice rule in our country. Generally, in the absence of parties' choice, the arbitral tribunal will be guided by the parties' contractual practice.

15. In your country, are there any restrictions in the appointment of arbitrators? Are there any legal requirements relating to the number, qualifications, and characteristics of

arbitrators?

No special requirements. However, the arbitrator shall:

- ✓Be a natural person.
- ✓Enjoy full exercise of civil rights.
- ✓Be available.
- ✓Be independent and impartial vis-à-vis the parties.

The tribunal shall be constituted of sole or three arbitrators (imparity rule)

- ✓Sole or three arbitrators

16. Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?

An arbitrator does not need to be a national or licensed to practice law in our jurisdiction.

The list of arbitrators at major arbitration institutions such as the CMAG Arbitration center consist of diverse mix of individuals, including nationals and non-nationals from around the world.

17. Are there any default requirements as to the selection of a tribunal?

There are no default requirements in the selection of an arbitral tribunal except for the imparity rule. The parties have the power to decide on the number, whether it is a sole or three arbitrators.

18. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

Yes, in case of an arbitration proceedings seated in their jurisdiction, the local courts can intervene at different levels:

- ✓ to complete an arbitral tribunal composed of two persons by a third arbitrator in absence of an agreement of the parties.
- ✓ if the arbitrator is challenged, becomes incapacitated, dies, resigns or is evoked.
- ✓ to rule on provisional or conservatory measures.
- ✓ To rule on the annulment procedure
- ✓ To rule on the exequatur procedure.

19. Can the local courts intervene in the selection of arbitrators? If so, how?

The local court can intervene in the selection of arbitrators. The local court intervenes in particular in ad hoc arbitrations to appoint the sole arbitrator when the parties do not agree or when, in the case of an arbitral tribunal composed of three arbitrators, the two

arbitrators designated by the parties do not agree on the choice of the third arbitrator.

20. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

An arbitrator may be challenged if there are doubts regarding his independence and impartiality.

There are not specific grounds for such challenge. An arbitrator can be challenged for failure to disclose any fact or circumstances that might create doubt as to his independence or impartiality

The procedure for such challenge

- ✓ The parties and the challenged arbitrator are heard or duly summoned.
- ✓ The arbitral procedure is suspended.
- ✓ The competent jurisdiction is obligated to render a decision within the 30 days.

21. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceeding by frequent court applications?

The risk of a local court intervening to frustrate an arbitration seated in its jurisdiction is the potential for delay. Additionally, there is a risk of conflicting decisions if, for example, the court rules prior to the arbitral tribunal, and the decision made by the arbitral tribunal differes from that of the court in the same matter.

This is an option, especially if the arbitral tribunal is not yet constituted and the other party believes he has to wait until the local court rendered a decision on jurisdiction.

22. Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?

CCJA N° 199/2022, 29 december 2022, Societe Fontaine à Biere (FAB) c/ Société Anonyme des Brasseries du Cameroun (SABC)

CCJA N° 151/2017, 29 june 2017, WANMO Martin vs NGUESSI Jean Pierre, MABOU Joseph, société SOMATEL and others

These two cases have been rendered by the CCJA concerning disputes involving Cameroonian companies. The CCJA is the supreme court for ruling on annulment proceedings within OHADA members states when the nationals' Courts of Appeal have not made any rulings within a three-month period. The rules derive from Art. 27 of the Arbitration Act.

23. Has there been any recent decisions in your country concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

Cour of Appeal Douala, n° 221/C, 19 December 2014, WANMO Martin vs NGUESSI Jean Pierre, MABOU Joseph, société SOMATEL et others;

24. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

A truncated tribunal will normally be dismissed. The award resulting from a truncated tribunal will simply be annulled for violation of the independence and impartiality of the arbitrators

25. Are arbitrators immune from liability under local laws?

Arbitrators are not immune from liability under local laws.

26. Is the principle of competence-competence recognized in your country?

Yes the principle of competence – competence is recognized in Cameroon. It derives from article 11 of the Arbitration Act.

27. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

The local courts shall declare it lacks jurisdiction when a party commences litigation in apparent breach of an arbitration agreement, unless the arbitration agreement is manifestly null or inapplicable to the case. This principle derives from article 13 (2) of the Arbitration Act.

28. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

In the case of an institutional arbitration, arbitral proceedings commence when the case is referred to the arbitral tribunal by the center, which then transfers the file to the arbitral tribunal after the parties or a party has paid the required fees in full.

In case of ad hoc arbitration, arbitral proceedings commence when the parties have or a party has paid the required fees in full to the arbitral tribunal;

There are key provisions under the arbitration laws relating to limitation periods. Nevertheless:

- ✓ If an arbitration agreement requires parties to undergo a preliminary dispute resolution phase before arbitration, and if one party requests it and the preliminary phase has not begun, the arbitral tribunal shall suspend the proceedings for a duration it

deems appropriate (Article 8-1 of the Arbitration Act).

- ✓ Initiating the mediation process will pause the statute of limitations for the action. Should the mediation process conclude without reaching an agreement, the statute of limitations will resume, with a period of no less than six (06) months from the date the mediation process concluded without an agreement (Article 4(4) of the Mediation Act).

These provisions deriving from the common OHADA legislation based on the Arbitration and Mediation Uniforms Acts applied in Cameroon.

29. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?

The limitation period for actions to vacate or challenge an international arbitration award is one month from the notification of the award upon receiving the exequatur.

30. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

In Cameroon, a state or state entity unlikely to invoke state immunity in connection when commencing arbitration proceedings. This is because a state or a state entity can be a party to arbitration proceedings, as they are permitted to sign an arbitration agreements without being able to invoke their own laws to object to the arbitrability of the dispute, their capacity to submit to arbitration or the validity of the arbitration agreement.

In other words, if a state or state entity is bound by an arbitration agreement cannot, they cannot invoke state immunity upon commencement of arbitration proceedings.

This principle is derived from Article 2 of the Arbitration Act.

31. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

When a respondent fails to participate in the arbitration, the proceedings will continue and award by default can be rendered against him. There are no known provisions by which the local courts can compel participation in the arbitration. An award by default resulting from the non-participation of a respondent can be enforced by the local courts.

32. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Third parties can voluntarily join arbitration proceedings. If all the parties agree to the

intervention, the tribunal is bound by that agreement. If all the parties do not agree to the intervention, the tribunal can allow it if necessary.

33. Can local courts order third parties to participate in arbitration proceedings in your country?

There is not a renowned provision by which local courts can order third parties to participate in arbitration proceedings in Cameroon.

34. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Interim measures:

- ✓ To safeguard evidence.
- ✓ For conservative seizure of goods.
- ✓ To maintain relationships between the parties during the arbitration proceedings.

Local courts can issue interim measures pending the constitution of the tribunal. This is based on Article 13(4) UAA "

35. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

The practice of anti-suit and anti-arbitration injunctions is not common in Cameroon.

36. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

There are not particular rules governing evidentiary matters in arbitration in Cameroon. In most of the arbitration proceedings even local arbitration, the trend is to refer to international rules such as the IBA rules on the taking of evidence.

The arbitral tribunal can, however, in certain cases on its own request or upon request of one of the parties seek the assistance of local courts for the taking of evidence. This rule derives from Art. 14 -4 of the Arbitration Act.

37. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

There are not specific ethical codes or other professional standards applying to counsel and arbitrators' proceedings in Cameroon other than the renown principles of:

- ✓ Loyalty and efficiency which derives form Art. 14 of the Arbitration Act which expressly provides that arbitration proceedings should be conducted diligently and that the parties should not use dilatory tactics.

- ✓ **Duty and standard of impartiality and independence, which derives from** Art. 7 of the Arbitration Act

- ✓ Some Arbitration institutions such as the CMAG Arbitration have an Ethic Arbitration Charter.

38. In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

The confidentiality of arbitration proceedings is a fundamental principle – Although not explicitly stated in the Arbitration Law itself, but it applies in practice and it is expressly mentioned in the arbitration rules of some arbitration institutions such as:

- ✓ The CCJA Arbitration Rules – Art. 14
- ✓ The CMAG Arbitration Rules – Art. 17

However, certain exceptions are applied while considerating the confidentiality principle:

- ✓ Awards or extract of awards can be published with the authorization of the parties (see Art. 17.1 -3 CMAG Arbitration rules) or without mentioning elements which would enable the parties to be identified (See Art. 14-3 CCJA Arbitration rules.

- ✓ In Case of investment arbitration proceedings based on an investment related instrument, any party able to demonstrate a legitimate interest may submit a reasoned request to the Arbitral Tribunal for confidentiality to be lifted (See for example Art.17.2 CMAG Arbitration rules).

39. How are the costs of arbitration proceedings estimated and allocated?

The costs of arbitration proceedings are estimated in connection with the claims, or more generally based on the amount on disputes.

The costs are allocated equally between the parties. They can be adjusted during the course of the arbitration proceedings.

At the end of the arbitration proceedings the arbitral tribunal in accordance with the arbitral institution (in case of an institutional arbitration) or with the parties (in case of an ad hoc arbitration) will allocate the final costs within the parties depending on the circumstances of the case.

40. Can pre- and post-award interest be included on the principal claim and costs incurred?

The practice observed in Cameroon is to have pre- and post-award interest determined separately from the principal claim. Pre and post-award interest are rarely included in the principal claim as they are awarded by the arbitral tribunal for diverse purposes: either to compensate a party who has been unable to dispose of a sum of money, or to encourage the unsuccessful party to make payment, and dissuade it from taking abusive legal action.

They can therefore be determined before the case is brought to arbitration (pre-award) or after the arbitration proceedings (post-award) taking into consideration a number of factors such as the contractual practice between the parties, the payment request date, the date of submission of request of arbitration, the date of the award.

41. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

The legal requirement for the recognition and enforcement of an award in Cameroon are as follows:

- ✓ Establish the existence of the arbitral award by providing the original of the award and the arbitration agreement.
- ✓ Submit a translation of the aforementioned documents (the arbitral award and the arbitration agreement) if they're not in one of the languages spoken in Cameroon i.e French or English

The award must be reasoned.

42. What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

The estimated timeframe for the recognition and enforcement of an award is 6 (six) months.

The procedure under the new arbitration law deriving from the Arbitration Act is an expedited procedure. It states that the national jurisdiction seized by a request for recognition and enforcement (exequatur) shall render a decision within fifteen (15) days from the day of its seizure. If the jurisdiction fails to render a decision within the time limit, the exequatur shall be presumed to be granted.

Nevertheless, the reality on the ground is totally different, as many courts in Cameroon are not adequately equipped to meet the requirements of the arbitral law.

A party brings a motion for the recognition and enforcement of an award on an ex parte basis

- ✓ Art. 31 Arbitration Act
- ✓ Section 5(2) of Law n°2003/009 of 10 July 2003 - the petition is submitted to the President of the Court of First Instance by application or by motion ex parte, along with documents as stated by the Arbitration Act.

43. To what extent is a foreign arbitration award enforceable?

According to Art. 11 of Law No. 2007/001 of 19 Apr. 2007, a foreign arbitration award is enforceable in Cameroon to the extent that it is *res judicata. It may* be recognized and enforced by the judge in charge of litigation related to the execution of judgments in accordance with the conditions outlined in relevant international agreements. In the absence of such agreements, recognition and enforcement shall be carried out in accordance with similar conditions provided for by the OHADA Uniform Act on Arbitration and Law No. 2003/009 dated July 10, 2003, which designates the competent courts mentioned in the OHADA Uniform Act on Arbitration.

44. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

The arbitration law of Cameroon does not establish a different standard of review for the recognition and enforcement of awards compared to domestic awards.

Article 34 of the Arbitration Act states that "*The arbitral awards rendered on the basis of rules different from those provided for in this Uniform Act shall be recognized in the Member States under the conditions provided for by international conventions possibly applicable and, in the absence thereof, under the same conditions as those provided in the Uniform Act*."

45. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts

The award shall not be subject to any opposition, or appeal on factual or legal grounds. It may only be subject to an annulment.

46. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Arbitration awards can be challenged in local courts on the following grounds:

a) The arbitral tribunal has ruled without an arbitration agreement or on an agreement that is void or expired.
b) The arbitral tribunal was irregularly composed, or the sole arbitrator irregularly appointed.
c) The arbitral tribunal ruled without conforming to the mandate with which it has been entrusted.
d) The principle of due process has not been respected.

e) The arbitral award is contrary to international public policy.
f) The award fails to state the reasons on which it is based.

Section 4(1) of Law n°2003/009 of 10 July 2003 the court of appeal of the place where the arbitral award was rendered is competent and it is seized by motion on notice.

47. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

The parties are allowed to waive any rights of challenge to award by agreement before the dispute arises provided the waival is not contrary to international public policy.

The agreement must be expressly made in writing. Many courts of appeal have held that the simple mention that by accepting the arbitration rules of the institution the parties accept that the award will be final, and binding is not an express waival to the right of challenging the award.
(*see for example Court of Appeal, Douala 04 April 2022BGFI Bank Cameroon SA Vs Pizzaroti Branch,*)

48. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

A state or state entity can successfully raise a defence of state or sovereign immunity in case it proves that the assets seized serve for public interest purposes**.**

49. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

Third parties can be bound by an award if they are indirectly mentioned or involved in the award. A third party can challenge the recognition of an award by using a third-party objection procedure.

50. Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

Third party funding is a practice not yet developed in my Cameroon. There have not been to our knowledge third party funding decisions in connection with arbitration proceedings.

51. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Emergency arbitrator relief is available in Cameroon. Art 22 CMAG rules.
Decisions made by emergency arbitrators are readily enforceable.

52. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often

used?

CMAG arbitration institutional rules provides for simplified of expedited procedures for claims under a certain value.

53. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

Diversity in the choice of arbitrators and counsel is actively promoted in Cameroon. Some renown arbitral institutions, for example, applies a policy of mixing gender (men and women) and especially experienced arbitrators with less experienced to build capacity and develop an effective culture of arbitration.

54. Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

There have not been recent court decisions in Cameroon considering the setting aside of an award that has been enforced.

55. Has there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

There are not so far recent court decisions in Cameroon considering the issue of corruption.

Local courts do not currently employ specific standards for proving corruption. Instead, they utilize the standard rules of evidence to assess requests alleging corruption that may be brought by either party.

The burden of proving corruption lies with the party making the allegation.

56. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

As of now, there have not been effective reforms aimed at enhancing the use of technology and achieving a more cost-effective conduct of arbitrations in my Cameroon. However, the practice of virtual hearings is becoming increasingly common and steady.

57. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

The insolvency of a party can affect the enforceability of an arbitration agreement. There is a general principle deriving from Arts 9 and 75 of the OHADA Uniform Act on insolvency and Bankruptcy that a decision to initiate reorganization or assets

liquidation proceedings shall stay or prohibit individual law suits which includes the arbitration agreement.

58. Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

Not to our knowledge.

59. Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?

Not to our knowledge.

60. Is consolidation allowed under local laws?

Yes, consolidation is allowed under local laws. See for example:

- ✓ Art. 23.1 of CMAG Arbitration rules.

61. What is the regime for enforcement of ICSID awards in your country?

In complying with this requirement which is that every Contracting State of the Washington Convention must also designate the competent jurisdiction to grant an exequatur for an ICSID award to ensure forceful execution, Cameroon enacted Law No. 75/18 of 18th December 1975 which designated the Supreme Court of Cameroon as the competent court to grant exequatur on ICSID awards in view of their judicial execution in Cameroon.

Malawi



Contribut or:



Charl es Martin Mhone



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Background

For an extended period, the sole governing legislation for arbitration matters in Malawi has been the Arbitration Act 1967. While this Act has been effective since 6th November 1967, it was primarily tailored for domestic arbitration, offering limited provisions for international arbitration. To address this gap, Malawi introduced the International Arbitration Act 2023 on 7th December 2023. This legislation aims to comprehensively regulate all aspects of international arbitration in accordance with the UNCITRAL Model Law. This marks a significant milestone for Malawi, as the UNCITRAL Model Law now holds the force of law in the country, except in cases where the Constitution or other laws dictate otherwise.

1. What legislation applies to arbitration in your country? Are there any mandatory laws? What is their effect?

Currently, there are two sets of legislation that govern matters of arbitration in Malawi. These are the Arbitration Act 1967, which provides for domestic arbitration, and the International Arbitration Act 2023, which was recently passed to regulate the practice of international arbitration.

Under Section 7 of the International Arbitration Act, an international commercial dispute may be determined by arbitration unless the dispute is not capable of determination by arbitration under any written law in Malawi or the arbitration agreement is considered contrary to public policy.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

The first step that Malawi took to improve the practice of arbitration was to accede to the Convention on Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) on 4th March 2021 and by that accession it became its 167th State Party. The Convention entered into force for Malawi on 2nd June 2021 with the reservations that Malawi will apply the Convention only with respect to (a) the recognition and enforcement of awards made in the territory of another Contracting State; (b) differences arising out of relationships, whether contractual or not, which are considered as “commercial” under the laws of Malawi; and (c) arbitration agreements concluded, or arbitral awards rendered, after the date Malawi accedes to the Convention and not those before that date.

3. What other arbitration-related treaties and conventions is your country a party to?

Apart from the New York Convention, Malawi is also a party to the 1923 Geneva Protocol on Arbitration Clauses and the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards. Additionally, Malawi is a party to the International Convention on the Settlement of Investment Disputes (ICSID) since 14th October 1966.

4. Is the law governing international arbitration in your country based on the UNCITRAL

Model Law? Are there significant differences between the two?

The Arbitration Act 1967, which provides for domestic arbitration, is an old piece of legislation that is not based on the Model Law. However, a draft Bill is in the pipeline to replace this Act with a new law that is based on the Model Law.

On the other hand, regarding international arbitration, the Arbitration Act 2023 domesticates the UNCITRAL Model Law.

5. Are there any impending plans to reform the arbitration laws in your country?

Malawi has set out to join several other jurisdictions in nurturing a legal landscape that is international arbitration friendly. This has been done by enacting the International Arbitration Act 2023, which adopts the UNCITRAL Model Law in the practice of international arbitration.

Malawi is also revising its law on domestic arbitration to be as modern as possible by structuring it around the Model Law. This new law is set to be passed in or around April 2024

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

Until recently, Malawi lacked an institution to which parties engaged in disputes or bound by an arbitration agreement could turn for arbitration-based dispute resolution. Traditionally, arbitration matters were handled on an ad hoc basis, with parties seeking assistance from professional bodies like the Malawi Law Society and others for the appointment of arbitrators.

However, Malawi has taken significant steps to establish an international arbitration center that will serve as a regional and global option for administering arbitral proceedings, allowing parties to resolve their disputes through arbitration. This initiative has materialized through the collaborative efforts of the Malawi Law Society (MLS) with the Arbitration Foundation of Southern Africa (AFSA) and the SADC Lawyers Association (SADC-LA).

The rules governing Malawi's international arbitration center have been adapted from the 2021 AFSA Rules for international arbitration. These rules draw inspiration from the London Court of International Arbitration (LCIA) Rules, presenting a contemporary approach to managing international arbitration disputes.

7. Is there a specialist arbitration court in your country?

There is no specialist arbitration court that deals purely with matters relating to arbitration in Malawi. However, there is a specialised commercial division of the High Court that has judges with expertise in various aspects of substantive commercial law, this division that handles all matters relating to arbitration.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

The Arbitration Act 1967 recognizes as valid any written agreement to submit present or future differences to arbitration whether an arbitrator is named in the agreement or not.

Regarding international arbitration, Article 7(2) of the Model Law provides that the arbitration agreement must be in writing. According to Article 7, an agreement is considered to be in writing if it is contained in:

- a document signed by the parties,
- an exchange of letters, telex, telegrams, or other means of communication that provides a record of the agreement.
- an exchange of statements of claim and defense in which the existence of an agreement is alleged and not denied.

9. Are arbitration clauses considered separable from the main contract?

The International Arbitration Act provides for the separability of the arbitration agreement from the substantive contract. This is by virtue of Article 16(1) Model Law, which provides that an arbitration clause shall be treated as an agreement independent of the main contract.

10. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

Section 10 of the International Arbitration Act 2023 provides that arbitral proceedings may be consolidated subject to parties' agreement.

11. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

In Malawi's legal terrain, several avenues exist through which a third party, not initially a party to an agreement, may find itself bound by that agreement. This has implications for international arbitration agreements, with key mechanisms being assignment, agency, and piercing the corporate veil.

Assignment, a significant concept in the Malawian legal context, gains prominence in transactions involving the transfer of rights and obligations. Particularly relevant in scenarios such as subrogation within insurance contracts, mergers, and acquisitions, the crux lies in whether the arbitration clause embedded in the assigned contract binds non-signatories, specifically the assignee in relation to the original party or transferor. Malawi's legal framework, echoing global perspectives, generally recognizes an automatic transfer of the arbitration clause to the assignee when assuming

obligations derived from the primary contract.

Malawi aligns with international consensus in matters of agency, wherein an agent acts on behalf of a principal. When an agent contracts on behalf of a principal, the prevailing understanding is that the principal becomes bound by all contractual obligations, including the arbitration clause. Despite the principal being a non-signatory to the primary contract, the extension of the clause to the principal is acknowledged.

While globally recognized, the legal doctrine of alter-ego, or piercing the corporate veil, is approached cautiously in Malawi. Applied when corporate entities and their stakeholders are held accountable as one, irrespective of the separation principle, its invocation hinges on cases of bad faith and rights abuse. Notably, Malawian courts exhibit prudence and reluctance in applying this doctrine, emphasizing the need for a thorough examination of circumstances surrounding its potential application.

Although specific court decisions binding non-signatories to arbitration agreements are yet to emerge in Malawi, the legal landscape, anchored in principles such as assignment, agency, and piercing the corporate veil, suggests a potential trajectory for such developments. The recognition of these legal mechanisms implies that Malawi's courts may consider extending the reach of arbitration agreements to non-signatory entities based on established principles within the current legal framework.

12. Are any types of disputes considered non-arbitrable? Has there been any jurisprudence in this regard in recent years?

The International Arbitration Act 2023 in Malawi signals a significant step towards aligning the nation with the UNCITRAL Model Law concerning the arbitrability of disputes. While the Model Law does not explicitly enumerate non-arbitrable matters, it furnishes a structured framework to assess arbitrability. For instance, Article 1(5) of the Model Law recognizes that disputes deemed non-arbitrable under other national laws will also be regarded as such. This provision enables national legislation to specifically address the arbitrability of certain subject matters.

Further, considering that Malawi operates within the common law tradition, the determination of arbitrability will not solely rest on statutory provisions. Common law principles, inherent to the legal system, will play a pivotal role in shaping the landscape of arbitrability. Traditionally, common law jurisdictions consider certain categories of disputes as non-arbitrable. These include matters falling under public law, such as constitutional law challenges and challenges to government's actions. Similarly, criminal matters, family law disputes (involving divorce, child custody, etc.), bankruptcy and insolvency proceedings, and competition law matters are often regarded as not suitable for arbitration.

The integration of the UNCITRAL Model Law and the influence of common law principles together form the basis for assessing the arbitrability of disputes in Malawi.

13. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

As international arbitration gradually emerges in Malawi, the courts have not yet encountered the issue of determining the applicable law in the absence of parties' specification. The growing practice of international arbitration in the country means that legal frameworks for addressing choice of law matters are still in the process of being tested and established.

14. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

Article 28 of the UNCITRAL Model Law holds particular significance in ascertaining the governing law for the substance of a dispute within the Malawian legal framework. This provision outlines several crucial considerations that guide the arbitral tribunal in its determination. Firstly, the tribunal examines the choice of law made by the parties involved in the dispute. If the parties have explicitly selected a governing law, the tribunal will generally uphold this choice unless it is deemed invalid or inapplicable.

Additionally, conflict of law rules become a pivotal factor in deciding the applicable law. These rules help address situations where the parties have not expressly chosen a governing law or when the chosen law cannot be applied for any reason. The tribunal may consider established conflict of law principles to identify the legal system with the closest connection to the dispute, ensuring a fair and just resolution.

Furthermore, the principles of ex aequo et bono and amiable compositeur come into play. Ex aequo et bono, meaning "according to what is just and good," allows the tribunal to decide the case based on considerations of fairness and equity rather than strict application of law. Amiable compositeur, or "friendly arbitrator," gives the tribunal the authority to determine the dispute based on general principles of fairness and justice rather than rigid adherence to legal rules.

Usages of trade applicable to the transaction are also taken into account. If the dispute arises within a specific industry or trade, the tribunal may consider established customs and practices within that sector. This ensures that the resolution aligns with the norms and expectations prevalent in the relevant business community.

15. In your country, are there any restrictions in the appointment of arbitrators? Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?

Malawi's international arbitration framework aligns with the UNCITRAL Model Law on International Commercial Arbitration, emphasizing flexibility and party autonomy in arbitrator selection. This model serves as a guiding framework, eschewing rigid constraints on appointing arbitrators.

Central to this framework is the principle of party autonomy, provided under Articles 10(1) and 11(2). Parties in arbitration agreements have unrestrained authority to mold the arbitrator selection process as they see fit. This encompasses defining criteria and qualifications, including arbitrator number and appointment procedure. Parallel to this commitment to party autonomy, Article 11 refrains from imposing specific arbitrator qualifications. Instead, it entrusts parties with discretion to establish necessary qualifications. This approach allows adaptable selection, considering expertise, language skills, and other relevant criteria. While Article 12 avoids exhaustive qualifications, it emphasizes arbitrators' impartiality and independence. Arbitrators must adhere to strict ethical standards, disclosing any potential bias.

Crucially, the Model Law (Article 11) does not mandate arbitrator's nationality, permitting free selection unless otherwise agreed in the arbitration agreement.

16. Are there any default requirements as to the selection of a tribunal?

The international arbitration framework in Malawi draws its foundation from the UNCITRAL Model Law, which establish default requirements in the event of a dearth of consensus among the parties concerning the formation of an arbitral tribunal.

Under the UNCITRAL Model Law, when the parties fail to stipulate the number of arbitrators, Article 10 prescribes the default provision of a three-member tribunal. While the Model Law endorses party autonomy, permitting the parties to determine their preferred method of appointment, it stands ready with a fallback mechanism. In instances where parties cannot reach an agreement on the appointment procedure, Article 11(3) of the Model Law empowers each party to designate one arbitrator, with these two appointed arbitrators then jointly selecting a third arbitrator who serves as the presiding arbitrator.

Importantly, the flexibility inherent in the Model Law ensures that these default requirements are not inviolable dictates. They yield to the parties' arbitration agreement. In essence, if the parties have expressly defined an alternative number of arbitrators or a specific appointment method within their arbitration agreement, those agreed-upon terms will take precedence over the default provisions.

17. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

The UNCITRAL Model Law, a foundational framework for international arbitration in Malawi, allows local court intervention in specific situations during arbitration. Pertinent articles within the Model Law elucidate the roles of local courts in aiding arbitration proceedings:

Court's assistance in taking evidence Article 27: Courts in Malawi can issue orders compelling witnesses to attend and produce documents, enhancing the arbitration

process.

Interim Measures by Courts: Article 9 empowers parties to seek interim relief from Malawian courts preemptively or during arbitration. This includes measures to preserve assets, maintain the status quo, or prevent irreparable harm. Such court-ordered measures can be pivotal in ensuring the efficacy of arbitration.

Appointment of Arbitrators: When parties fail to agree on the appointments of arbitrators, Article 11 permits Malawian courts to step in and make necessary appointments upon request. This ensures the progression of arbitration, even in the absence of a consensus on arbitrator selection.

Setting Aside of Awards: Article 34 allows parties to apply to Malawian courts to set aside arbitral awards under specific circumstances, such as due process violations or public policy breaches.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

In Malawi, as in many countries that have adopted the UNCITRAL Model Law, courts can intervene in the selection of arbitrators in international arbitration proceedings under specific circumstances. The relevant provisions include the following:

Appointment of Arbitrators by the Court (Article 11): If the parties have not been able to agree on the appointment of arbitrators, Article 11 of the UNCITRAL Model Law provides that Malawian courts can step in and make the necessary appointments upon the request of a party. In Malawi, this means that if the parties are unable to reach an agreement on arbitrator appointments and one party requests court intervention, the court can appoint arbitrators to form the arbitral tribunal.

Challenging Arbitrators (Article 13): If there are concerns about the impartiality or independence of an arbitrator, Malawian courts, in accordance with Article 13 of the Model Law, can hear challenges to arbitrators. If a challenge is successful, the court can order the removal of the challenged arbitrator.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

In Malawi, the challenge to an international arbitrator's appointment is regulated by specific provisions of the UNCITRAL Model Law. The grounds and procedures for such challenges are detailed as follows:

Grounds for Challenging an Arbitrator's Appointment:

Lack of Impartiality or Independence (Article 12(2)): A fundamental basis for challenging an arbitrator's appointment emerges when there is a perceived absence of impartiality or independence. Article 12(2) of the UNCITRAL Model Law empowers parties to challenge an arbitrator if evidence suggests bias or a conflict of interest

that compromises impartiality.

Failure to Qualify (Article 12): Another valid reason for challenge arises when an arbitrator lacks the qualifications or attributes mandated by the arbitration agreement or prescribed by law, as articulated in Article 12(2).

Procedure for Challenging an Arbitrator's Appointment:

The challenge procedure is outlined in Article 13 of the UNCITRAL Model Law. In the absence of an agreed-upon procedure, a party seeking to challenge an arbitrator must, within fifteen days of becoming aware of the tribunal's formation or specific circumstances, furnish a written statement elucidating the grounds for the challenge to the arbitral tribunal. Unless the challenged arbitrator voluntarily withdraws or the opposing party consents, the tribunal itself adjudicates the challenge.

Should this internal challenge procedure prove unsuccessful, the challenging party has a thirty-day window from the decision's receipt to petition the court or another designated authority, as stipulated in Article 6.

20. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

Malawi, like many countries that have adopted the Model Law, has a legal framework that supports international arbitration and enforces arbitration agreements. The Model Law, which Malawi has adopted, emphasizes pro-arbitration principles which are aimed at minimizing court interference in arbitration proceedings. Further, Malawian courts respect and enforce arbitration agreements, meaning that they are inclined to uphold the parties' choice to resolve disputes through arbitration rather than litigation.

21. Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?

None

22. Has there been any recent decisions in your country concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb? 23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

None

24. Are arbitrators immune from liability under local laws?

Section 9 of the International Arbitration Act 2023 in Malawi unequivocally establishes immunity for arbitrators, arbitral institutions, and appointing authorities. They are shielded from liability, with the exception that such immunity can be set aside only if it

can be demonstrated that the act or omission in question was carried out in bad faith. Furthermore, this protective umbrella covers not only the arbitrators themselves but also the employees of the arbitrator and officers or employees of the arbitral institution or appointing authority.

25. Is the principle of competence-competence recognized in your country?

The principle of competence-competence is recognized in Malawi by virtue of Article 16(1) of the Model Law, which states that the arbitral tribunal has the power to rule on its jurisdiction, including any objections to the existence or validity of the arbitration agreement.

26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

In Malawi, the jurisprudence surrounding the enforcement of arbitration agreements has demonstrated a consistent approach by the courts to honor such agreements. Despite the long-standing use of the old Arbitration Act 1967, Malawian courts, guided by Section 6(1) of this old law, have routinely favored arbitration by typically staying court proceedings and directing disputing parties to engage in arbitration. This pro-arbitration stance is exemplified through notable cases: *Midima Holdings Limited v ETG Inputs Limited* Commercial Cause No. 156 of 2022; *Access Communications Limited et al. v. Fags Investments Limited et al*. (Commercial Case 142 of 2012); *The State v. Minister of Mining and Secretary for Mining, Ex-parte: Nyala Mines Limited*, Judicial Review Cause No. 27 of 2013 [2017] MWHC 91; *Capital Investment Limited v Dr. C.K. Makadia Civil Cause No. 495 of 2003*; *Projex Group Limited v Central East African Railway* Civil Appeal No. 10 of 2021

In these cases, the courts' consistent stance demonstrates the commitment to upholding arbitration agreements, aligning with the pro-arbitration ethos prevalent in international commercial dispute resolution. This approach also demonstrates that this will continue to be the position even under Article 8(1) of the Model Law.

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

The commencement of arbitral proceedings in Malawi differs between the Arbitration Act 1967 and the new International Arbitration Act, which incorporates the Model Law principles. Under the Arbitration Act 1967, initiation occurs through a Notice to Appoint an Arbitrator or Arbitrators. Conversely, the International Arbitration Act mandates the commencement of proceedings by submitting a Request for Arbitration (in line with Art. 21 of the Model Law), with the commencement date being the day of receipt by the respondent.

Interestingly, the Arbitration Act 1967 and the International Arbitration Act, including the Model Law, do not expressly stipulate a timeframe for initiating arbitral

proceedings. However, Section 26(1) of the Limitation Act extends its applicability to arbitration, treating them like actions in the High Court. In this context, Section 4(1)(a) of the Limitation Act dictates that actions stemming from contracts must commence within six years from the cause of action's origination. Consequently, this signifies that a six-year limitation period applies to initiating of arbitral proceedings in Malawi.

28. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?

The International Arbitration Act in Malawi adheres to a three-month time frame (Article 34(3) of the Model Law) for setting aside awards. Once this period expires, annulment becomes unavailable. The countdown for the three-month limit commences upon the challenging party's receipt of the award.

29. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

Section 13(5) of the Arbitration Act 1967 prescribes that non-participation in arbitral proceedings leads to consequences akin to those in a court dispute.

On the other hand, the framework provided by the International Arbitration Act delineates a different approach. In cases where a respondent refrains from participating by omitting to communicate a defense statement or failing to attend a hearing, the tribunal, under this framework, is authorized to persist with the proceedings and render an award based on the available evidence before it (Article 25, Model Law).

30. Can local courts order third parties to participate in arbitration proceedings in your country?

In Malawi's legal framework, courts lack the authority to compel third parties to participate in arbitration proceedings, except when these third parties have voluntarily agreed to participate or are legally bound by an arbitration agreement. Furthermore, the UNCITRAL Model Law, which carries legal weight in Malawi, primarily regulates the dynamics between the parties who are signatories to the arbitration agreement and the arbitral tribunal. It generally does not encompass provisions for the involvement of third parties who have not explicitly consented to the arbitration agreement.

31. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

The International Arbitration Act 2023 empowers courts to issue interim measures, including orders for the preservation, interim custody, or sale of goods related to the dispute, in accordance with Articles 9 and 17J of the UNCITRAL Model Law.

32. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your

country?

In a significant ruling delivered on 14th March 2024, the Supreme Court in *Projex Group Limited v Central East African Railway* Civil Appeal No. 10 of 2021, emphasized the importance of upholding party autonomy in arbitration. The court's decision reinforces the position that when parties explicitly agree in writing to settle their disputes through arbitration, judicial intervention should be minimal. Specifically, the court refused to issue an anti-arbitration injunction, thereby allowing the arbitration agreement to take precedence.

This shows that although parties to an arbitration agreement in Malawi can seek an anti-arbitration injunction, the courts tend to favor upholding the arbitration agreement and allowing the dispute to be resolved through arbitration.

33. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

The International Arbitration Act 2023 in Malawi, under the aegis of the Model Law, grants courts a role in the process of obtaining evidence (Article 27, Model Law). This role encompasses the authority to compel witnesses to attend and provide testimony.

34. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

In Malawi, there are no dedicated codes of ethics explicitly addressing the behavior of counsel or arbitrators engaged in arbitration proceedings. Nevertheless, counsel and arbitrators frequently hold memberships in professional bodies such as the Malawi Law Society, Institute of Chartered Accountants, Malawi Engineering Institution, and the Chartered Institute of Arbitrators. These organizations maintain their own codes of conduct and ethical guidelines, which continue to apply to their members when they participate in arbitral proceedings.

35. In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

Section 11 of the International Arbitration Act 2023 mandates that arbitral proceedings must be conducted in private, unless the involved parties reach a mutual agreement to the contrary. When proceedings are conducted in private, all documents generated for the arbitration that are not already publicly available, must be treated as confidential by both the parties and the arbitral tribunal. This confidentiality obligation remains in effect, except when the disclosure of these documents is necessary due to a legal obligation or is essential for safeguarding or asserting a legal entitlement unless the parties explicitly agree to a different arrangement.

36. How are the costs of arbitration proceedings estimated and allocated?

Malawi does not have specific provisions that address the calculation and distribution of costs in arbitration.

37. Can pre- and post-award interest be included on the principal claim and costs incurred?

In Malawi, there are no dedicated regulations concerning the aspects of pre- and post-award interest in arbitration.

38. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

The International Arbitration Act 2023 and the Arbitration Act 1967 govern the recognition and enforcement of arbitral awards in our jurisdiction. Under the International Arbitration Act 2023, awards falling within its scope are subject to its provisions. However, awards not covered by this Act are governed by the Arbitration Act 1967 (Section 4, International Arbitration Act 2023).

Part III of the International Arbitration Act addresses the recognition and enforcement of foreign arbitral awards. Section 16(2) specifies that a foreign award can be enforced if it pertains to a commercial relationship and originates from another Contracting State. To seek recognition or enforcement, Section 17 requires the party to provide a certified copy of the relevant arbitration agreement and the award. Section 18 outlines the grounds for refusing recognition or enforcement, including non-arbitrability, public policy, party capacity, and arbitration agreement validity.

In contrast, the Arbitration Act 1967 (Sections 27 and 37) allows for the enforcement of awards with leave from the court, akin to court judgments. Section 38 outlines the conditions for enforcement, aligning with the New York Convention and the International Arbitration Act's provisions.

39. What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

The time required for the recognition and enforcement of an arbitral award in Malawi can fluctuate based on multiple factors, such as case complexity and party cooperation. Typically, the recognition and enforcement procedure can be initiated ex-parte, as demonstrated in the Bauman Hinde & Co. Ltd v David Whitehead & Son Ltd Civil Cause 2107 of 1996 case.

40. To what extent is a foreign arbitration award enforceable?

Foreign arbitral awards typically enjoy enforceability in Malawi. In accordance with the International Arbitration Act 2023, foreign arbitral awards related to commercial

matters are enforceable if they originate from a State that is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Conversely, all other arbitral awards falling outside the purview of the International Arbitration Act may be enforced under Sections 27, 37 and 38 of the Arbitration Act of 1967 if they meet such conditions as having (a) been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed; (b) been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties; (c) been made in conformity with the law governing the arbitration procedure; (d) become final in the country in which it was made; (e) been in respect of a matter which may lawfully be referred to arbitration under the law of Malawi, and (d) the enforcement thereof must not be contrary to the public policy or the law of Malawi.

41. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Foreign arbitral awards arising from commercial relationships under now fall under the jurisdiction of the International Arbitration Act. These awards are subject to the regulatory framework outlined in the UNCITRAL Model Law and the New York Convention, ensuring alignment with international arbitration standards.

Conversely, foreign arbitral awards not covered by the International Arbitration Act can still be enforced through the Arbitration Act 1967, provided they fulfill specific criteria. This dual approach allows for the enforcement of a wide range of foreign arbitral awards in Malawi, depending on the nature of the award and the applicable legislation.

42. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts

Under Malawi's current legal framework, there are no specific limitations imposed on the available remedies in international arbitration proceedings. Even the UNCITRAL Model Law, which has the force of law in Malawi, provides a broad framework for international arbitration and upholds the principle of party autonomy, allowing parties to determine the remedies they seek.

The enforceability of specific remedies depends on factors such as the parties' arbitration agreement, the chosen governing law, and the arbitrator's discretion. Generally, Malawian courts are likely to enforce if the parties have agreed on a particular remedy that complies with the public policy and mandatory laws of the arbitration's jurisdiction,. However, Malawian courts may refuse to enforce remedies that violate public policy. For example, remedies involving criminal activities or actions contrary to legal principles may not be upheld.

43. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

In Malawi, the sole recourse available to a party involved in an arbitral proceeding to challenge an award is by seeking its setting aside. The legal framework does not provide for the option of appealing an arbitral award. According to the Arbitration Act of 1967, an award may be set aside if there has been misconduct by an arbitrator or during the arbitration proceedings, as outlined in Section 24(2).

Under the provisions of the International Arbitration Act of 2023, an application to set aside an award can only be made on specific grounds specified in Article 34(2). These grounds include situations where (a) a party to the arbitration agreement was incapacitated; (b) a party did not receive proper notice regarding the appointment of an arbitrator or the proceedings; (c) the award fails to address matters envisioned by the parties; (d) the composition of the tribunal deviated from the parties' agreement. Additionally, an award may be set aside if the court determines that the dispute was not arbitrable under Malawian law or if the award contradicts Malawi's public policy.

44. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

The current legal framework in Malawi allows parties the freedom to design the dispute resolution process according to their preferences. Within this flexible framework, parties have the option to proactively waive any rights to appeal or challenge an award through pre-dispute agreements. These waivers can be incorporated into the arbitration clause of their contract or addressed in a separate agreement. By doing so, parties can effectively address potential delays and cost implications that may arise from post-award challenges.

45. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

...As per the response to question 11.

46. Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

None

47. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

The current legal framework does not provide for an emergency arbitrator.

48. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

Under the current legal framework, there is no provision for expedited procedure.

49. Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

None

50. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

Currently, Malawi is in the process of establishing its inaugural international arbitration center, marking a significant milestone as it ventures into the world of arbitration. Given that this initiative coincides with the growing prevalence of virtual hearings, the center is anticipated to embrace advanced technological solutions to facilitate arbitration proceedings.

51. Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

None

52. Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?

None

53. Is consolidation allowed under local laws?

Section 10 of the International Arbitration Act 2023 provides that arbitral proceedings may be consolidated subject to the agreement by parties.

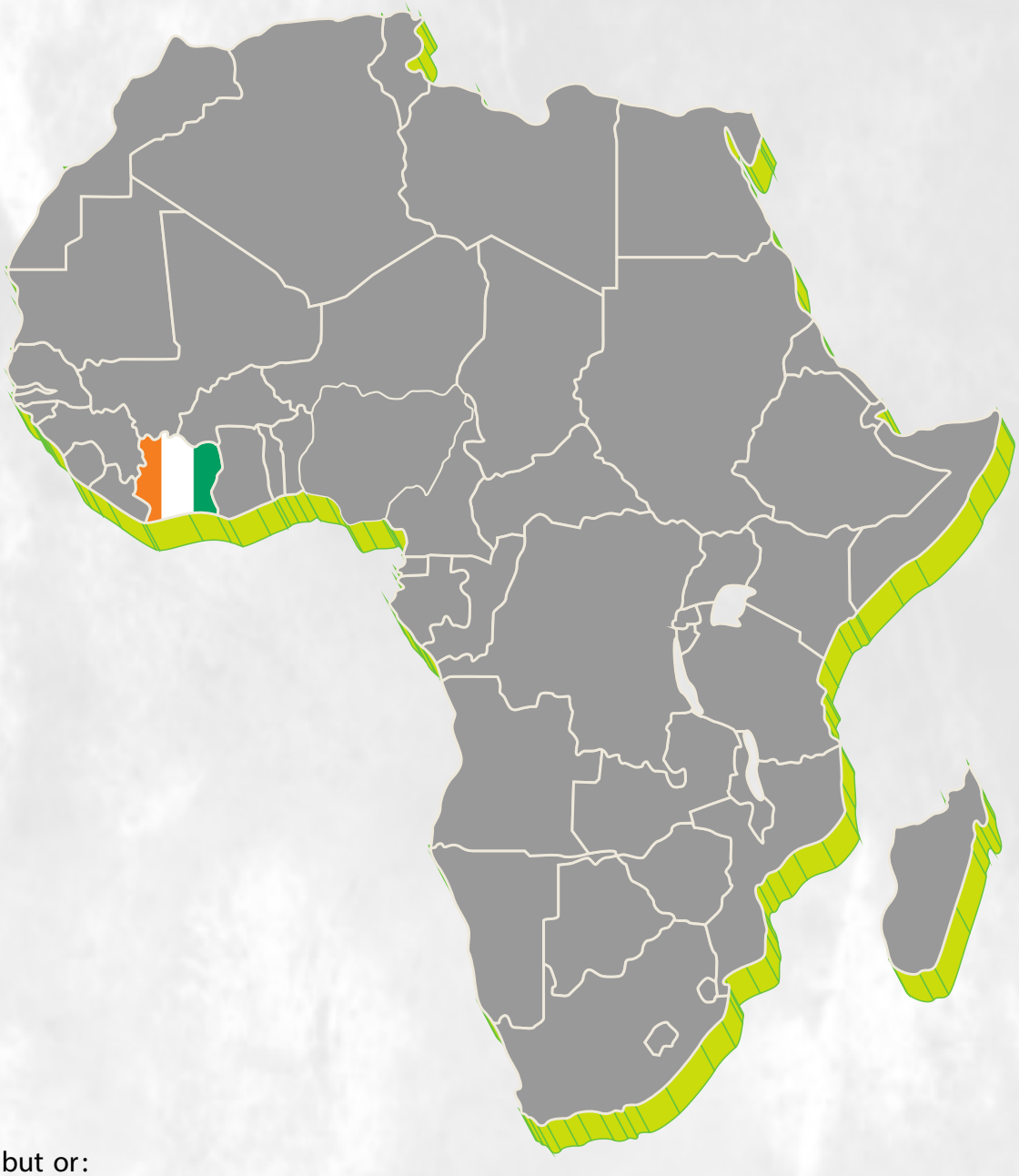
54. What is the regime for enforcement of ICSID awards in your country?

Malawi, a Member State of the International Convention on the Settlement of Investment Disputes (ICSID Convention), signed this convention on 9 June 1966, and it entered into force on 14 October 1966. In compliance with Article 69 of the ICSID Convention, Malawi enacted the Investment Disputes (Enforcement of Awards) Act, 1966 (Act 46 of 29 December 1966, effective 10 January 1967), incorporating the Convention into its domestic law.

As per Article 54(2) of the ICSID Convention, Malawi has designated the 'High Court' as the competent authority for recognizing and enforcing ICSID awards. However, Malawi is not a party to the 2014 United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (Mauritius Convention).

Malawi has entered into bilateral investment treaties (BITs) that are in force with Egypt (effective from 7 September 1999), Italy (effective from 21 March 2012), and the Netherlands (effective from 1 November 2007). Additionally, Malawi has signed BITs with Brazil (signed on 25 June 2015), Malaysia (signed on 5 September 1996), Taiwan (signed on 22 April 1995), and Zimbabwe (signed on 4 July 2003), although these agreements are not yet in force (source: UNCTAD ISDS Navigator).

Ivory Coast



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1. **What legislation applies to arbitration in your country? Are there any mandatory laws? What is their effect?**

   The legislation applicable to arbitration in Ivory Coast (**IC**) is the OHADA Uniform Act on Arbitration (**UAA**). In fact, since the advent of the Organisation for the Harmonisation of Business Law in Africa (hereinafter "OHADA"), the latter has actively promoted the use of arbitration within its seventeen Member States.

   The UAA was firstly adopted May 15, 1999. It was revised in December 15, 2017. It is directly applicable in all Member States and prevails over any other national provision in the event of conflict. It defines the basic rules applicable to any arbitration where the seat of the arbitral tribunal is located in one of the Member States including IC.

   For the implementation of the UAA provisions at the domestic level, the Republic of Ivory Coast has enacted Act Nº2023 - 418 of 22 May 2023 on the intervention of national courts in arbitration related matters. It repeals order no. 2012-158 of February 9, 2012.

2. **Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?**

   Côte d'Ivoire ratified (without reservation) the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards on February 1, 1991. It entered into force on May 2, 1991.

3. **What other arbitration-related treaties and conventions is your country a party to?**

   IC has signed the International Convention for the Settlement of Investment Disputes (ICSID), and entered into BIT's.

   ZLECAF (African Continental Free Trade Area) ratified by Côte d'Ivoire on November 13, 2018, entered into force on May 30, 2019.

   ZLECAF Protocol on rules and procedures relating to the settlement of disputes which defines the rules and procedures for settling disputes within the framework of the ZLECAF is applicable to Côte d'Ivoire.

   ZLECAF Protocol on investments was adopted on February 18 and 19, 2023, which contains provisions relating to the settlement of disputes between investors and host States.

   Member of the World Trade Organization (since January 1, 1995), Annex 2 of which consists of the Memorandum of Understanding on Rules and Procedures Governing the Settlement of Disputes.

   Washington Convention, signed without reservation, ratified on February 16, 1966 and entered into force on October 14, 1966.

4. **Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?**

The UAA is strongly inspired by the UNCITRAL Model Law, however, there are some main differences between the two texts, such as:

- The absence of a definition of "arbitration" in the UAA;
- The UNCITRAL Model Law provides in Article 7 that the arbitration agreement must be in written form. The UAA is more liberal since it strongly suggests writing but considers other means even if the wording remains vague.
- The UNCITRAL Model Law does not contain any provisions regarding the arbitrability of disputes. The UAA states that only rights that can be freely disposed of are arbitrable.

5. Are there any impending plans to reform the arbitration laws in your country?

Not to our knowledge. The last review being relatively recent.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

Common Court of Justice and Arbitration (CCJA) is an arbitration institution set through the OHADA Treaty, and it is based in Abidjan. Rules last amended on 23 November 2017.

Also, the Court of Arbitration of Côte d'Ivoire (**CACI**). Rules last amended on January 23, 2019.

7. Is there a specialist arbitration court in your country?

No, however, the law of May 22, 2023 relating to the intervention of national courts in matters of arbitration provides that the competent court in matters of arbitration is the President of the court in charge of commercial affairs of the place of the seat of the arbitration or the judge delegated by him. In the event of an action for annulment, the competent court is the Court of Appeal in charge of commercial affairs of the place of the seat of the arbitral tribunal.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

On the form: The arbitration agreement must be in writing or by any other means that can be proven and that allows reference to a document stipulating it. The matter submitted to arbitration must be arbitrable. No drafting rule is imposed so that the parties are free to word their agreement as they wish.

On the merits: in relation to the parties, it is necessary to verify the parties' capacity to compromise (in particular public legal entities), their consent which must be unequivocal,

and the power to compromise for others (for legal entities).

9. Are arbitration clauses considered separable from the main contract?

Yes. Under OHADA law, arbitration agreement is independent of the main contract. Its validity is not affected by the nullity of the main contract (Art.4 paragraphs 1 and 2 of the UAA). See an application of this principle in judgment no. 192/2021 of November 11, 2021, Société Générale de Surveillance v. Benin State. The existence of an arbitration clause must be proven independently of the existence of the main contract. This proof may be examined in particular with regard to the pre-existing contractual relations between the parties. (*Ref. art. 4 of the UAA).*

In 'CCJA, arrêt n° 012/2005, 24 February 2005, Société de manufacture de Côte dIvoire dite MACACI c/ MAY Jean-Pierre, the CCJA ruled that the arbitration clause inserted in the main contract can be extended to its annexes contained in a separate document

10. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

The OHADA arbitration law is silent on this issue. However, as the law does not prohibit it, several arbitration centers provide for this type of arbitration. Thus, the CCJA Rules provide in article 8-3.1 that arbitration under the aegis of the Court can take place between more than two parties when they have consented to it. Likewise, claims arising from or in relation to several contracts may be brought within the framework of a single arbitration (art.8-4.1).

11. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

In general, third parties or non-signatories cannot be bound by an agreement unless the arbitration clause so provides and that the third party agrees to it. However, the CCJA case n° 024/2010, of 8 april 2010, Joseph Roger c/ Fofana Patrice, must be cited as it has been ruled that: the beneficiary of a commission on a construction contract containing an arbitration clause, even if he is not a signatory to the said contract, necessarily finds in the performance of the latter the very basis of his status as a pursuing creditor. It was on this basis that the Supreme Court ruled that the national court lacked jurisdiction to hear his claim.

Where issues relating to this comes up, it may also be resolved by the rules of the arbitration centers in the event of institutional arbitration. The CCJA arbitration rules, for example, consider these situations (article 8-1, 8-2, 8-3 et 8-4).

12. Are any types of disputes considered non-arbitrable? Has there been any jurisprudence in this regard in recent years?

Article 2, para. 1 of the UAA provides that "*any natural person or legal entity may have recourse to arbitration in respect of rights of which it has free disposal*". The text does not list the rights of which the holders would have free disposal. It is therefore necessary to examine on a case-by-case basis whether a given right covered by the agreement is an unavailable right. Very often, it is considered in the civil law system to which the majority of OHADA member states belong that extra-patrimonial rights are unavailable. However, this criterion may seem insufficient.

Under OHADA law, an intellectual property dispute can only be arbitrated if it is a contractual dispute.

In its judgment no. 152/2018 of June 7, 2018, while the appellant maintained that the arbitration clause contained in an employment contract was manifestly void, as derogating from article 6 of the Niger civil code, and its labor code, the CCJA approved the decision of the state judge referring the parties to the competent arbitration court to examine the validity of the clause and hear the merits of the dispute

13. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

No.
The jurisprudence is in line with article 4 of the UAA stating that *the arbitration agreement "is assessed on the basis of the common will of the parties, without any necessary reference to state law"*

14. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The choice of the rule to govern the substance of the dispute is primarily determined by the parties. In the absence of a choice by the parties, the arbitrator shall settle the dispute in accordance with the rules he considers most appropriate, considering, where applicable, the usages of international trade (*cf. Art. 15 of the UAA).*

Regarding the specific set of applicable choice of law rules, there is no particularity in the Republic of Ivory Coast because the rules of law to which the arbitrator may refer do not necessarily refer to State law.

15. In your country, are there any restrictions in the appointment of arbitrators? Are there any legal requirements relating to the number, qualifications and characteristics of

arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?

Yes. In the OHADA zone, arbitration may only be entrusted to a natural person (See Art. 5 of the UAA).

Arbitration may be conducted by a sole arbitrator or by three arbitrators (See Art. 5 of the UAA).

With regard to qualifications and characteristics, "The arbitrator must have the full exercise of his civil rights and remain independent and impartial vis-à-vis the parties" (*See Art. 7, para. 3 of the UAA*).

The UAA is silent on the question of the arbitrator's nationality.

16. Are there any default requirements as to the selection of a tribunal?

Under the UAA, the choice of arbitrator(s) is made by the parties in the arbitration agreement (Ref. Art. 6, para. 1 of the Uniform Act on Arbitration Law). Arbitrators are appointed, dismissed and replaced in accordance with the arbitration agreement of the parties.

If the parties fail to agree on appointment procedure, if the arbitration is institutional, the arbitral institution will choose the arbitrator or arbitrators (See Art. 3.1 of the CCJA Arbitration Rules). While under the UAA, each party appoints an arbitrator and the two appointed arbitrators choose the third one. If one of the parties does not appoint an arbitrator within 30 days from receipt of the request from the other party, the President of the court in charge of commercial affairs at the place of seat of the arbitration shall do so at the request of a party.

In the event of arbitration by a sole arbitrator, if the parties cannot agree on the choice of a sole arbitrator, the latter shall be appointed at the request of a party by the competent judge (UAA, November 23, 2017, article 6.)

17. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

Yes. National courts can intervene in arbitration proceedings, especially in the case of ad hoc arbitration. As supporting jurisdictions, they generally intervene alongside the arbitral tribunal. As supervisory courts, they generally have exclusive jurisdiction.

a) <u>During the procedure</u>:

- the state judge intervenes to resolve the difficulties linked to the constitution of the arbitral tribunal.
- It also intervenes in the event of a request for challenge of an arbitrator by one of the parties, incapacity, death, resignation or revocation of an arbitrator.
- If the assistance of the judicial authorities is necessary for the administration of proof, the arbitral tribunal may, ex officio or upon request, ask for the assistance of the competent court.
- The state court may, at the request of the parties, order precautionary seizures and judicial security. In the event of a clear emergency and if these measures do not involve any substantive examination, the national court may order precautionary measures and provisional measures.
- The legal (six months) or conventional deadline for the arbitration procedure may be extended by the competent national court.
- When the arbitral tribunal cannot reconvene, the national court may interpret the award, rectify material errors and omissions which affect the arbitral award.

b) After the procedure:
- The recognition and enforcement of arbitral awards is the responsibility of the President of the court in charge of commercial affairs in the location of the seat of the court;
- the examination of appeals for annulment of awards is the responsibility of the Court of Appeal in charge of commercial affairs in the location of the seat of the arbitral tribunal.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Under the UAA, pursuant to Article 5, paragraph 2: "The arbitral tribunal shall consist of either a sole arbitrator or three arbitrators. Failing agreement by the parties, the arbitral tribunal shall consist of a sole arbitrator.

The Ivoria judge has jurisdiction to appoint a third arbitrator if the arbitration agreement is absent or inadequate; to complete the arbitral tribunal when the parties appoint an even number of arbitrators and no agreement can be reached either between the parties or between the appointed arbitrators on the choice of the arbitrator who is to complete the composition of the arbitral tribunal.

See also 16&18.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Yes, the appointment of an arbitrator may be challenged in accordance with article 8 and

seq. of the UAA, which states that :

"*In the event of a dispute, and if the parties have not settled the challenge procedure, the competent court in the State Party shall rule on the challenge within thirty days at the latest, after hearing the parties and the arbitrator or duly summoning them. If the competent court fails to rule within the aforementioned time limit, it shall be deprived of jurisdiction and the challenge may be brought before the Common Court of Justice and Arbitration by the most diligent party. The decision of the competent court rejecting the challenge may only be appealed to the Common Court of Justice and Arbitration. Any ground for challenge must be raised within a period not exceeding thirty days from the discovery of the fact giving rise to the challenge by the party intending to invoke it. An arbitrator may only be challenged for a reason revealed after his appointment. When an arbitrator's term of office is terminated or when the arbitrator withdraws for any other reason, a replacement arbitrator shall be appointed in accordance with the rules applicable to the appointment of the arbitrator replaced, unless otherwise agreed by the parties. The same applies when the arbitrator's mandate is revoked by agreement of the parties and in any other case where the arbitrator's mandate is terminated.*"

20. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

The risk of local court intervention to frustrate arbitration seated in IC is limited as the intervention of the Courts on the substance of a dispute is only possible when the arbitration agreement is considered manifestly null and void or manifestly inapplicable.

The principle of "competence-competence" enshrined in article 11 of the UAA also reduces the risk of incursion by national judges into the arbitral procedure.

However, certain parties still attempt to submit their dispute to national courts despite the existence of an arbitration clause (judgment no. 152/2018 of June 7, 2018, T.O. v. EU Delegation to Niger and State of Niger).

21. Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?

No. Not to our knowledge.

To our knowledge, not in Côte d'Ivoire. However, relating to Cameroonian entities, see: CCJA N° 199/2022, 29 december 2022, Société Fontaine à Bière (FAB) c/ Société Anonyme des Brasseries du Cameroun (SABC)

22. Has there been any recent decisions in your country concerning arbitrators' duties of

disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

No, not to our knowledge.

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

They must be replaced. The proceedings cannot continue unless the parties have agreed that the remaining arbitrator(s) can continue to resolve the dispute, unless otherwise agreed by the parties.

24. Are arbitrators immune from liability under local laws?

Arbitrators appointed in a CCJA arbitration enjoy diplomatic privileges and immunities under Article 49 of the OHADA Treaty, which provides that "the officials and employees ... of the CCJA, as well as the judges of the Court and the arbitrators appointed by the latter shall enjoy, in the exercise of their functions, diplomatic privileges and immunities".

25. Is the principle of competence-competence recognized in your country?

Yes. Under OHADA arbitration law, "the arbitral tribunal shall have exclusive jurisdiction to rule on its own jurisdiction, including all questions relating to the existence or validity of the arbitration agreement" (See art. 11, para. 1 of the UAA).

26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Article 13 of the UAA provides that "Where a dispute which is the subject of arbitral proceedings under an arbitration agreement is brought before an exclusive jurisdiction, the latter shall, if one of the parties so requests, declare that it has no jurisdiction".

The Ivorian courts should stop ruling on a dispute if the parties have agreed to submit it to arbitration. In principle, the arbitration agreement must take precedence over court proceedings unless the arbitration agreement is manifestly null and void or manifestly inapplicable (See Commentary on Art. 13 of the UAA, OHADA, *Traité et Actes uniformes commentés et annotés*, 2023, p. 226). See also judgments No. 151/2017 of June 29, 2017 and No. 230/2017 of December 14, 2017

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

The arbitration proceedings will usually commence with a request for arbitration, by

application of the applicable arbitration rules or the parties agreements. In the case of institutional arbitration, the rules of the arbitration center generally govern all matters relating to the arbitration proceedings. Indeed, Article 9 of the UAA provides that when parties rely on an arbitration body, it commits them to apply the arbitration rules of this center, except for the parties to expressly exclude them, in agreement with the said center.

There is no time limit specific to arbitration procedures.

28. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?

The appeal for annulment is admissible as soon as the sentence is pronounced. It ceases to be exercised if it has not been exercised within one month of the notification of the exequatur sentence. See Article 27 of the UAA which provides thus- "An action for setting aside shall be admissible as soon as the award has been made. It shall cease to be admissible if it has not been lodged within one month of service of the exequatur award. The competent court shall render its decision within three months of the date on which the matter was brought. If the said court has not given a ruling within this period, it shall be deprived of jurisdiction and the action may be brought before the Common Court of Justice and Arbitration (CCJA High Court) within the following fifteen days. The latter must rule within a maximum of six months from the date of referral. In this case, the time limits provided for by the Rules of Procedure of the CCJA are reduced by half."

29. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

Government and government entities benefit from immunity of jurisdiction and execution that applies except for waivers when applicable. Article 2 of the UAA provides that States and public law legal entities may be parties to arbitration. However, the Uniform Act on simplified debt recovery procedures provides that unless expressly waived by the parties, there is no compulsory execution or precautionary measures against legal entities under public law. The question of compulsory execution of public law legal entities can therefore be a source of difficulties.

30. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

No, the local courts cannot compel participation.

When the defendant does not present his defense, or one of the parties refuses to appear at the hearing or to produce documents, the arbitral tribunal may continue its proceedings and rule on the basis of the evidence at its disposal. The award rendered is binding on the parties involved because an arbitral award, once rendered, carries the

authority of res judicata effect regarding the dispute it resolves (See Article 23 of the Uniform Arbitration Act).

31. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

In principle, the arbitration agreement is only binding on the parties to the contract who have decided to refer their dispute to arbitration. However, nothing forbids parties to agree on the joinder of a third party.

The UAA does not contain any provision on this issue. However, the CCJA arbitration rules consider this possibility provided that the parties and the arbitral tribunal authorize it (art 8-2 CCJA arbitration rules). The CACI Arbitration Rules do not contain a provision on voluntary intervention.

32. Can local courts order third parties to participate in arbitration proceedings in your country?

No. The principle of the will of the parties is a principle enshrined by the UAA (UAA, article 3-1).

33. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Interim conservatory or probationary measures can be issued by local courts pending the constitution of the arbitral Tribunal.

Furthermore, the existence of an arbitration agreement does not prevent a state court, at the request of a party, in the event of a recognized and justified emergency, from ordering provisional measures provided that these measures do not involve an examination of the dispute on the merits.

Finally, the regulations of the CACI allow parties to request, prior to the constitution of the arbitral tribunal, the appointment of an arbitrator for the purpose of ordering provisional measures (Art. 21).

34. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

No, not to our knowledge.

35. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts

compel witnesses to participate in arbitration proceedings?

There are no specific rules regarding the administration of evidence in arbitration. Article 14 of the Uniform Arbitration Act stipulates that the arbitral tribunal is empowered to request explanations of facts and presentation of evidence from the parties deemed necessary for resolving the dispute. However, the tribunal cannot incorporate into its decision any pleas, explanations, or documents invoked or presented solely by the parties unless they have had the opportunity to discuss them in adversarial proceedings. Moreover, the tribunal cannot base its decision on pleas raised ex officio without first inviting the parties to provide their observations.

If the tribunal requires assistance from judicial authorities for evidence administration, it may, at its own initiative or upon request, seek assistance from the competent court in the State Party.

36. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

There is no general rule of conduct specifically applicable to counsel and arbitrators, in arbitration procedures.

However, Law No. 81-588 of July 27, 1981 regulating the legal profession in Ivory Coast contains some provisions relating to discipline in this profession. The UAA also specifies that the arbitrator must remain impartial and independent of the parties throughout the procedure (UAA, Art.7).

37. In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

There is no general principle of confidentiality set out in the UAA. At the end of the deliberations, the arbitrators make their decision. The award is not made public. It is only notified to the parties. This is supported by Article 18, which states that: "The deliberations of the arbitral tribunal shall be secret". Additionally, Article 14 of the CCJA arbitration rules and article 3 of the CACI arbitration rules provide that “the arbitral procedure is confidential”. This confidentiality which must be respected throughout the arbitral procedure (procedure documents, arbitral award, procedure administration meetings, etc.) applies both to the parties, to the arbitral tribunal, and to the arbitration center.

Except from the above provision, the UAA is silent, and parties are free to frame the confidentiality of their procedure as they wish.

The CCJA arbitration rules allow the Center to publish extracts from arbitral awards without mentioning the elements allowing the parties to be identified.

38. How are the costs of arbitration proceedings estimated and allocated?

The allocation and estimation of cost is not regulated under this jurisdiction, except for the provisions of the institutional arbitration rules. Arbitral tribunals allocate arbitration costs to the parties in a discretionary manner, taking into account the circumstances of the case. However, the CCJA and the CACI have arbitration fee schedules. These costs depend on the interest in the dispute.

39. Can pre- and post-award interest be included on the principal claim and costs incurred?

There is no prohibition in this respect. Pre and post-award interest can be determined before the case was brought to arbitration (pre-award) or after the arbitration proceedings (post-award) taking into consideration a number of factors such as the contractual practice between the parties, the payment request date, the date of submission of request of arbitration, the date of the award.

Pre and post-award interest are rarely included in the principal claim since they are awarded by the arbitral tribunal either to compensate a party who has been deprived of a sum of money or to make the unsuccessful party pay, and to prevent it from taking abusive legal action.

40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

The arbitral awards must be reasoned, under the UAA, but this is not a condition for the enforcement.

Besides, once rendered, the arbitral award has the force of res judicata and the court may grant enforcement or provisional enforcement. According to article 29 of the UAA, the enforcement cannot be granted if the Court is already seized of a petition for annulment. Otherwise, exequatur may only be refused in the following cases:

a) if the arbitral tribunal has ruled without an arbitration agreement or on an agreement that is invalid or has expired;

b) if the arbitral tribunal has ruled without complying with the terms of reference conferred upon it;

c) if the principle of adversarial proceedings has not been respected;

d) if the award is contrary to international public policy.

41. What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

When a request for recognition or exequatur is submitted to a state court, the court shall render its decision within a period not exceeding fifteen days from the date of referral. If

at the end of this period the court has not issued its order, the exequatur is deemed to have been granted (art.31). Even in the absence of the other party, the recognition or exequatur procedure can continue its course (art.30).

If the exequatur is granted, or if the court to which the application for exequatur is referred remains silent within the aforementioned fifteen-day period, the most diligent party submits the application to the Chief Registrar or the competent authority of the State Party for the affixation of the executory formula on the minute of the decision.

The exequatur procedure is not adversarial, the motion can therefore be brought on an ex parte basis.

42. To what extent is a foreign arbitration award enforceable?

The UAA applies where the seat of arbitration is located in IC. Therefore, in such case, Article 34 of the UAA will apply and it provides that: "*Arbitral awards made on the basis of rules other than those provided for in this Uniform Act shall be recognized in the Contracting States under the conditions laid down in any applicable international conventions and, failing that, under the same conditions as those laid down in this Uniform Act.*"

According to article 31 of the UAA "Recognition and enforcement are refused if the award is manifestly contrary to a rule of international public policy."

43. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Yes. (contradictory answers)

44. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

There is no specific limit on the remedies. (contradictory answers)

45. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

International Arbitration awards are not subject to opposition, appeal, or cassation. They may only be the subject of a motion for annulment, an action for revision or opposition.

A claim for annulment can be brought against arbitral awards as soon as the arbitral award is pronounced. The appeal must be exercised within one month of notification of the exequatured award.

The action for annulment is only admissible if:

- The arbitral tribunal ruled without an arbitration agreement or on a void or expired arbitration agreement,
- The arbitral tribunal was irregularly composed or the sole arbitrator irregularly appointed,
- The arbitral tribunal ruled without complying with the mission entrusted to it,

- The adversarial principle was not respected,
- The arbitral award is contrary to international public order,
- The arbitral award is devoid of any motivation (art.26),

The competent court rules within 3 months of its referral. After this period, an appeal can be placed within 15 days before the CCJA which must rule within 6 months of its referral.

46. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

Yes. The parties may agree to waive the right for annulment of the arbitral award provided that the award is not contrary to international public policy.

47. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

The State enjoys immunity to protect itself and its assets and such immunity may be raised at any stage.

Compulsory execution and protective measures shall not apply to persons who enjoy immunity from execution. However, any debt which is certain, due and owed by state corporations of firms, regardless of their legal form and mission, shall give rise to a set-off against debts which are also certain, due and owed them, subject to an agreement of reciprocity (Art.30 al.2 Uniform act organizing simplified recovery procedures and enforcement measures.)

48. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

The UAA does not provide for any specific provision dealing with this matter. Moreover, Article 1165 of the Ivorian Civil Code provides the general principle according to which contracts are only binding upon their signatories. As a consequence, we understand that a third-party may only be bound by an arbitration agreement to the extent that it has agreed to the arbitration agreement.

However, when the arbitral tribunal has violated certain mandatory rules of law, or when the award prejudices the rights of third parties who were not called to arbitration, or when it has discovered a fact which was unknown to the arbitral tribunal and to a party, of such a nature as to exert a decisive influence on the solution of the dispute, or when the award contains material errors and omissions which affect it. In such situations, the UAA provides for a few remedies that may be exercised against an arbitral award, namely annulment, which is the principal remedy; third-party opposition; revision of the award; and reparation and/or interpretation of an arbitral award.

49. Has there been any recent court decisions in your jurisdiction considering third party

funding in connection with arbitration proceedings?

Not to our knowledge.

50. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

No. We have no jurisprudence on their enforcement.

51. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

Not under the OHADA Law.

The law does not provide for an accelerated procedure. However, the CACI arbitration rules provide that when the interest in the dispute is less than or equal to 50,000,000 FCFA, the arbitration is conducted according to the accelerated procedure, unless the parties wish otherwise. For a dispute greater than the amount indicated above, the accelerated procedure can be implemented at the request of the parties (Art.37).

52. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

There is no specific regulation on that.

53. Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

Not to our knowledge.

54. Has there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

Not to our knowledge.

55. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

The law does not contain provisions relating to the use of new technologies in arbitral

procedures. However, the CCJA arbitration rules provide that the arbitral tribunal may, with the agreement of the parties, hold a scoping meeting in the form of a telephone conference or video conference (art.15.1). In fact, meetings, hearings and hearings of witnesses can also be held by videoconference with the agreement of the parties. The CACI arbitration rules are silent on the issue. But in practice, meetings between arbitrators and hearings can take place by videoconference with the agreement of the parties.

56. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

Yes. The insolvency of a party can affect the enforceability of an arbitration agreement. There is a general principle deriving from Articles 9 and 75 of the OHADA Uniform Act on Insolvency and Bankruptcy that a decision to initiate reorganization or assets liquidation proceedings shall stay or prohibit individual lawsuits, that includes arbitration agreements.

57. Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

Not to our knowledge.

58. Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?

Not to our knowledge.

59. Is consolidation allowed under local laws?

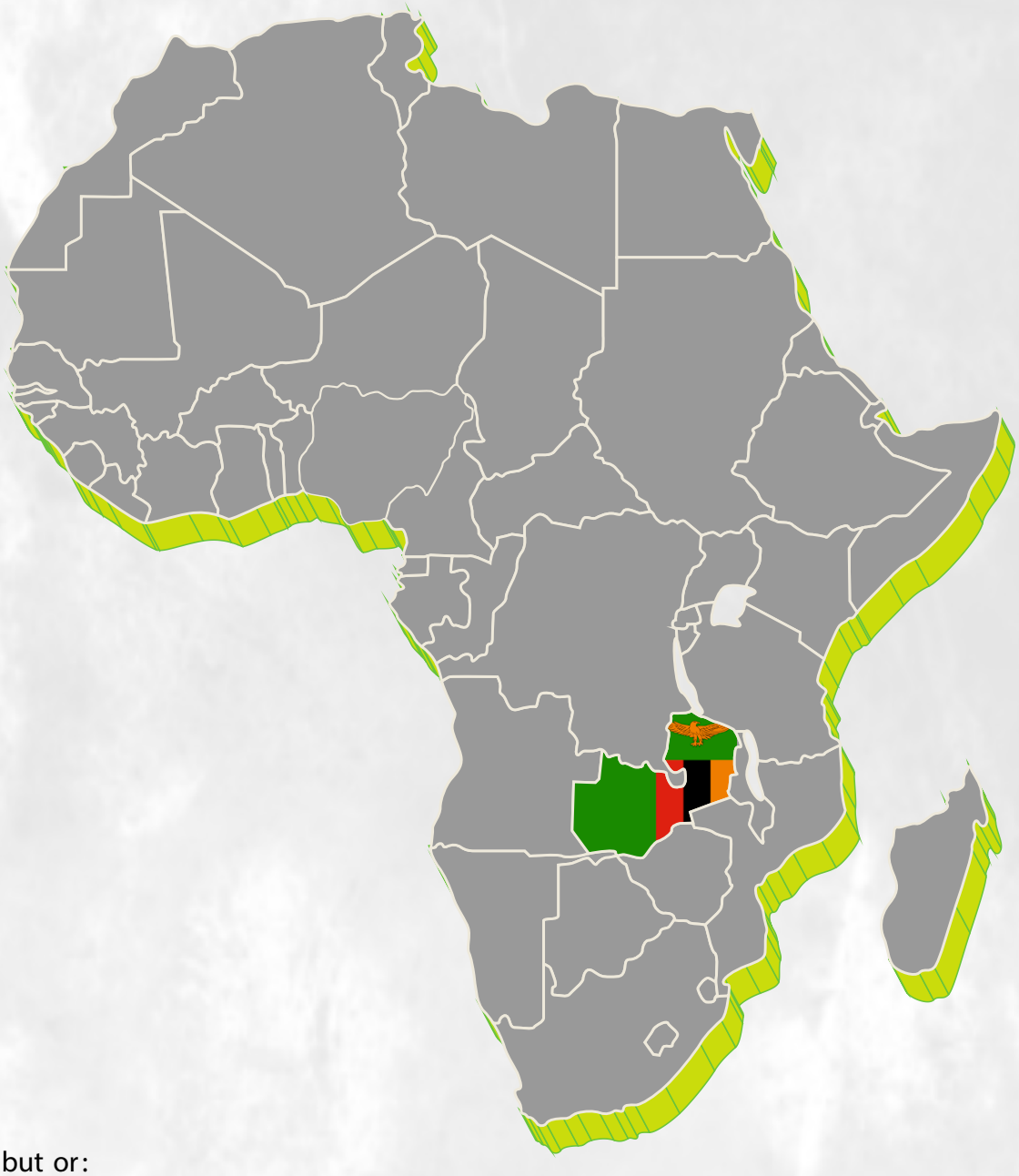
Not without the parties' consent.

The UAA does not contain any provision on this issue. However, the CCJA arbitration rules provide that arbitration may take place between more than two parties when they have agreed to resort to arbitration in accordance with its rules. In the event of multi-party arbitration, any party may file claims against any other party (Art.8.3).

60. What is the regime for enforcement of ICSID awards in your country?

There is no specific regime. Arbitral awards rendered under the aegis of the ICSID are recognized under the conditions provided for by the ICSID convention.

Zambia



Contribut or:



John K awana

1. What legislation applies to arbitration in your country? Are there any mandatory laws? What is their effect?

a. The Arbitration Act No. 19 of 2000 (which incorporates the UNCITRAL Model Law and the New York Convention);
b. The Arbitration (Court Proceedings) Rules, Statutory Instrument No. 75 of 2001;
c. The Arbitration (Code of Conduct and Standards) Regulations, Statutory Instrument No. 12 of 2007; and
d. The Investments Disputes Convention Act, Chapter 42 of the Laws of (which domesticates the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States 1965) ("ICSID" Convention).

The arbitration laws are binding. The laws do contain mandatory provisions, but some provisions are subject to the parties' agreement.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Yes. Zambia is a signatory to the New York Convention. There are no reservations to the general obligations of the Convention.

3. What other arbitration-related treaties and conventions is your country a party to?

Zambia is a signatory to the following treaties and conventions:

· The 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID).

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

Yes. The Arbitration Act of Zambia is based on the UNICITRAL Model Law. There are no significant differences between the two.

5. Are there any impending plans to reform the arbitration laws in your country?

Zambia is currently in the process of amending the Arbitration Act No. 19 of 2000. The Government is at stakeholder engagement stage and receiving submissions from the

general public.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The Chartered Institute of Arbitrators (CIArb) Zambia Branch. The CIArb Arbitration Rules were last amended in 2022. There are currently no amendments being considered.

CIArb Zambia Branch together with the Law Association of Zambia are spearheading the creation of the Lusaka International Arbitration Centre (LIAC). A memorandum of understanding was signed and the process is underway.

7. Is there a specialist arbitration court in your country?

Zambia does not have a specialist arbitration court.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

An arbitration agreement must be in writing or evidenced in writing. Where parties agree otherwise than in writing by reference to terms which are in writing, their agreement shall be treated as an agreement in writing.

Further, an arbitration agreement will be invalid if it is inoperative or incapable of being performed.

9. Are arbitration clauses considered separable from the main contract?

Yes, arbitration clauses are considered separable from the main contract and generally survive the main contract.

10. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

Nothing to note in particular.

11. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

Third parties or non-signatories are not bound by an arbitration agreement.

12. Are any types of disputes considered non-arbitrable? Has there been any jurisprudence in this regard in recent years?

Yes. The following disputes are not arbitrable under Zambian law:

a. Matters contrary to public policy;

b. Criminal matters, unless the High Court grants leave;

c. Matrimonial causes;

d. Matters incidental to matrimonial causes, unless the High Court grants leave;

e. Matters related to the determination of paternity, maternity or parentage; and

f. Matters affecting the interests of minors or persons under legal incapacity, unless represented by a competent person.

13. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

No, there is no recent court decision concerning the choice of law.

14. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The substantive law is determined by examining the parties' express choice, the implied choice as well as the system of law with which the contract has the closest connection.

There are no specific choice of law rules in Zambia.

15. In your country, are there any restrictions in the appointment of arbitrators? Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?

There are no restrictions in the appointment of an Arbitrator. The Arbitration Act provides that no person shall be precluded by reason of that person's nationality,

gender, colour or creed from acting as an arbitrator.

However, the Arbitration Act also provides that the court or arbitral institution, in appointing an arbitrator, must have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

16. Are there any default requirements as to the selection of a tribunal?

There are no default requirements for selections of a tribunal. If the parties fail to choose a tribunal, the court appoints the tribunal upon request of either party. The court has wide discretion to appoint the tribunal but is obliged to do so within the limited mentioned in question 15 above.

17. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

The court may intervene to assist arbitration proceedings seated in Zambia within the permissible limits such as compelling the attendance of witnesses.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Yes, where parties (or two arbitrators) fail to reach an agreement expected under an appointment procedure or a party fails to adhere to the said procedure or a third party such as an arbitral institution fails to appoint an arbitrator, the High Court may appoint an arbitrator on application of either party.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Yes. The appointment of an arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the impartiality or independence of the arbitrator, or if the arbitrator does not possess qualifications agreed to by the parties.

The procedure depends on the agreement between the parties. However, failing such agreement, a party that intends to challenge an arbitrator must send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator. The challenge must be made to the arbitrator first before it is made to the

High Court.

20. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceeding by frequent court applications?

The risk is slim to none as there are very specific instances that call for the court's intervention in arbitral proceedings. A party cannot delay arbitration proceedings by frequent court applications because court applications do not preclude the arbitrator from proceeding with the arbitration while the court applications pend.

21. Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?

No. There are no recent developments.

22. Has there been any recent decisions in your country concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

No. There are no recent decisions on this.

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

The law provides for the replacement of an arbitrator during the course of the arbitral proceedings and unless the tribunal decides otherwise, such an arbitrator appointed, the proceedings resume at the stage where the arbitrator who was replaced ceased to perform his or her functions.

24. Are arbitrators immune from liability under local laws?

Yes, the law provides for the exclusion of liability of an arbitrator, the appointing authority and any person appointed by the arbitral tribunal except where there is intentional wrongdoing.

Further, an arbitrator, an arbitral or other institution or a person authorised to perform any function in connection with arbitral proceedings is not liable for anything done or omitted in good faith in the discharge or purported discharge of that function.

25. Is the principle of competence-competence recognized in your country?

Yes. The principal of competence-competence is recognised in Zambia. However, where the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party

may request the court to decide the matter. It should be noted that while such a request is pending, the arbitrator may continue the arbitral proceedings and make an award.

26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Where parties put before the court a matter which is subject of an arbitration agreement, the court's approach is to stay the proceedings and refer the parties to arbitration upon request by a party to the arbitration agreement.

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

Arbitral proceedings are typically commenced by way of a notice to refer the matter for arbitration. There are no specific arbitration laws relating to limitation periods. However, generally, the Limitation Act, 1939 sets a prescription of 6 years for causes of action arising from a contract.

28. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?

An action to vacate or challenge an award must be brought within ninety (90) days of the award.

29. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

Arguments of state immunity usually arise at enforcement and not commencement in Zambia.

30. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation? Can third parties voluntarily join arbitration proceedings?

No. The courts cannot compel participation of the respondent. The law provides that if the respondent fails to communicate his statement of defence, the arbitral tribunal shall continue the proceedings without treating such failure in itself as admission of the claimant's allegations. Further, if the respondent fails to appear at a hearing or to adduce evidence in their defence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Third parties cannot join arbitration proceedings unless with the consent of both parties.

31. If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Yes, the tribunal is bound by the agreement. However, if the parties do not agree to the intervention, the tribunal cannot allow for it as the law provides for judicial/court intervention in particular instances.

32. Can local courts order third parties to participate in arbitration proceedings in your country?

Courts can compel the attendance of witnesses or production of documentary evidence by third parties in an arbitration.

33. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

The interim measures available include the following:

a. interim injunction or other interim order;
b. order for the parties to make a deposit in respect of the fees, costs and expenses of the arbitration; and
c. detain, preserve or inspect any property or thing in the custody, possession or control of a party which is in issue in the arbitral proceedings and to authorise for any of those purposes any person to enter upon any land or any building in the possession of a party, or to authorise any sample to be taken or any observation to be made or experiment to be carried out which may be necessary or expedient for the purpose of obtaining full information or evidence.

Yes, courts may issue interim measures while the constitution of the tribunal is pending.

34. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

The law does not specifically provide for anti-suit and/or anti-arbitration injunctions. To the extent that common law applies in Zambia, anti-suit and anti-arbitration injunctions would be available and enforceable in Zambia courts.

35. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

The parties generally agree on the procedure for the arbitration, including the procedure for taking evidence. If the parties do not agree, the arbitral tribunal will determine the procedure in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

The court may assist in taking evidence when requested by the arbitral tribunal.

36. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

Arbitrators have ethical duties such as the duty to uphold ethical codes and professional standards, the duty to be fair, impartial, to give each party the opportunity to present its case and the duty to avoid conflict of interest. The Arbitration (Code of Conduct and standards) Regulations S.I. No.12 of 2007 governs the conduct of arbitrators. Counsel's ethics are generally regulated by the Legal Practitioners Practice Rules.

37. In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

Yes. Arbitrators and the parties have a duty to not disclose to anyone who is not a party to the arbitral proceedings any information or documents that are exchanged over the course of the proceedings, except with consent of the parties concerned or when ordered to do so by a court or otherwise required to do so by law, or when the information discloses an actual or potential threat to human life or national security. This obligation also extends to arbitral institutions.

38. How are the costs of arbitration proceedings estimated and allocated?

The costs typically awarded are the fees and expenses of the arbitrator, the legal fees and other expenses of the parties and other expenses relating to the arbitration.
The Costs and expenses of an arbitration are usually born by the unsuccessful party unless there are extenuating factors that warrant apportioning of the costs.

39. Can pre- and post-award interest be included on the principal claim and costs incurred?

Yes they can.

40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

The law provides that an arbitral award irrespective of the country in which it was made shall be enforceable and recognized as binding upon application to a competent court.

There are legal requirements for an award to be valid. The law provides that an award should be in writing and should be signed by the arbitrator or arbitrators. Where there is more than one arbitrator, the signature of the majority is sufficient. However, the reason for any omitted signature must be stated.

In addition, the Award should state the reasons upon which it is based unless the parties agree otherwise. An award should also state its date and the place of arbitration.

41. What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

Typically, the timeframe is after a period three (3) months/ ninety (90) days. This is because a party has the right to challenge the award within ninety (90) days of the receipt of the award. Therefore, recognition and enforcement can only occur after this time period has elapsed.

The process of registration of an arbitration award is an ex-parte process.

42. To what extent is a foreign arbitration award enforceable?

Foreign arbitration awards are enforceable in Zambia save as provided for in the New York Convention.

43. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

No. The standard of review for recognition and enforcement is the same.

44. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

The limits are as outlined under question 12.

45. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Under Zambian law, arbitration awards cannot be appealed against. However, awards can be challenged by way of an application to set aside the award or an application to set aside registration of an award.

The grounds on which an award (or its registration) may be challenged are where:

a. a party to the arbitration was under some incapacity; or the said agreement is not valid under the law;
b. the party making the application was not given proper notice of the appointment of an arbitrator;
c. the award deals with a dispute not contemplated by or falling within the terms of the submission to arbitration;
d. the composition of the arbitral tribunal of the arbitral procedure was not in accordance with the agreement; and
e. the award has not yet become binding on the Parties or has set aside or suspended by the Court.

46. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

No. Parties cannot waive this right.

47. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

To a large extent. State Proceedings Act, chapter 71 of the laws of Zambia provides for immunity against execution. No execution can be levied on the State.

48. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

Third parties or non-signatories cannot be bound by an award and cannot challenge the recognition of an award. However, if third parties wish to be heard on an incidental matter, such a party can institute a fresh court action.

49. Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

No. There are no court decisions relating to third party funding in arbitration proceedings.

50. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

There is no provision for emergency arbitrators in Zambian legislation but decisions of an emergency arbitrator duly appointed pursuant to specific arbitration rules will be readily enforceable.

51. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

There are no laws or rules providing for simplified or expedited procedures. However, the parties are at liberty to adopt any such rules wherever they exist. The procedure under the arbitral laws and institutional rules is the same regardless of the amount in dispute.

52. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

Yes. Although there are no specific rules under the arbitration law in Zambia, diversity is actively promoted by various foundations and societies. Diversity is also one of the values championed by the national Constitution which proscribes discrimination based on gender, race, religion etc.

Further, laws such as the Gender Equality and Equity Act No. 22 of 2015 provide for provide for "taking of measures and making of strategic decisions in all spheres of life in order to ensure gender equity, equality and integration of both sexes in society". Arbitral Institutions such as the CIArb Zambia Branch are bound by this law and take this into account in the appointment of arbitrators.

53. Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

No. There have been no recent decisions in this respect.

54. Has there been any recent court decisions in your country considering the issue of

corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

There have been no recent court decisions considering corruption in arbitration.

55. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

Yes, the CIArb Zambia Branch encourages the resolution of disputes in a cost-effective manner.

Further, the CIArb Rules of 2022 provides for virtual proceedings and/or hybrid arbitral hearing as well as guidance notes and protocols on the same.

56. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

The insolvency of a party does not affect the enforceability of an arbitration agreement in Zambia.

57. Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

No. There are no recent developments in Zambia in this respect.

58. Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?

No. There are no recent developments in this respect.

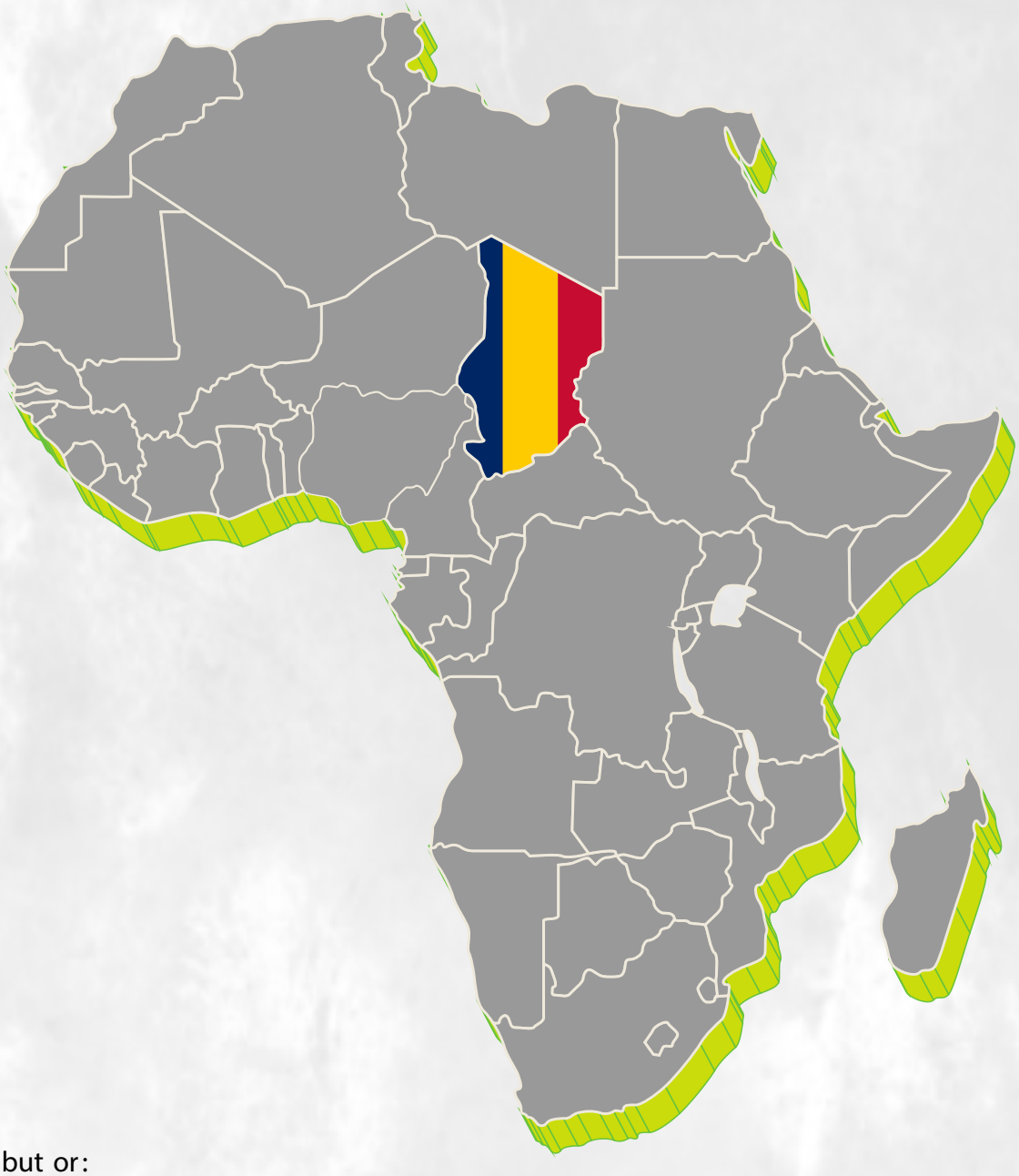
59. Is consolidation allowed under local laws?

Yes. Consolidation is allowed but it can only be done with the consent of the parties.

60. What is the regime for enforcement of ICSID awards in your country?

Zambia has the Investments Disputes Convention Act, Chapter 42 of the Laws of Zambia (which domesticates the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States 1965) ("ICSID" Convention). This law relates to enforcement of ICSID awards. However, it is not detailed as to the actual procedure for enforcement. A party will have to revert to the High Court Rules as well as the Arbitration (Court Proceedings) Rules for the actual procedure.

Chad



Contribut or:



Mahamat Att eib

1. **What legislation applies to arbitration in your country? Are there any mandatory laws? What is their effect?**
   The OHADA Uniform Act on Arbitration (UAA) is the arbitration law in Chad. Its provisions are implemented by the articles 483 and 688-690 of Act No.028/PR/2020 on the Code of Civil, Commercial and Social Procedure (**Civil Proceedings Code or CPC**) in Chad.
   There are several mandatory laws in Chad including laws on insolvency proceedings, commercial companies, and securities. These laws are applicable to arbitration proceedings as part of substantive law when chosen by parties or decided by arbitrators.
   There are also mandatory provisions relating to the organisation and functioning of local Courts. Those provisions are not applicable to arbitrations. However, when the UAA provides itself mandatory rules such as principle of adversarial proceedings or competence-competence principle, parties, arbitrators, and Courts shall comply with.

2. **Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?**
   Chad is not a signatory to the New York Convention.

3. **What other arbitration-related treaties and conventions is your country a party to?**
   Chad has signed several conventions related to arbitration including:
   - The OHADA treaty, which established the CCJA as an arbitration Centre.
   - The Convention on the Settlement of Investment Disputes between States and Nationals of Other States, known as the "ICSID Convention" of March 18, 1965
   - The Convention of the Establishment of the African Free Trade Area which include Protocol on Disputes resolution.

4. **Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?**
   The UAA provisions are consistent with the UNCITRAL Model Law.

5. **Are there any impending plans to reform the arbitration laws in your country?**
   No.

6. **What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?**
   Chad has a national arbitration structure. This is the Centre of arbitration, Mediation and Conciliation of N'Djamena (**CAMC-N**).
   As an OHADA State member, Chad participated in the establishment of the OHADA regional arbitration centre and the adoption of its rules (**CCJA**).
   Both CAMC-N and CCJA updated rules were adopted in 2017. To our knowledge, there are no planned reforms.

7. **Is there a specialist arbitration court in your country?**
   There is no specialized arbitration court in Chad.
   However, specific tribunals have been nominated to intervene on arbitration-related

matters.

8. **What are the validity requirements for an arbitration agreement under the laws of your country?**
To be valid, the arbitration agreement must relate to rights that are freely available to the parties.
As a contract, the arbitration agreement must be the result of the consent of the contracting parties.
More generally, the arbitration agreement is assessed based on the common intention of the parties, without any necessary reference to state law. For instance, the nullity of the main contract has no effect on the validity of the arbitration agreement.

9. **Are arbitration clauses considered separable from the main contract?**
Arbitration clauses are separable from the main contract.

10. **Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?**
There is no specific provision excluding multi-party or multi-contract arbitration under the arbitration Law in Chad.
CCJA has however specific provisions on those issues.

11. **In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?**
In principle, third parties or non-signatories can only be bound by an agreement if the arbitration agreement so provides and the third-party consents.
Consent to arbitration may be established by any means. including CCJA Court, the Court in charge over disputes related to UAA admitted that a third party can be bound by an arbitration agreement when he participates in the negotiation or performance of the contract containing such agreement.

12. **Are any types of disputes considered non-arbitrable? Has there been any jurisprudence in this regard in recent years?**
Parties may have recourse to arbitration for rights they freely dispose of. The CPC does not define the material scope of the arbitration agreement.
The CCJA Court has ruled however that the application of mandatory legal provisions to the merits of disputes does not imply the non-arbitrability of disputes.

13. **Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?**
Not to our knowledge.
The most recent decision we are aware of is rendered in 2011. In this case, the CCJA Court stated that a State invoke its own regulations to contest the validity of the arbitration agreement.

14. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The arbitration tribunal decide the substance of the dispute in accordance with the rules of law chosen by the parties.

In the absence of a choice by the parties, the arbitral tribunal shall apply the rules of law which it considers most appropriate, considering, where appropriate, the usages of international trade.

15. In your country, are there any restrictions in the appointment of arbitrators? Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?

The arbitrator must be a natural person. It must enjoy full civil rights and remain independent and impartial vis-à-vis the parties.

In addition, under Chadian Law, Magistrates cannot carry out private activities.

16. Are there any default requirements as to the selection of a tribunal?

The parties should agree on sole arbitrator, or three arbitrators.

Failing such agreement, the arbitral tribunal shall be constituted by a sole arbitrator.

The President of the Commercial Court is empowered to appoint the third arbitrator to chair the tribunal when the arbitrators appointed by the parties are unable to agree on the third arbitrator or to nominate an arbitrator when a party does not exercise its right to nominate a co-arbitrator.

He may also appoint an arbitrator when a party fails to exercise its right to appoint an arbitrator, or in the event of the challenge, incapacity, or death of an arbitrator.

17. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

The courts will intervene to assist arbitration proceedings in several matters including cases of disagreement/inaction to nominate arbitrators/sole arbitrator, to support on production of evidence, to extend the duration of arbitral proceedings and during the recognition and enforcement of arbitration awards.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Yes. See Answers to Questions 15 above.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

There are no specific grounds for challenge, but it may be raised if there is any doubt about its impartiality or independence.

20. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

The risks are virtually negligible, as the intervention of state courts is limited on specific issues specified above.
In addition, when the arbitral tribunal is appointed, the local Court cannot, in principle, intervene to frustrate an arbitration.

21. **Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?**
No, not to our knowledge.

22. **Has there been any recent decisions in your country concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?**
No, not to our knowledge.

23. **What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?**
Where the tribunal is truncated, the matter is settled by agreement between the parties.
Failing agreement between the parties, the matter is settled by the President of the Commercial Court.

24. **Are arbitrators immune from liability under local laws?**
The UAA does not contain any specific provisions on this issue.
Under CCJA rules however, arbitrators enjoy diplomatic immunity.

25. **Is the principle of competence-competence recognized in your country?**
Yes.

26. **What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?**
Notwithstanding the existence of an arbitration agreement, the Court litigation proceedings continue until one of the parties raises the issue of lack of jurisdiction. In such instances, the courts declare themselves non-competent.

27. **How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?**
The arbitration proceeding is initiated based on arbitration agreement between parties or under an investment Code or an investment treaty. However, when there is a prior amicable settlement step, the parties should comply with. The arbitral tribunal suspends the proceeding if initiated, orders parties to comply with it and if any, recognise the failure of an amicable settlement.
There is no specific limitation period for arbitration under UAA.
However, the default limitation period is 5 years on commercial matters.

28. **What is the limitation period applicable to actions to vacate or challenge an international**

arbitration award rendered inside your jurisdiction?
The application for annulment must be made within one month from the date of notification of the award.

29. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?
A State or State entity cannot invoke its immunity from jurisdiction to exclude its ability to be part of arbitrations.
However, the State or State entity enjoy immunity from execution, which it can invoke at the stage of enforcement of the award unless they waive it.

30. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?
The non-participation of the defendant does not impact the continuation of the arbitration proceedings.
If the defendant refuses to take part in the constitution of the arbitral tribunal, the President of the commercial court will make up for the defendant's absence.
During arbitration proceedings, the defendant's refusal to present his defence does not prevent the proceedings from continuing. However, such failure does not constitute acceptance of the plaintiff's allegations.
Moreover, failure to appear at the hearing or to produce documents does not prevent the arbitral tribunal from continuing the proceedings.
Finally, the arbitral award rendered in this context is enforceable against all parties, including the defaulting defendant.
In any cases, the courts cannot compel the defaulting party to participate in arbitration.

31. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?
Under the UAA, there is specific provision on the voluntary intervention of third parties.
Under CCJA rules however, voluntary intervention is possible after the constitution of the tribunal, and subject to the agreement of both the arbitral tribunal and parties.

32. Can local courts order third parties to participate in arbitration proceedings in your country?
No.

33. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?
The arbitral tribunal is competent to pronounce any form of provisional or conservatory measures, except for seizures and judicial securities.
Prior to the constitution of the arbitral tribunal, Courts have jurisdiction to order all forms

of provisional and protective measures.

34. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

No.

35. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

The arbitral tribunal may invite the parties to provide any evidence it deems necessary to resolve the dispute. However, documents or information relating to a prior mediation stage may not be used as evidence in the arbitration proceedings.

The arbitral tribunal may, of its own motion or upon request, call upon the Commercial Court to provide evidence, including by ordering a witness to testify in arbitration proceedings.

36. What codes of ethics and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

There are no specific codes of ethics or professional standards specifically applicable to counsel and arbitrators conducting proceedings in Chad.

Counsel and arbitrators, remain however subject to the ethical rules of their original profession. This is the case for barristers acting as arbitrators or counsels in Chad.

37. In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

Under the UAA, there is no general rule on the confidentiality of arbitration proceedings. However, the deliberations of the arbitral tribunal are secret.

Both CCJA and CAMC-N proceedings are however confidential unless the parties otherwise agreed.

38. How are the costs of arbitration proceedings estimated and allocated?

The UAA does not provide specific provision on estimating or apportioning arbitration costs.

Both the CCJA and CAMC-N rules provide however for scales of administrative costs and arbitrators' fees. Additionally, arbitral tribunal has power to decide on the estimating and allocation of costs.

39. Can pre- and post-award interest be included on the principal claim and costs incurred?

There are no restrictions on the allocation of interest in the main claims and the costs incurred, either under the UAA nor under CCJA and CAMC-N arbitration rules.

In general, arbitrators may award interest as well as compound interest in accordance with articles 1153-1154 of the Civil Code.

40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

Arbitral awards can only be recognized and enforced by virtue of an exequatur decision issued by the President of the Court of First Instance. The applicant for enforcement shall establish the existence of the arbitral award by producing the original of the award and the arbitration agreement or copies of these documents which meet the requirements of authenticity. These documents must be drawn up in French/Arabic when exequatur is requested, otherwise the party must produce a certified translation in those language.

Opposition to enforcement is possible when the award manifestly violates international public policy. Once the application to oppose enforcement has been filed, the President of the Court of First Instance may decide to stay enforcement pending his decision on the application. In such a case, there is no way of obtaining authorization to enforce.

A decision refusing exequatur may be appealed only to the Court of the CCJA, whereas a decision granting exequatur is not subject to appeal. The CCJA rules on the exequatur request by decision of its President or by decision of the Court. The decision of the CCJA granting the exequatur is subject to a request for formal confirmation of the exequatur (*formule exécutoire*), which must be requested from the Chief Clerk of the Court of First Instance. The same confirmation of exequatur is required for arbitral awards rendered under the auspices of the CCJA Arbitration Centre and receiving exequatur from the CCJA Court.

Arbitral awards must be reasoned. Failure to provide reasons can be a ground for annulment of the award.

41. What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

The Tribunal of Court of first instance of N'Djamena rules on the enforcement request within 15 days of the date of the request. If, on expiry of this period, the court has not issued its order, the exequatur is deemed to have been granted.

If the application for exequatur is rejected, appeal is possible before the CCJA Court.

Under CCJA arbitrations, the decision on the exequatur of arbitral awards relating to interim or conservatory measures is rendered within 3 days. The same time limit applies to appeal against a decision refusing exequatur before the same Court.

A party cannot apply for exequatur on an *ex parte* basis. The exequatur procedure is adversarial.

42. To what extent is a foreign arbitration award enforceable?

Foreign arbitral awards are enforceable in accordance with relevant international treaties. In the absence of such treaties, the regime for recognition and enforcement of arbitral awards provided by the UAA applies.

43. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

See answers to question 42.

44. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Arbitration awards are not subject to appeal in Chad. They may however be subject to annulment proceedings in the following cases:

- The arbitral tribunal ruled without an arbitration agreement or based on an invalid or expired agreement.
- The arbitral tribunal was improperly composed, or the sole arbitrator was improperly appointed.
- The arbitral tribunal ruled without complying with the terms of reference entrusted to it.
- The principle of due process has not been respected
- The arbitral award is contrary to international public policy
- No reasons are given for the sentence

The action for annulment must be lodged within one month from the notification of the award with its exequatur.

The annulment proceedings suspend the enforcement proceedings, except in cases where provisional enforcement of the award has been ordered by the arbitral tribunal.

The N'Djamena Court of Appeal has jurisdiction over annulment proceedings. It rules on the annulment application within 3 months. Failing a decision within this timeframe, the CCJA Court will decide within 6 months at the request of the interested party.

45. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

As stated above, the arbitral award is not subject to appeal.

Regarding the annulment recourse, the parties may waive it by agreement before the dispute arises, provided that such waiver is not contrary to international public policy.

46. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

The State or State entity may invoke their immunity from execution against any precautionary measures and any measures of forced execution at the stage of enforcement of the arbitral award unless they have previously expressly waived such immunity.

47. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

Arbitral awards are in principle not binding on third parties or non-signatories.

Third parties or non-signatories are bound by an award in case of forced execution proceeding against the debtor under the award.

Additionally, third party or non-signatory party may object to the enforcement of the arbitral award if the latter is prejudicial to its interests.

48. Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

Not to our knowledge.

49. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

There are no provisions for emergency arbitration measures in Chad.

We are not aware of any court rulings concerning the application of emergency arbitrator decisions.

50. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

No, not to our knowledge.

51. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

There are no requirements for diversity in the choice of arbitrators and counsels.

52. Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

No, not to our knowledge.

53. Has there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

No, not to our knowledge.

54. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

No, not to our knowledge.

55. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

There are no specific provisions rendering the arbitration agreement non applicable in the event of the insolvency of a party to the that agreement.

Generally, insolvency proceedings are organized under specific and collective proceedings before Court. As such, individual legal proceedings, or actions for payment against an insolvent debtor are suspended.

56. Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

No, not to our knowledge.

57. Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?

No, not to our knowledge.

58. Is consolidation allowed under local laws?

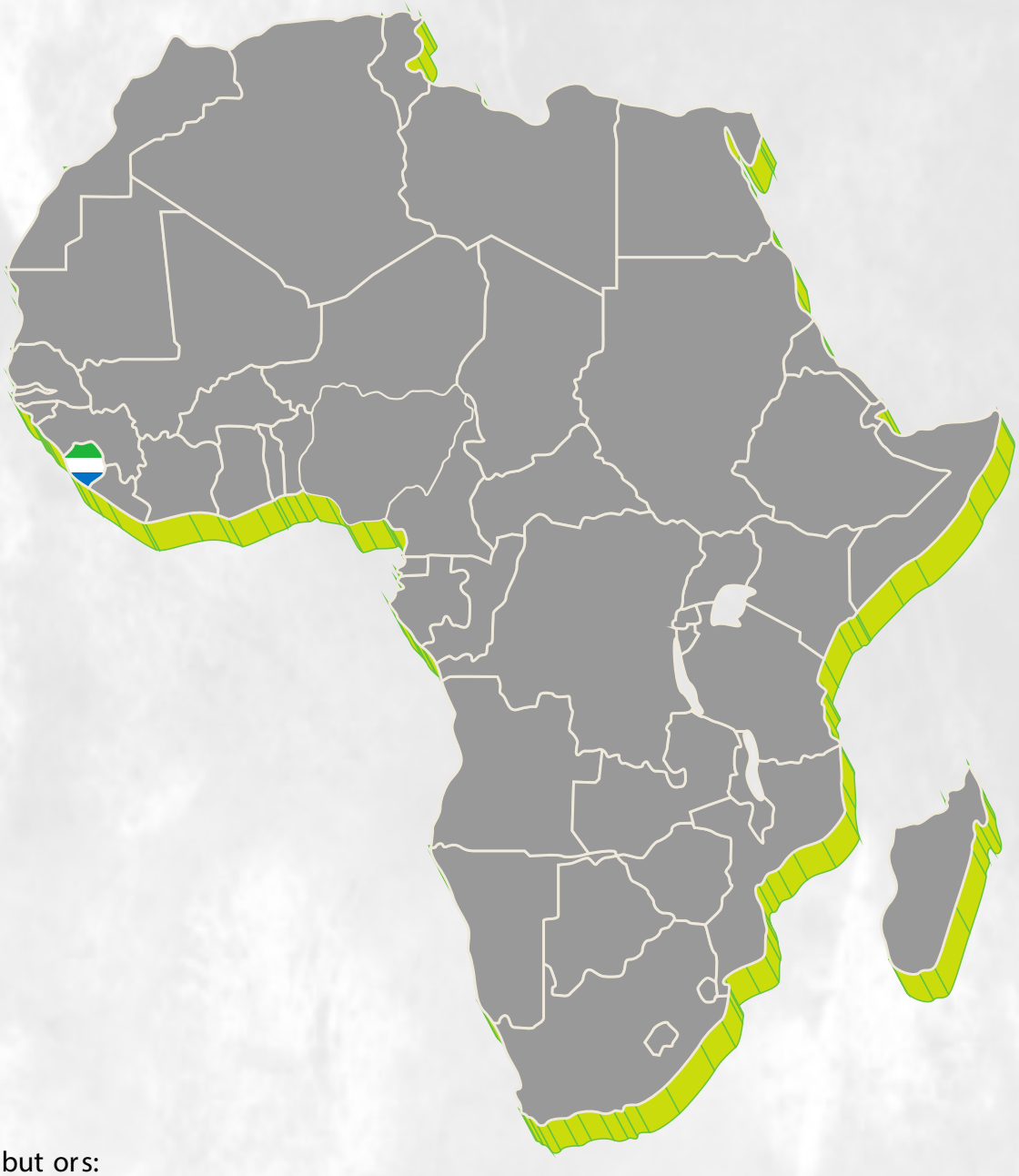
There are no specific provisions relating to the consolidation under the UAA.

However, consolidation is used in legal proceedings before the Court and under CCJA arbitrations.

59. What is the regime for enforcement of ICSID awards in your country?

There is no specific regime for ICSID arbitral awards in Chad.

Sierra Leone



Contributors:



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1. **What legislation applies to arbitration in your country? Are there any mandatory laws? What is their effect?**

The Arbitration Act, 2022 Act No.18 of 2022 (the Act). This Act contains mandatory provisions which cover areas of the nature and form of arbitration clause or agreement, appointment of an arbitrator, conduct of arbitral proceedings and challenge of an award. Provisions of the Act regulate the conduct of arbitral proceedings, and a breach of some provisions may make an award susceptible to a successful challenge.

2. **Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?**

Sierra Leone is a signatory to the New York Convention. It acceded to the Convention on the 28th October 2020.
Sierra Leone did not unreservedly join the Convention. The following reservations were made:

- **Commercial Reservation**: Sierra Leone will only recognise and enforce awards that arise out of legal relationships, whether contractual or not, which are commercial under the laws of Sierra Leone;
- **Non-Retroactive Application**: Sierra Leone will only apply the Convention to arbitration agreements concluded, and awards rendered, after the date of its accession to the Convention; and
- **Reciprocity**: Sierra Leone will only recognise and enforce awards made in the territory of another contracting state to the Convention.

3. **What other arbitration-related treaties and conventions is your country a party to?**

Sierra Leone is also a party to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention) of 1966.

4. **Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?**

The Arbitration Act, 2022 (Act No.18 of 2022) is largely based on the UNCITRAL Model Law on International Commercial Arbitration. It incorporates many of the key principles and provisions of the Model Law.
There are, however, some significant differences between the UNCITRAL Model Law on International Commercial Arbitration (Model Law) and the Sierra Leone Arbitration Act, 2022 (Act No.18 of 2022). While the Arbitration Act 2022 is generally based on the Model Law, it incorporates several key modifications and additions to adapt the law to the specific context of Sierra Leone.

These include the following:

- **Third-Party Funding**: The Model Law does not explicitly address third-party funding,

which is a growing practice in international arbitration. The Sierra Leone Arbitration Act in Sections 79 and 80 expressly permit third-party funding for Sierra Leone-seated arbitrations and for arbitration-related court proceedings within Sierra Leone. This reflects the recognition of third-party funding as a viable financing option for parties involved in arbitration.

- **Emergency Arbitrator**: The Act provides for the appointment of an emergency arbitrator in section 28, while the Model Law does not contain any such provision.
- **Costs of Arbitration**: While the Act in Part XIV sets out extensive provisions regarding costs of arbitration, security for costs and other related matters, the Model Law is silent on these matters.
- Arbitration Management Conference: the Act in section 47 provides for the conduct of an arbitration management conference between parties. In the case of the Model Law no such provision is made.
- **Scope of Application**: The Model Law applies to international commercial arbitrations, while the Sierra Leone Arbitration Act applies to both domestic and international arbitrations. This broader scope of the Sierra Leone Arbitration Act reflects the growing importance of arbitration in resolving disputes within Sierra Leone.
- **Appointment of Arbitrators**: The Model Law provides a more detailed framework for the appointment of arbitrators, including specific provisions for the appointment of emergency arbitrators and the challenging of arbitrators. The Sierra Leone Arbitration Act simplifies these procedures, aiming for greater flexibility and efficiency in appointment of arbitrators.

5. Are there any impending plans to reform the arbitration laws in your country?

There are no impending plans to reform the arbitration laws in Sierra Leone given that it was recently enacted in 2022.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

No arbitral institution exists in Sierra Leone. Arbitral proceedings are mostly conducted on an ad hoc basis. However, Part XVII of the Act provides for the establishment of the Sierra Leone Arbitration Centre, which is yet to be established.

7. Is there a specialist arbitration court in your country?

There is no specialist arbitration court.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

To be valid under the laws of Sierra Leone, an arbitration agreement must meet the following requirements:

- In writing: The arbitration agreement shall be in writing and this includes electronic communication;

- Subject matter: The arbitration agreement must cover a dispute that is capable of being settled by arbitration. This means that the dispute must not be a matter that is exclusively reserved for the courts, such as criminal matters or family law matters.

- Consent: All parties to the arbitration agreement must have consented to the agreement. This means that they must have agreed to submit their disputes to arbitration. The consent can be done in any form.

- Specificity: The arbitration agreement must clearly identify the parties to the agreement, the subject matter of the dispute, and the seat of the arbitration.

9. Are arbitration clauses considered separable from the main contract?

Arbitration clauses are considered separable from all other terms of a contract in. Section 6 of the Arbitration Act 2022 provides as follows:
Unless otherwise agreed by the parties, an arbitration agreement which forms or was intended to form part of another agreement, shall be treated as a distinct agreement, whether in writing or not, shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, did not come into existence or has become ineffective

10. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

In Sierra Leone, the Arbitration Act 2022 does not expressly provide anything particular to note regarding multi-party or multi-contract arbitration. However, section 44 of the Act gives parties to arbitral proceedings to consolidate matters. This may allow for multi-party and multi-contracts arbitration. Similarly, Articles 31 and 32 of the Arbitration Rules in the First Schedule of the Act, provide for the consolidation of arbitral proceedings. Additionally, Articles 32, 33, 34, 35, 36 and 37 of the Rules provide for joinder of a Third Party in appropriate circumstances. In effect, this may give rise to multi-party and multi-contract arbitrations.

11. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

Third Parties may be bound by an arbitration agreement in cases of a successful application is made either by the the third party and a party to the proceedings for the a third party to be joined as a party to arbitral proceedings. Articles 32, 33, 34, 35, 36 and 37 of the Rules in the First Schedule of the Act makes such provisions.
No recent court decision has been made on this point.

12. Are any types of disputes considered non-arbitrable? Has there been any jurisprudence in this regard in recent years?

Yes, certain types of disputes are considered non-arbitrable in Sierra Leone under the Act. These non-arbitrable disputes are generally considered to be matters that fall within the exclusive jurisdiction of the courts or that involve public interest concerns.
Examples of Non-Arbitrable Disputes in Sierra Leone

- Criminal Matters: Criminal offences are not subject to arbitration, as they involve the enforcement of public criminal law and the protection of society.
- Tax Disputes: Tax disputes involving the assessment and collection of taxes are typically considered non-arbitrable, as they fall within the exclusive jurisdiction of tax authorities.

- Constitutional and Administrative Law Disputes: Disputes involving the interpretation or application of the Constitution of Sierra Leone are not arbitrable, as they involve fundamental questions of constitutional law and the rule of law. Disputes arising from administrative decisions or actions of government agencies may not be arbitrable if they involve issues of public interest or the exercise of public power.

Most notably, the key factor affecting the arbitrability of a dispute is whether the dispute involves a matter of public interest or concerns the protection of fundamental human rights.

There is no recent jurisprudence on this topic in Sierra Leone.

13. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

No decision exist in Sierra Leone regarding choice of law applicable to an arbitration agreement.

14. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The law applicable to the substance of a dispute is determined by choice of law made by the parties, as provided by Section 56 of the Act. In the absence of a choice-of-law provision, an arbitral tribunal shall apply the law determined by the conflict of law rules which it considers applicable.

An arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly agreed to do so.

Typically, an arbitral tribunal shall decide the law applicable to the substance of the dispute in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

15. In your country, are there any restrictions in the appointment of arbitrators? Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practise in your jurisdiction to serve as an arbitrator there?

There is a restriction. According to Section 14 of the Act, only a natural person can be appointed as an arbitrator. This implies that a company or an artificial intelligence application cannot be appointed as arbitrator.

Section 12 of the Arbitration Act 2022 provides that parties are free to determine the number of arbitrators. However, in the event that the parties fail to determine the number of arbitrators, an arbitral tribunal shall, in the case of an international arbitration, consist of 3 arbitrators and in a domestic arbitration, consist of a single arbitrator.

There are no requirements regarding qualifications and characteristics of arbitrators. An arbitrator does not need to be a national of or licensed to practise in Sierra Leone for him to be eligible for an appointment in Sierra Leone.

16. Are there any default requirements as to the selection of a tribunal?

There are default requirements for the selection of an arbitral tribunal in Sierra Leone under the Sierra Leone Arbitration Act, 2022 (Act No.18 of 2022). These default provisions mainly apply when the parties to an arbitration agreement have not agreed on an alternative procedure for arbitrator selection (see Sections 12,13, 15 and 18(2)) of the Act).

17. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

Local courts in Sierra Leone may intervene to assist arbitration proceedings seated in their jurisdiction under certain circumstances. In particular, Part IX of the Arbitration Act exclusively provides for powers of court in relation to arbitration proceedings. This assistance can take various forms, including: granting interim measures, enforcement of peremptory orders of arbitral tribunals, securing attendance of witnesses, appointing or replacing arbitrators, recognizing and enforcing arbitral awards, setting aside arbitral awards.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Local courts in Sierra Leone can intervene in the selection of arbitrators under certain circumstances. Section 15 of the Act sets how local courts can intervene in the selection

of arbitrators. Typically, courts intervene where parties are unable to reach a consensus on who should be appointed as arbitrator or a party fails to comply with the appointment procedure set out in the Act or the arbitration agreement.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such a challenge? What is the procedure for such a challenge?

The appointment of an arbitrator can be challenged under Section 22 of the Arbitration Act 2022. Parties can agree on the challenge procedure, but if not, the challenging party, as per Section 22(2), must submit a written statement within 14 days of learning about the tribunal's formation or the justifying circumstances. If the challenged arbitrator does not withdraw, Section 22(3) outlines that the challenge is decided by the arbitral tribunal, appointing authority, or High Court, depending on the case. A successful challenge, as per Section 22(4), results in the removal of a sole arbitrator. In instances of challenges from both parties, Section 22(5) stipulates that the appointing authority replaces the arbitrator. The grounds for challenge, according to Section 17, encompass circumstances raising doubts about the arbitrator's impartiality, independence, or the lack of agreed qualifications. A party can challenge its appointed arbitrator only for reasons discovered post-appointment, as stated in Section 17(4).

20. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

It is difficult to determine the extent of risk of a local court intervening to frustrate an arbitration seated in Sierra Leone based on case law. However, given the provisions of the recently enacted Arbitration Act 2022, there is low risk for a local court to intervene to frustrate an arbitration. This is largely because Part IX of the Act sets out the powers of the court in relation to arbitration proceedings, which include enforcement of peremptory orders of arbitral tribunal, securing attendance of witnesses, and general court powers exercisable in support of arbitral proceedings. Furthermore, one of the guiding principles of the Act as provided by section 4(c) is that local courts shall not in matters governed by the Act, except where it provides otherwise.

Given the specific powers given to the courts in arbitral proceedings, it is less likely that a party can delay arbitral proceedings by frequent court applications.

21. Has there been any recent developments concerning the duty of independence and impartiality of arbitrators?

There has been recent development regarding the duty of independence and impartiality of arbitrators which is expressly captured in Section 17 of the Arbitration Act 2022. It requires arbitrators to make full disclosure in respect of facts or issues that may compromise their impartiality or independence. Once appointed, arbitrators must continuously reveal such circumstances to the parties involved. Challenges to an arbitrator are permissible if legitimate doubts arise regarding their impartiality or independence. Additionally, a party can challenge an arbitrator they had a role in appointing, but only if reasons for the challenge emerge after the appointment.

22. Has there been any recent decisions in your country concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

There is no recent court decision on arbitrators' duties to make disclosures.

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

The Act is silent on this. No case law exists in this regard.

24. Are arbitrators immune from liability under local laws?

Section 21 of the Arbitration Act 2022 provides immunity to arbitrators, stating that they cannot be held liable for their actions or omissions in carrying out their duties unless it can be proven that they acted in bad faith. This immunity also extends to employees or agents of the arbitrator. It is, however, important to note that an arbitrator may still be held liable for actions leading up to their resignation.

25. Is the principle of competence-competence recognised in your country?

The doctrine of competence-competence is one of the hallmarks of international and domestic arbitration. Section 27 of the Arbitration Act 2022 empowers an arbitral tribunal to decide on its own jurisdiction, including challenges regarding the existence or validity of the arbitration agreement. The arbitration clause within a contract is considered independent of other contract terms, and the tribunal's decision that a contract is void does not automatically invalidate the arbitration clause. Challenges against the tribunal's jurisdiction must be raised promptly, such as at the submission of a defence or when an issue beyond the tribunal's authority arises during proceedings. Delays may be excused if justified. The tribunal can rule on the validity of the arbitration agreement, its own constitution, and the matters submitted for arbitration.

26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

In Sierra Leone, courts generally take a pro-arbitration stance when parties commence litigation in contravention of an arbitration agreement. The courts typically respect and uphold arbitration agreements, emphasising the principle of party autonomy and the parties' preferred method of dispute resolution. When faced with a situation where one party initiates court proceedings despite the existence of a valid arbitration agreement, the courts often stay or dismiss the litigation in favour of arbitration. The object of this approach is to respect the parties' intentions to resolve disputes through arbitration, promoting efficiency and the autonomy of their chosen dispute resolution mechanism.

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of

which the parties should be aware?

The commencement of arbitral proceedings is initiated by a party wishing to pursue arbitration under Part V of the Arbitration Act 2022 by sending a Notice of Arbitration to the other party involved in the dispute. This notice must contain specific information such as the demand for arbitration, the parties' details, the invoked arbitration agreement, a description of the claim, relief sought, and proposals for the arbitration process if not previously agreed upon. Upon receiving this notice, arbitral proceedings officially commence unless otherwise agreed by the parties.

Upon receipt of the Notice of Arbitration, the respondent has 30 days to respond, providing details like their contact information, responses to the Notice of Arbitration, and any counterclaims or claims for set-off. The sufficiency of both the Notice of Arbitration and the response is determined by the arbitral tribunal. Notices and proposals can be transmitted through various means, and the date of receipt is crucial in calculating timelines for responses. Additionally, Section 26 outlines circumstances allowing for an extension of time to begin arbitral proceedings, permitting a party to apply for an extension in specific situations, subject to the Court's discretion.

28. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?

In accordance with Section 63(3) of the Arbitration Act 2022, an application to set aside an arbitral award must be made within 90 days from the date on which the party seeking to challenge the award received it, or from the date when a request concerning the award under Section 61 was disposed of by the arbitral tribunal, whichever date is later. After this 90-day period elapses, the Act prohibits making an application to challenge or set aside the arbitral award.

29. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

The Arbitration Act 2022 does not provide specific information regarding the circumstances in which a state or state entity can invoke state immunity in connection with the commencement of arbitration proceedings in Sierra Leone.

30. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

When a respondent fails to participate in the arbitration, the arbitral tribunal has the authority to proceed with the arbitration and make decisions based on the evidence and arguments presented by the claimant. Section 51 of the Arbitration Act 2022, provides that if a party fails to attend or be represented at an oral hearing without sufficient cause, the arbitral tribunal may proceed with the hearing and make an arbitral award based on the available evidence.
Local courts do not have the power to compel a respondent to participate in the arbitration. The Act does not provide provisions for the local courts to intervene or

compel a party's participation in the arbitration process, except for witnesses.

31. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Articles 34 to 36 of the Arbitration Rules contains a comprehensive procedure for third-party involvement in arbitration proceedings. Parties can either voluntarily join an additional party or request a third party's inclusion, outlining specific details and arguments to the arbitral tribunal. If all parties unanimously agree to the intervention, the tribunal is bound by this decision, and should commence proceedings for the additional party upon receipt of the request. However, if unanimity is lacking, the tribunal cannot allow the intervention without the consent of all involved parties. The process involves submissions and responses from all parties, including objections or comments on jurisdiction and relief sought, within designated timeframes. The date of the tribunal's receipt of the Request for Joinder marks the start of proceedings for the newly joined party. Notably, parties waive objections to any resulting awards due to the inclusion of the additional party, solidifying the arbitration's validity and enforcement.

32. Can local courts order third parties to participate in arbitration proceedings in your country?

Local courts do not possess the power to order third parties to participate in arbitration proceedings.

33. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

In Section 31, the Arbitration Act 2022 provides for interim measures, allowing the arbitral tribunal to grant temporary relief upon a party's request. These measures include provisional payments, maintaining the status quo, preventing potential harm, providing security for arbitration costs, preserving assets, and safeguarding evidence.

Additionally, the Act in Section 41 empowers local courts to issue interim measures related to arbitration proceedings similar to their authority in standard legal proceedings. However, courts will intervene only under specific circumstances, such as when the arbitral tribunal is unable to effectively issue interim measures or when supported by the arbitrator's permission or written agreement from the other party. Notably, if the tribunal has already ruled on a matter relevant to the court's application, the court must consider the tribunal's findings of fact as conclusive in its decision-making process. This dual system allows for both arbitral tribunal and court intervention, ensuring effective provisional relief in arbitration cases.

34. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

In Sierra Leone, the Arbitration Act 2022 does not explicitly address anti-suit and/or

anti-arbitration injunctions.

35. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

By Section 43 of the Arbitration Act of 2022, provides for evidentiary matters. Though it empowers an arbitral tribunal to decide all evidentiary matters, it also confers a right on the parties to agree on any evidentiary matter. The power of arbitral tribunals to decide on evidentiary matters includes making decisions on relevance, admissibility and weight of evidence adduced, and the manner and form in which the parties should adduce evidence. This is also covered by section 49 of the Act, which allows a tribunal to decide on the oral presentation of evidence or documents.

Local courts play a role in possessing powers similar to legal proceedings in obtaining evidence, as provided by sections 54 and 55 of the Act. Local courts can, in support of arbitral proceedings, secure the attendance of witnesses, grant orders for the preservation of evidence, obtain evidence of witnesses, take samples of a property, inspect, photograph, preservation, custody or detention of a property related to the arbitration. In urgent cases, the court can act if the arbitral tribunal lacks power or is unable to act effectively, but its orders cease if the tribunal or empowered institutions intervene in the same matter. By Section 54 of the Act, local courts can compel witnesses to participate in arbitral proceedings.

36. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

The Arbitration Act 2022 is silent on ethical codes and other professional standards that apply to counsel and arbitrators conducting proceedings. However, the Legal Practitioners Code of Conduct Rules of Act No. 2 2010 applies to counsel and the arbitrators conducting proceedings, particularly if they are legal practitioners within the meaning of the Legal Practitioners Act 2000 (as amended).

Furthermore, typically, arbitration practitioners and arbitrators are guided by the International Bar Association (IBA) Guidelines on Conflict of Interest.

37. In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality, and who is subject to the obligation (parties, arbitrators, institutions and so on)?

According to Section 50(1) of the Arbitration Act 2022, unless otherwise agreed by the parties, all information relating to arbitration proceedings shall be kept confidential. However, there are exceptions to this general rule of confidentiality. The confidentiality provisions in arbitration proceedings stipulate that all information related to the arbitration, including exchanged information, tribunal-submitted documents, and expert reports, must be kept confidential. Exceptions to this rule include situations where disclosure is required by law, to prevent or reveal a crime or for the protection of

public order. The confidentiality obligation extends to all parties involved in arbitration, such as the arbitrator, claimants, respondents, and others directly participating in the process. While the Act does not explicitly address arbitrators or institutions, it is generally understood that they are also expected to uphold confidentiality in arbitration proceedings.

38. How are the costs of arbitration proceedings estimated and allocated?

The costs of arbitration proceedings are estimated and allocated based on a comprehensive list outlined in Section 72 of the Arbitration Act 2022. An arbitral tribunal, in its award, determines and fixes these costs, encompassing various elements. These include the fees of the arbitrators, their incurred travel and related expenses, expenses for expert advice and tribunal-required assistance, as well as the travel and other related expenses of the parties, witnesses, and other consulted experts approved by the tribunal as reasonable. Furthermore, the costs may cover legal representation and assistance of the successful party, administrative expenses like venue and correspondence, costs related to obtaining Third-Party Funding, and any other approved expenses decided by the arbitral tribunal. The fees of the arbitral tribunal itself must be reasonable, considering factors such as the amount in dispute, complexity of the subject matter, time spent by the arbitrators, and other relevant case circumstances.

39. Can pre and post-award interest be included on the principal claim and costs incurred?

Award of cost, as provided in Section 72 of the Arbitration Act 2022, does not encompass pre and post-award interest. However, as a general rule, if the tribunal considers it reasonable, interest on the principal claim can be included in the arbitral award.

40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

Section 65 sets out the legal requirements for the recognition and enforcement of an arbitral award. An arbitral award, regardless of the country in which it is made, is recognised as binding and may be enforced by the court upon written application, subject to compliance with Sections 65 and 66 of the Arbitration Act 2022. A party seeking recognition and enforcement of an award must provide the original or a certified copy of the award, the original or a certified copy of the arbitration agreement, and if not, in English a certified translation into English.

By section 59(2) of the Act, an award must state the reasons on which it is based, except where the parties agree otherwise or the award is based on terms.

41. What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

The estimated timeframe for the recognition and enforcement of an award is 60 days as set out in rule 6(4)(d) of the Arbitration Proceeding Rules of the Third Schedule of the Act, and no expedited procedure exists. However, there is provision for expedited hearing in the rule 6(2) of the Arbitration Proceeding Rules contained in the Third Schedule of the Act. No provision exists for a party to file an Originating Notice of Motion for the recognition and enforcement of arbitral awards on an *ex parte* basis.

42. To what extent is a foreign arbitration award enforceable?

A foreign arbitration award is enforceable to the extent provided for by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This is because Section 67 of the Arbitration Act 2022 recognises and domesticates the New York Convention in Sierra Leone. Furthermore, section 81 of the Arbitration Act 2022 provides for the applicability of the Foreign Judgments (Reciprocal Enforcement) Act, which dates back to the Laws of Sierra Leone in 1960. This provision indicates that the Foreign Judgments Act remains effective concerning the recognition and enforcement of foreign awards that might not fall under the scope of enforceability as outlined in the New York Convention.

43. Does the arbitration law of your country provide a different standard of review for the recognition and enforcement of a foreign award compared with a domestic award?

The Act provides a slightly different standard of review for the recognition and enforcement of a foreign award compared with domestic award. In addition to the standard which applies to both foreign and domestic awards, a foreign award can only be recognised and enforced if it is made in a country that is a signatory to the New York Convention; the differences between the parties arise out of a relationship this is considered commercial under the laws of Sierra Leone and the differences arise out of an arbitration agreement concluded and award rendered after the date Sierra Leone acceded to the New York Convention.

44. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

The Arbitration Act 2022 does not explicitly mention limits on available remedies or specify remedies that are not enforceable by local courts. However, the Act does provide provisions related to the recognition and enforcement of interim measures and awards.

Section 38 of the Act addresses costs and damages, indicating that the arbitral tribunal has the authority to determine the costs of the arbitration and allocate them between the parties. Section 39 discusses the recognition and enforcement of interim measures, while Section 40 outlines the grounds for refusing recognition and enforcement of such measures. These sections suggest that the Act recognises the availability of interim measures as a remedy in arbitration proceedings.

Additionally, Section 78 mentions the possibility of staying enforcement of an award

pending a decision by the Committee. This implies that the Act allows for the enforcement of arbitral awards, which can be considered as a remedy.

45. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedures?

Arbitration awards can be appealed or challenged in local courts in Sierra Leone. According to the Arbitration Act, there are provisions for setting aside an arbitral award. Section 63 of the Act allows for an application to be made to the court for setting aside an arbitral award, either in whole or in part. The court has the authority to set aside the award based on certain grounds specified in the Act.

The grounds for setting aside an arbitral award are not explicitly provided for. However, Section 64 of the Act states that when the court sets aside an arbitral award, it may give other directions as it deems appropriate. These directions may include remitting the matter back to the arbitral tribunal, commencing a new arbitration, or bringing any action related to the subject matter of the set-aside award.

46. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

The Arbitration Act provides for parties to waive their rights of appeal or challenge to an award by agreement before the dispute arises, such as in the arbitration clause. Section 95 of the Act states that if a party proceeds with the arbitration without raising an objection to non-compliance with a provision of the Act or a requirement under the arbitration agreement, they will be deemed to have waived their right to object.

47. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

The Act does not explicitly address the defence of state or sovereign immunity for states or state entities. The Arbitration Act 2022 primarily focuses on the immunities and privileges of the Centre and its personnel. Therefore, the extent to which a state or state entity can successfully raise a defence of state or sovereign immunity at the enforcement stage may depend on other applicable laws, international conventions, or treaties that govern state immunity in Sierra Leone.

48. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

The Arbitration Act 2022 does not provide specific details on the circumstances in which third parties or non-signatories can be bound by an award. However, it is possible for a third party to be bound by an award if they are found to be a successor-in-interest to one of the parties, if they have been assigned the rights and obligations of a party, or if they have otherwise assumed the obligations of a party to the arbitration agreement.

The extent to which a third party can challenge the recognition of an award is not explicitly mentioned in the provided documents. By section 66(1) of the Act, allows a party to request the court to refuse recognition or enforcement of an award. This suggests that a third party may have the ability to challenge the recognition of an award if they can demonstrate valid grounds for refusal as specified in the Act.

49. Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

There are no recent court decisions in this regard.

50. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Emergency arbitrator relief is available in Sierra Leone under the Arbitration Act 2022. Section 28 of the Act allows a party to submit an application for the appointment of an emergency arbitrator to an arbitral institution designated by the parties or to the Court. This enables parties to seek urgent interim measures from an emergency arbitrator before the constitution of the arbitral tribunal.

Decisions made by an emergency arbitrator be recognised and enforced in the same manner as an interim measure. By Section 39(1) of the Act, such decisions can be enforced after a successful application has been made to the Court.

51. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

No arbitral law or institutional rules make provision on this subject.

52. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

The Arbitration Act 2022 does not specifically address the promotion of diversity in the choice of arbitrators and counsel. However, the Gender Empowerment and Women's Empowerment Act 2022 enjoins all employers (which may include appointing authorities like arbitral institutions) to employ a minimum of thirty percent of women.

53. Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

There is no decision in this regard.

54. Has there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

No decision has been made in this regard.

55. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

Article 28 of the Arbitration Rules provides for virtual hearing. Where physical hearing is impracticable due to health, safety, cost, or other considerations, tribunals shall conduct proceedings virtually. This provision recognises the importance of utilising virtual hearings as an alternative to physical hearings when necessary. It further incorporates and refers to the Africa Arbitration Academy Protocol on Virtual Hearings in Africa 2020. This protocol provides guidelines and best practices for conducting virtual hearings in arbitration proceedings. By incorporating this protocol, Sierra Leone acknowledges the importance of keeping up with technological advancements and promoting the use of virtual hearings to enhance the efficiency and cost-effectiveness of arbitrations.

56. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

The Arbitration Act 2022 does not contain specific provisions regarding the impact of insolvency on the enforceability of arbitration agreements and there are no case laws on this in Sierra Leone.

57. Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

There are no recent developments in Sierra Leone in climate change and human rights disputes.

58. Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?

No recent developments in this regard.

59. Is consolidation allowed under local laws?

Consolidation is allowed under local laws in Sierra Leone. According to Article 44 of the Arbitration Rules, parties involved in multiple arbitrations arising out of the same transaction or series of transactions can request the consolidation of these arbitrations. The Request for Consolidation should include various details such as the names and addresses of the parties, their counsel, and any appointed arbitrators, a copy of the arbitration agreements, a description of the claims and the amount involved in each arbitration, the points at issue, the legal arguments supporting the request, and more.

The arbitral tribunal also has the authority to decide whether to consolidate the

arbitrations. If consolidation is granted, the proceedings will be consolidated into the arbitration that commenced first, unless all parties agree or the tribunal decides otherwise based on the circumstances of the case. The Act also clarifies that the consolidation of arbitrations does not affect the validity of any acts or orders made by a court in support of the relevant arbitrations before consolidation.

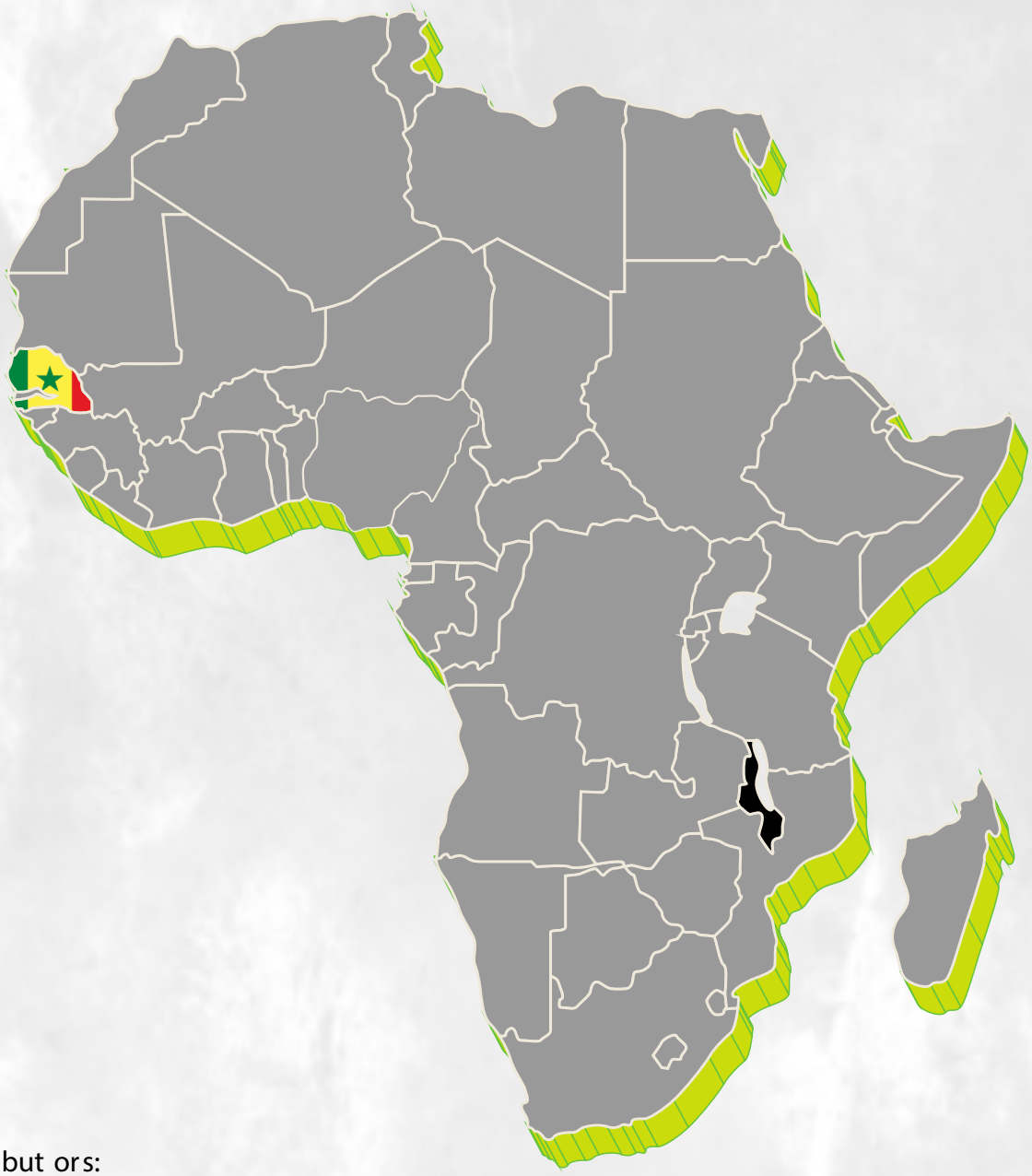
60. What is the regime for the enforcement of ICSID awards in your country?

According to Section 68(1) of the Act, if it becomes necessary or expedient to enforce an ICSID award in Sierra Leone, a copy of the award certified by the Secretary-General of the Centre should be filed in the Supreme Court by the party seeking its recognition for enforcement. Once filed, the award will have the same effect as if it were an award contained in a final judgement of the Supreme Court, and it will be enforceable accordingly. The Rules of Court Committee is empowered by the Act to make rules for this purpose, though no rules have been drafted.

Meanwhile, Section 70(1) specifies that Articles 18 to 24 of the ICSID Convention, which govern the immunities, status, and privileges of the International Centre for Settlement of Investment Disputes, its members, and persons involved in conciliation or arbitration under the Convention, have the force of law in Sierra Leone.

Additionally, Section 71 of the Act mentions that the Ministry of Finance may use funds provided by Parliament to fulfil the obligations of the Sierra Leonean government arising under Article 17 of the ICSID Convention. This article requires the Contracting States to cover any deficit of the International Centre for Settlement of Investment Disputes and provide necessary funds.

Senegal



Contribut ors:



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1. What legislation applies to arbitration in your country? Are there any mandatory laws? What is their effect?

The legislation applicable to arbitration in the Republic Senegal is the OHADA Uniform Act on Arbitration (**UAA**). In fact, since the advent of the Organisation for the Harmonisation of Business Law in Africa (hereinafter "OHADA"), the latter has actively promoted the use of arbitration within its seventeen Member States.

The UAA was firstly adopted May 15, 1999. It was revised in 15, 2017. It is directly applicable in all Member States and prevails over any other national provision in the event of conflict. It defines the basic rules applicable to any arbitration where the seat of the arbitral tribunal is located in one of the Member States including Senegal.

For the implementation of UAA provisions at the domestic level, the Republic of Senegal has issued Decree n°2016-1192 on the intervention of national courts in arbitration related matters, and has designated the High Court of Dakar as the competent jurisdiction.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

The Republic of Senegal is a signatory to the New York Convention since 17 October 1994.

It has not made reservation to the Convention.

3. What other arbitration-related treaties and conventions is your country a party to?

Senegal has signed the International Convention for the Settlement of Investment Disputes (ICSID), Regulation No. 1/96/CM on the Rules of Procedure of the WAEMU Court of Justice (cf. article 15, 8° relating to the jurisdiction of the Court), and entered into BIT's.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

The UAA is strongly inspired by the UNCITRAL Model Law.

5. Are there any impending plans to reform the arbitration laws in your country?

No.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The Dakar arbitration, médiations and conciliation center (Chambre d'arbitrage, de médiations et de conciliation de Dakar).

7. Is there a specialist arbitration court in your country?

No. However, Decree 2016-1192, regulates the competent jurisdiction on certain matters devolved to the judge of the seat of arbitration in the UAA.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

The arbitration agreement must be in writing or by any other means that can be proven and that allows reference to a document stipulating it (Art. 3,1 of the UAA).

The matter submitted to arbitration must be arbitrable.

9. Are arbitration clauses considered separable from the main contract?

Yes, the existence of an arbitration clause must be proven independently of the existence of the main contract. This proof may be examined in particular with regard to the pre-existing contractual relations between the parties. (*Ref. art. 4 of the UAA).*

10. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

The OHADA arbitration law is silent on this issue.

11. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

In general, third parties or non-signatories cannot be bound by an agreement unless the arbitration clause so provides and that the third party agrees to it.

However, the CCJA case n° 024/2010, 8 April 2010, Joseph Roger c/ Fofana Patrice, must be cited as it has been ruled that the beneficiary of a commission on a construction contract containing an arbitration clause, even if he is not a signatory to the said contract, necessarily finds in the performance of the latter the very basis of his status as a pursuing creditor.

It was on this basis that the Supreme Court ruled that the national court lacked jurisdiction to hear his claim.

12. Are any types of disputes considered non-arbitrable? Has there been any jurisprudence in this regard in recent years?

Article 2, para. 1 of the UAA provides that "*any natural person or legal entity may have recourse to arbitration in respect of rights of which it has free disposal*". In other words, arbitration only applies to rights that a person has at his or her free disposal.

In the Republic of Senegal, this OHADA text is applicable. In addition, there are areas listed in article 796 of the Code of Civil Procedure in which arbitration is excluded. These include, for example, gifts and bequests of maintenance, housing and clothing, separations between husband and wife, divorces, questions of personal status and, in general, all disputes that would be subject to communication to the Public Prosecutor under article 57 of the Code of Civil Procedure, in particular cases concerning public order, the State, municipalities, public establishments, incidents of jurisdiction, cases

involving incapable adults, etc. (CF Art 57 CPC Senegal).

13. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

No. The jurisprudence is in line with article 4 of the UAA stating that *the arbitration agreement "is assessed on the basis of the common will of the parties, without any necessary reference to state law"*

14. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The choice of the rule to govern the substance of the dispute is primarily determined by the parties. In the absence of a choice by the parties, the arbitrator shall decide the dispute in accordance with the rules he considers most appropriate, considering, where applicable, the usages of international trade (*cf. Art. 15 of the UAA).*

Regarding the specific set of applicable choice of law rules, there is no particularity in the Republic of Senegal because the rules of law to which the arbitrator may refer do not necessarily refer to State law.

15. In your country, are there any restrictions in the appointment of arbitrators? Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?

Yes. In the OHADA zone, arbitration may only be entrusted to a natural person (See Art. 5 of the UAA).

Arbitration may be conducted by a sole arbitrator or by three arbitrators (See Art. 5 of the UAA).

With regard to qualifications and characteristics, "The arbitrator must have the full exercise of his civil rights and remain independent and impartial vis-à-vis the parties" (*See Art. 7, para. 3 of the UAA*).

The UAA is silent on the question of the arbitrator's nationality.

16. Are there any default requirements as to the selection of a tribunal?

Under the UAA, the choice of arbitrator(s) is made by the parties in the arbitration agreement (Ref. Art. 6, para. 1 of the Uniform Act on Arbitration Law). Failing this, if the arbitration is institutional, the arbitral institution will choose the arbitrator or arbitrators (See Art. 3.1 of the CCJA Arbitration Rules).

According to Art. 5 of the UAA, "*The role of arbitrator may only be entrusted to a natural person. The arbitral tribunal may consist of a sole arbitrator or three arbitrators. Failing agreement between the parties, the arbitral tribunal shall consist of a sole arbitrator.*"

17. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

Yes.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Under the UAA, pursuant to Article 5, paragraph 2: "The arbitral tribunal shall consist of either a sole arbitrator or three arbitrators. Failing agreement by the parties, the arbitral tribunal shall consist of a sole arbitrator.

The Dakar High Court judge has jurisdiction to appoint a third arbitrator if the arbitration agreement is absent or inadequate; to complete the arbitral tribunal when the parties appoint an even number of arbitrators, and no agreement can be reached either between the parties or between the appointed arbitrators on the choice of the arbitrator who is to complete the composition of the arbitral tribunal.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Yes, the appointment of an arbitrator may be challenged in accordance with article 8 and seq. of the UAA, which states that:

"*In the event of a dispute, and if the parties have not settled the challenge procedure, the competent court in the State Party shall rule on the challenge within thirty days at the latest, after hearing the parties and the arbitrator or duly summoning them. If the competent court fails to rule within the aforementioned time limit, it shall be deprived of jurisdiction and the challenge may be brought before the Common Court of Justice and Arbitration by the most diligent party. The decision of the competent court rejecting the challenge may only be appealed to the Common Court of Justice and Arbitration. Any ground for challenge must be raised within a period not exceeding thirty days from the discovery of the fact giving rise to the challenge by the party intending to invoke it. An arbitrator may only be challenged for a reason revealed after his appointment. When an arbitrator's term of office is terminated or when the arbitrator withdraws for any other reason, a replacement arbitrator shall be appointed in accordance with the rules applicable to the appointment of the arbitrator replaced, unless otherwise agreed by the parties. The same applies when the arbitrator's mandate is revoked by agreement of the parties and in any other case where the arbitrator's mandate is terminated.*"

20. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

The risk of local court intervention to frustrate arbitration seated in IC is limited as the intervention of the Courts on the substance of a dispute is only possible when the arbitration agreement is considered manifestly null and void or manifestly inapplicable.

In such cases, the state court rules on its jurisdiction within a maximum period of 15

days. Its decision cannot be appealed to the OHADA Common Court of Justice and Arbitration (see Article 13, para. 2 of the Revised Uniform Act Organising Arbitration Law).

21. Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?

No. Not to our knowledge.

22. Has there been any recent decisions in your country concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

No, not to our knowledge.

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

They must be replaced. The proceedings cannot continue unless the parties have agreed that the remaining arbitrator(s) can continue to resolve the dispute, unless otherwise agreed by the parties.

24. Are arbitrators immune from liability under local laws?

Arbitrators appointed in a CCJA arbitration enjoy diplomatic privileges and immunities under Article 49 of the OHADA Treaty, which provides that "the officials and employees ... of the CCJA, as well as the judges of the Court and the arbitrators appointed by the latter shall enjoy, in the exercise of their functions, diplomatic privileges and immunities".

Otherwise, arbitrators might face criminal liability for corruption, under article 159 of the Senegalese criminal code.

25. Is the principle of competence-competence recognized in your country?

Yes. Under OHADA arbitration law, "the arbitral tribunal shall have exclusive jurisdiction to rule on its own jurisdiction, including all questions relating to the existence or validity of the arbitration agreement" (See art. 11, para. 1 of the UAA).

26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Article 13 of the UAA provides that "Where a dispute which is the subject of arbitral proceedings under an arbitration agreement is brought before an exclusive jurisdiction, the latter shall, if one of the parties so requests, declare that it has no jurisdiction".

Senegalese courts should stop ruling on a dispute if the parties have agreed to submit it to arbitration. In principle, the arbitration agreement must take precedence over court proceedings unless the arbitration agreement is manifestly null and void or

manifestly inapplicable (See Commentary on Art. 13 of the UAA, OHADA, *Traité et Actes uniformes commentés et annotés*, 2023, p. 226).

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

The arbitration proceedings will usually commence with a request for arbitration, by application of the applicable arbitration rules or the parties agreements. There is no time limit specific to arbitration procedures.

28. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?

Under the terms of Article 27 of the UAA, "An action for setting aside shall be admissible as soon as the award has been made. It shall cease to be admissible if it has not been lodged within one month of service of the exequatur award. The competent court shall render its decision within three months of the date on which the matter was brought. If the said court has not given a ruling within this period, it shall be deprived of jurisdiction and the action may be brought before the Common Court of Justice and Arbitration (CCJA High Court) within the following fifteen days. The latter must rule within a maximum of six months from the date of referral. In this case, the time limits provided for by the Rules of Procedure of the CCJA are reduced by half."

29. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

The State and States entities benefit from immunity of jurisdiction and execution that applies except for waivers when applicable.

Under the OHADA Uniform Act on the organization of simplified recovery procedures and enforcement procedures," Forced execution and precautionary measures are not applicable to persons who benefit from immunity from execution.

However, the debts that are certain, liquid and due of legal persons governed by public law or public undertakings, whatever their form or purpose, shall give rise to set-off against debts that are also certain, liquid and due owed to them by any person, subject to reciprocity.

The debts of the persons or undertakings referred to in the preceding paragraph may only be considered to be certain within the meaning of the provisions of this article if they result from an acknowledgement by them of such debts or from an instrument enforceable in the territory of the State in which the said persons and undertakings are situated".

30. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

No, the local courts cannoy compel participation.

If the defendant does not participate in the arbitration, the award rendered is opposable to him because the arbitral award, as soon as it is rendered, has the authority of res judicata effect with respect to the dispute that it resolves (See Art. 23 of the UAA).

31. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

In principle, the arbitration agreement is only binding on the parties to the contract who have decided to refer their dispute to arbitration. However, nothing forbids parties to agree on the joinder of a third party.

32. Can local courts order third parties to participate in arbitration proceedings in your country?

No.

33. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Interim conservatory or probationary measures can be issued by local courts pending the constitution of the arbitral Tribunal.

34. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

No, not to our knowledge.

35. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

According to article 14 of the UAA, the arbitral tribunal may invite the parties to provide explanations of the facts and to present evidence it deems necessary to resolve the dispute.

The arbitral tribunal may include in its decision any pleas, explanations or documents invoked or produced by the parties only if they have been able to debate them in adversarial proceedings.

It may not base its decision on pleas raised ex officio without first inviting the parties to present their observations.

If the assistance of the judicial authorities is necessary for the administration of evidence, the arbitral tribunal may, of its own motion or on request, seek the assistance of the competent Court in the State Party.

36. What ethical codes and other professional standards, if any, apply to counsel and

arbitrators conducting proceedings in your country?

There is no general rule of conduct specifically applicable to counsel and arbitrators, in arbitration procedures.

Except for the rules applicable to arbitrators under the OHADA UAA, such as the independence and impartiality.

37. In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

At the end of the deliberations, the arbitrators make their decision. The award is not made public. It is only notified to the parties. This is supported by Article 18, which states that: "The deliberations of the arbitral tribunal shall be secret".

Except that provision, the UAA is silent, and parties are free to frame the confidentiality of their procedure as they wish.

38. How are the costs of arbitration proceedings estimated and allocated?

The allocation and estimation of cost is not regulated under this jurisdiction, except for the provisions of the institutional arbitration rules.

39. Can pre- and post-award interest be included on the principal claim and costs incurred?

There is no prohibition in this respect.

40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

The arbitral awards must be reasoned, under the UAA, but this is not a condition for the enforcement.

Besides, once rendered, the arbitral award has the force of res judicata and the court may grant enforcement or provisional enforcement.

According to article 29 of the UAA, the enforcement cannot be granted if the Court is already seized of a petition for annulment.

Otherwise, exequatur may only be refused in the following cases:

a) if the arbitral tribunal has ruled without an arbitration agreement or on an agreement that is invalid or has expired;

b) if the arbitral tribunal has ruled without complying with the terms of reference conferred upon it;

c) if the principle of adversarial proceedings has not been respected;

d) if the award is contrary to international public policy.

41. What is the estimated timeframe for the recognition and enforcement of an award? Is

there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

When a request for recognition or exequatur is submitted to a state court, the court shall render its decision within a period not exceeding fifteen days from the date of referral. If at the expiry of that period, the court has not issued its order, the exequatur is deemed to have been granted.

If the exequatur is granted, or if the court to which the application for exequatur is referred remains silent within the aforementioned fifteen-day period, the most diligent party submits to the Chief Registrar or the competent authority of the State Party for apposition of the apposition of the executory formula on the minute of the decision.

The exequatur procedure is not contradictory, the motion can therefore be brought on an ex parte basis.

42. To what extent is a foreign arbitration award enforceable?

The UAA applies where the seat of arbitration is located in Senegal. Therefore, in such case, Article 34 of the UAA will apply and it provides that: "*Arbitral awards made on the basis of rules other than those provided for in this Uniform Act shall be recognized in the Contracting States under the conditions laid down in any applicable international conventions and, failing that, under the same conditions as those laid down in the Uniform Act.*"

According to Article 31 of the UAA : "Recognition and enforcement are refused if the award is manifestly contrary to a rule of international public policy."

43. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Yes.

44. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts ?

There is no specific limit on the remedies.

45. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

International Arbitration awards are not subject to opposition, appeal, or cassation. They may only be the subject of a motion for annulment, an action for revision or opposition.

46. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

Yes.

47. To what extent might a state or state entity successfully raise a defence of state or

sovereign immunity at the enforcement stage?

The State enjoys immunity to protect itself and its assets and such immunity may be raised at any stage.

48. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

When the arbitral tribunal has violated certain mandatory rules of law, or when the award prejudices the rights of third parties who were not called to arbitration, or when it has discovered a fact which was unknown to the arbitral tribunal and to a party, of such a nature as to exert a decisive influence on the solution of the dispute, or when the award contains material errors and omissions which affect it. In such situations, the UAA provides for a few remedies that may be exercised against an arbitral award, namely annulment, which is the principal remedy; third-party opposition; revision of the award; and reparation and/or interpretation of an arbitral award.

49. Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

Not to our knowledge.

50. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

No. We have no jurisprudence on their enforcement.

51. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

Not under the OHADA Law.

Under the CCJA arbitration rules emergency measures can be provided in the arbitration agreement and benefit from an emergency exequatur.

52. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

There is no specific regulation on that.

53. Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

Not to our knowledge.

54. Has there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

Not to our knowledge.

55. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

Not to our knowledge.

56. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

Yes.

57. Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

Not to our knowledge.

58. Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?

Not to our knowledge.

59. Is consolidation allowed under local laws?

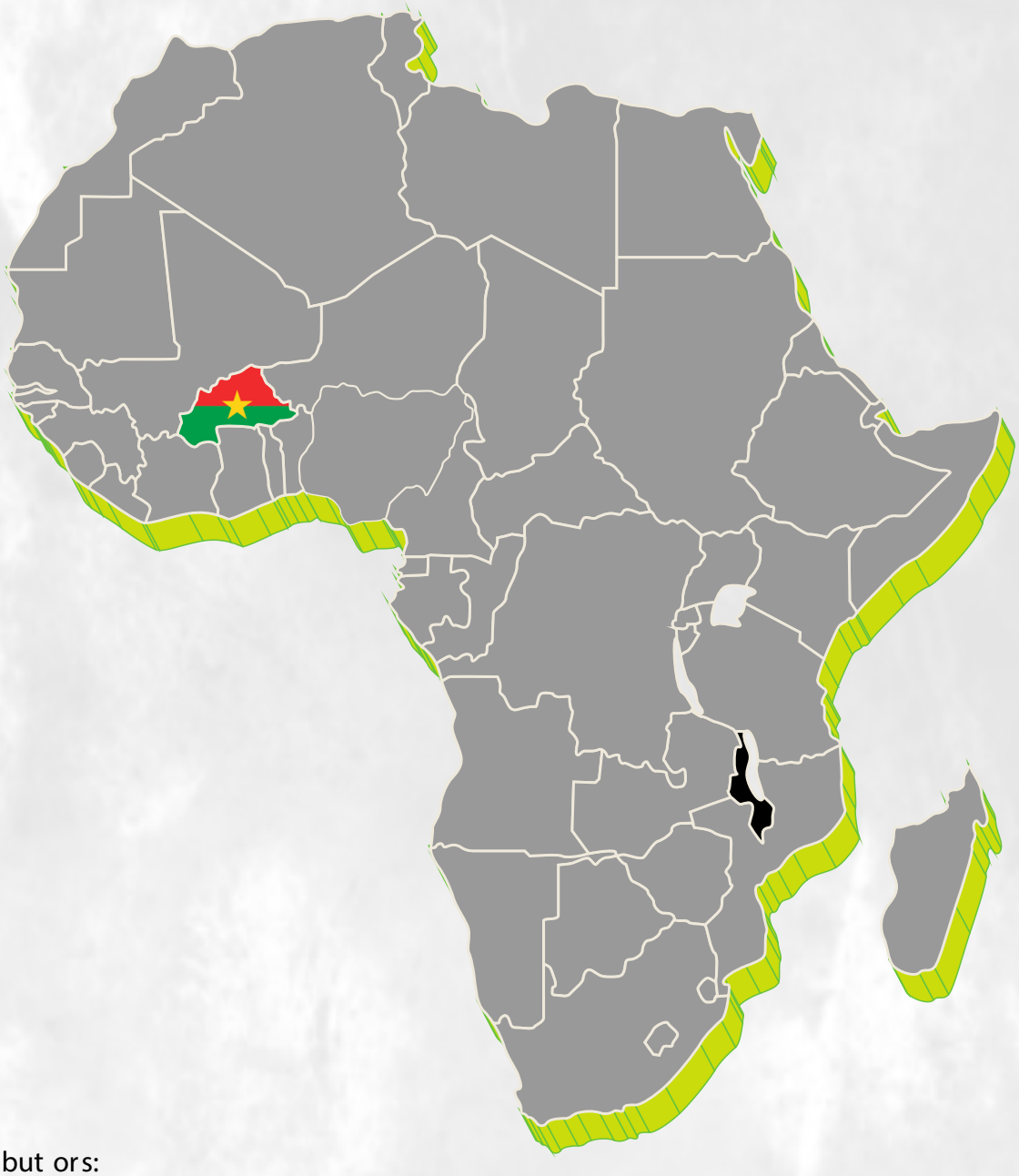
Not without the parties' consent.

60. What is the regime for enforcement of ICSID awards in your country?

There is no specific regime.

Except that in Senegal, the Code of Civil procedure provides that the Regional Tribunal of Dakar is competent to grant exequatur for award rendered in application of the 16th March 1965 Convention.

Burkina Faso



Contribut ors:



Dr. Faasseome Maxime SO MDA



Didier F rank B ATIONO

1. What legislation applies to arbitration in your country? Are there any mandatory laws? What is their effect?

The legislation applicable to arbitration in Burkina Faso includes the OHADA Uniform Act on Arbitration (UAA) and Law No 047-2017/AN. Adopted on November 23, 2017, as a replacement for the original text dating back to March 11, 1999, the new Uniform Act on Arbitration (UAA) constitutes the common law of arbitration for all member states of OHADA (Organisation for the Harmonisation of Business Law in Africa). Law No 047-2017/AN regulates the intervention of local courts in arbitration matters. These laws establish mandatory provisions governing arbitration procedures and enforcement mechanisms within the jurisdiction.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Yes, Burkina Faso is a signatory to the New York Convention. The State acceded to the New York Convention on March 23, 1987, and ratified it on June 21, 1987. Any reservations that might impact its obligations under the Convention have not been made by Burkina Faso.

3. What other arbitration-related treaties and conventions is your country a party to?

Burkina Faso is a signatory to other arbitration-related treaties and conventions, such as the ICSID Convention. However, Burkina Faso is not a signatory to the Apostille Convention.

Consequently, an award rendered abroad must receive an exequatur, despite the existence of OHADA mechanism of common exequatur.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

The laws governing international arbitration in Burkina Faso is not modelled after the UNCITRAL Model Law, although there are no significant differences between the two frameworks.

5. Are there any impending plans to reform the arbitration laws in your country?

There is currently no public information regarding impending plans to reform arbitration laws in Burkina Faso, specifically the OHADA Uniform Act and Law No 047.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The Ouagadougou Arbitration, Mediation, and Conciliation Centre, hereafter referred to as CAMC-O (Centre d'Arbitrage, de Médiation et de Conciliation de Ouagadougou), serves as an arbitral institution in Burkina Faso. It was established in 2005 by the National Chamber of Commerce and Industry (CCI-BF). As an arbitral institution, the CAMC-O facilitates the resolution of disputes within the business community by organizing

arbitration, mediation, and conciliation proceedings. The rules of procedure were last amended in August 2022. Currently, there is no publicly available information regarding any amendments being considered.

7. Is there a specialist arbitration court in your country?

Burkina Faso's judicial system does not include a specialized arbitration court. Law No. 22-2009/AN introduced commercial courts to provide judicial resolution of business litigation in Burkina Faso. Only the provisions of Article 15 of that Act are related to arbitration. This Article states that the court, when seized of a case, is required, before taking any other action, to notify the parties of their option to resort to conciliation, mediation, or arbitration. If the parties decide to resort to conciliation or mediation, the procedure is suspended and may be resumed at any time upon the request of either party. The rules concerning arbitration are those provided for in the Uniform Act on Arbitration Law of OHADA. Then, Law No 047-2017/AN clarifies that these commercial courts are competent to handle incidental proceedings in matters of arbitration (Article 2).

8. What are the validity requirements for an arbitration agreement under the laws of your country?

Validity requirements for an arbitration agreement in Burkina Faso include the common will of the parties, as stipulated in Article 4 of the OHADA Uniform Act.

9. Are arbitration clauses considered separable from the main contract?

The arbitration clause is considered separable from the main contract, as outlined in Article 4 of the OHADA Uniform Act, which is enforced by CCJA Judgment No. 164/2016 rendered on December 1st, 2016. Additionally, the principle of separability is also affirmed in Article 8. 4 of the CAMCO Rules of Procedure.

10. Is there anything particular to note in your jurisdiction with regard to multi-party or multi- contract arbitration?

Multi-party and multi-contract arbitration are provided for under the CCJA rules of procedure, last amended in 2017 (Articles 8.3 and 8.4), as well as under the CAMCO rules of procedure (Article 12). There are no specific peculiarities to note regarding multi-party or multi-contract arbitration.

11. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

According to the Uniform Act (Article 3-1), the arbitration agreement can be proven by any means. Therefore, third parties or non-signatories can be bound by an arbitration agreement under certain conditions. The assumption was confirmed by some CCJA decisions such as Judgment no. 041/2010, Atlantique Telecom S.A. c/ Planor Afrique S.A. et Telecom Faso S.A. (10 June 2010) and Judgment no. 177/2020 rendered on 28 May 2020 (Société Africaine des Relations Commerciales et Industrielles vs Atlantique Telecom

SA). It has been established that the extension of an arbitration agreement to a third party is possible when this person has given consent, including signing the contract itself. The extension of an arbitration agreement to a third contract is possible when there is a formal identity of person and object between the different contracts.

12. Are any types of disputes considered non-arbitrable? Has there been any jurisprudence in this regard in recent years?

According to Article 2 of the OHADA Uniform Act, certain disputes (disputes concerning rights over which the parties don't have free disposal) are considered non-arbitrable in Burkina Faso. They include disputes over rights related to personal status, insolvency.

13. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

There have been no recent court decisions in Burkina Faso concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the parties.

14. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The determination of the law applicable to the substance of arbitration proceedings in Burkina Faso is governed by Article 15 of the OHADA Uniform Act. According to this article, the arbitral tribunal decides the substance of the dispute in accordance with the rules of law chosen by the parties. In the absence of a choice by the parties, the arbitral tribunal applies the rules of law it deems most appropriate, taking into account, if necessary, the usages of international trade. It may also act as an “amiable compositeur” when the parties have conferred this power upon it.

15. In your country, are there any restrictions in the appointment of arbitrators?

In Burkina Faso, specific requirements for the appointment of arbitrators are detailed in Article 5 of the OHADA Uniform Act. These requirements cover factors such as the number, qualifications, and characteristics of arbitrators (see CCJA Judgment no. 044/2008, July 17, 2008). There is no stipulation that arbitrators must be nationals of Burkina Faso or hold licenses to practice law in the country.

16. Are there any default requirements as to the selection of a tribunal?

Yes, there are default requirements as to the selection of a tribunal, as provided in Article 6 of the OHADA Uniform Act. When disputing parties fail to reach an agreement regarding the composition of the arbitral tribunal, the arbitral tribunal is completed by the arbitrator's designated or, failing agreement among them, by the competent judicial court in the Member State.

17. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

Local courts in Burkina Faso may intervene to assist arbitration proceedings seated in their jurisdiction, as outlined in Articles 6, 8, 12, 13, and 14 of the OHADA Uniform Act. It should be noted that the purpose of Law no. 047-2017/AN is to determine the modalities of the intervention of national courts in arbitration matters, as provided for by the Uniform Act on Arbitration Law.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Yes, national courts in Burkina Faso can intervene in the selection of arbitrators, as provided in Article 6 of the OHADA Uniform Act (see the answer to question 16)

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

There are no specific different rules in Burkina Faso regarding the grounds for challenging an arbitrator. Article 4.2 of the CCJA Rules of procedure just specifies that the request for disqualification based on an allegation of lack of independence or any other reason is initiated by sending a declaration to the Secretary-General specifying the facts and circumstances on which this request is based. Article 8 of the Uniform Act allows the parties to agree on the procedures for challenge. In the absence of such an agreement, the competent local court must decide on the challenge within 30 days. If the court fails to make a decision within this timeframe, it loses jurisdiction, and the request can be brought before the CCJA by the diligent party.

20. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

No. In Burkina Faso, there are strict time limits for court interventions in arbitration proceedings, such as the 30-day deadline for deciding a challenges of an arbitrator or the 15-day deadline for ordering interim measures as outline in Article 4 of Law No 047-2017/AN.

21. Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?

Regarding recent decisions emphasizing the duty of independence and impartiality of arbitrators, CCJA Judgment No. 151/2017 rendered on June 29, 2017 (Wanmo Martin v. Nguessi Jean Pierre et al.) can serve as an illustration. The CCJA confirmed the judgment of the Court of Appeal of Douala (Cameroon), stating a lack of independence of an arbitrator who did not disclose the nature of collaboration ties with a party.

22. Has there been any recent decisions in your country concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

CCJA Judgment No. 151/2017 rendered on June 29, 2017 (Wanmo Martin v. Nguessi Jean Pierre et al.) highlights arbitrators' obligations to disclose, akin to the UK Supreme

Court's ruling in Halliburton v Chubb.

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

There is no information provided regarding the case of a truncated tribunal in Burkina Faso (outside the possibilities, in case of parties' disagreement, to have the arbitral tribunal constituted by a sole arbitrator or completed by the local court, as per Articles 5 and 6 of the Uniform Act).

24. Are arbitrators immune from liability under local laws?

Arbitrators are not immune from liability under local laws in Burkina Faso, except for those arbitrating under the auspices of the CCJA, as stipulated in Article 49 of the OHADA Treaty.

25. Is the principle of competence-competence recognized in your country?

Yes, the principle of competence-competence is recognized in Burkina Faso under Article 11 of the OHADA Uniform Act.

26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Local courts in Burkina Faso meticulously scrutinize the existence of an arbitration agreement when a party initiates ordinary legal proceedings before them in apparent breach of such an agreement. This practice is illustrated by the judgment of the Tribunal de Grande Instance de Ouagadougou on August 9, 2017 (mentioned in CCJA Judgment no. 012/2019 rendered on January 24, 2019, Société Générale Burkina Faso c/ NARE Guibrina).

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

There is no specific obligation provided regarding limitation periods. Arbitration proceedings in Burkina Faso are initiated based on the parties' agreement, with an obligation to them to act with dispatch and loyalty as per Article 14 of the OHADA Uniform Act.

28. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?

As per Article 27 of the OHADA Uniform Act, the limitation period applicable to actions to vacate or challenge an international arbitration award rendered in Burkina Faso is one month from the notification of the award to the parties.

29. In what circumstances is it possible for a state or state entity to invoke state immunity in

connection with the commencement of arbitration proceedings?

In accordance with Article 2.2 of the OHADA Uniform Act, States, other public territorial entities, public establishments, and any other legal entity under public law can also be parties to arbitration, regardless of the legal nature of the contract, without being able to invoke their own law to challenge the arbitrability of a dispute, their capacity to compromise, or the validity of the arbitration agreement. Thus, by concluding an arbitration agreement, a state entity in Burkina Faso may lose the right to invoke state immunity for jurisdiction.

30. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

The procedure in case a respondent fails to participate in arbitration proceedings in Burkina Faso is not explicitly outlined. However, it can be inferred from legal provisions that the respondent's failure to participate does not invalidate the arbitration proceedings. According to Article 25 of the OHADA Uniform Act, the award is not subject to opposition. Similarly, under the CCJA Rules of Procedure (Article 19), if a party fails to attend the hearings without a valid excuse, the debate is considered adversarial.

31. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

The OHADA Uniform Act does not explicitly address the voluntary participation of third parties in arbitration proceedings. However, it is permitted under the CCJA Arbitration Rules of Procedure (Article 8-2) and the CAMCO Rules of Procedure (Article 7). Third-party participation is only allowed after the arbitral tribunal has been constituted, and with the prior consent of the parties involved.

32. Can local courts order third parties to participate in arbitration proceedings in your country?

No information is available regarding local courts in Burkina Faso ordering third parties to participate in arbitration proceedings.

33. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

According to article 13 of UAA, local court can order provisional measures in three situations. Firstly, in the event of a recognized and justified emergency. But the measures requested must not involve an examination of the merits of the dispute. Refer in this order to CCJA, 27 April 2015, Liquidation société CIM Sahel Energie SA c/ société " Les Ciments du Sahel " dite CDS SA, n° 047/2015

Secondly, when the measures must be executed in a State not party to OHADA.

Finally, precautionary seizures and legal security are the exclusive jurisdiction of local courts (article 14 of UAA)

As outlined in Article 13 of the OHADA Uniform Act, local courts in Burkina Faso may issue

interim measures in arbitration proceedings when these measures do not imply an examination of the substance of the dispute, for which only the arbitral tribunal is competent (see CCJA Judgment no. 047/2015 rendered on April 27, 2015, Liquidation société CIM Sahel Energie SA c/ société " Les Ciments du Sahel " dite CDS SA). Some interim measures, such as conservatory seizures and judicial sureties, can only be issued by local courts. Additionally, all interim measures that must be executed in an OHADA non-member State fall under the purview of the local courts.

34. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

The availability and enforceability of anti-suit and/or anti-arbitration injunctions in Burkina Faso are uncertain due to its civil law tradition.

35. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

There are no specific rules governing evidentiary matters in arbitration in Burkina Faso. Local courts may play a role in obtaining evidence, and they can compel witnesses to participate in arbitration proceedings according to procedural rules. Article 14 of the OHADA Uniform Act provides that the arbitral tribunal may request the assistance of local courts regarding the administration of evidence.

36. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

Professional standards for counsels and arbitrators conducting proceedings in Burkina Faso include a Regulation of the West African Economic and Monetary Union (Regulation No. 05/CM/UEMOA concerning the harmonization of rules governing the legal profession within the UEMOA space) and the internal Regulations of the Bar Association of Burkina Faso.

37. In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

There are no specific rules regarding the confidentiality of arbitration proceedings in Burkina Faso, except for provisions about the confidentiality of deliberations under Article 18 of the OHADA Uniform Act. As a common ground, confidentiality of arbitration proceedings is required for counsels, arbitrators, experts, and any person who has participated in the arbitration proceedings (Article 14 of the CCJA Rules of Procedure). The CAMCO Rules of Procedure (Article 12) extend that requirement to the instances of the CAMCO and allow the arbitrators to take any measures they deem necessary to protect trade secrets and confidential information.

38. How are the costs of arbitration proceedings estimated and allocated?

According to Article 24 of the CCJA Arbitration Rules, the costs include the arbitrator's

fees and the administrative costs set by the Court, any potential fees of the arbitrator, the operating costs of the arbitral tribunal, the fees and expenses of experts in case of expertise, and the normal expenses incurred by the parties for their defense. Article 37. 7 of the CAMCO Rules of Procedure define the costs of arbitration proceedings as procedural costs that include the administrative fees of the Center and the arbitrator's fees. Both Rules of Procedure are accompanied by annexes establishing a fee schedule. In any way, it is the arbitral tribunal that determines the allocation of the arbitration costs, taking into account all the relevant circumstances.

39. Can pre- and post-award interest be included on the principal claim and costs incurred?

There is no specific information provided regarding the inclusion of pre- and post-award interest on claims and costs incurred in Burkina Faso.

40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

The recognition and enforcement of arbitration awards in Burkina Faso are subject to specific legal requirements depending on whether the award is rendered within an OHADA member state or a non-member state, with the New York Convention applied in the latter case. In any case, the recognition and enforcement of the award are contingent upon providing evidence of the award's existence and ensuring that it does not contravene public order. The main difference seems to lie in the definition of public order that must justify a judgment of non-recognition of an award. While Article 31 of the Uniform Act requires that the award rendered within an OHADA member state must not be manifestly contrary to a rule of international public order, Article 8 of the Law only mentions a rule of public order in Burkina Faso regarding the decision of non-recognition of an award rendered within a non-member State. In any case, there is no explicit requirement that the award be reasoned. Although some authors argue otherwise, it seems that this cannot be considered a legal basis for non-recognition of awards (see CCJA Judgement no. 141/2016 rendered on July 14, 2016, Etat du Niger v. société Africard Co. Ltd.

41. What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

The required timeframe for the recognition and enforcement of an award in Burkina Faso is 15 days for awards rendered in OHADA member states. An automatic exequatur is granted in the absence of a decision after the expiration of 15 days. Parties may bring a motion for recognition and enforcement ex parte.

42. To what extent is a foreign arbitration award enforceable?

The enforcement of foreign arbitration awards in Burkina Faso is subject to the New York Convention.

43. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

The law in Burkina Faso may impose different standards of review for the recognition and enforcement of foreign awards (that is an award rendered in an OHADA non-member State) compared to domestic awards.

44. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts

According to the OHADA legal framework, arbitration proceedings must stem from contractual disputes, which typically have a commercial nature. Therefore, arbitrators are unlikely to be allowed to assess the validity of actions taken by the State, a practice inspired by the theory of Acts of State (see CCJA Judgement no. 103/2015 rendered on October 15, 2015, Benin v. société Commune de Participation dite SCP-SA et Patrice Talon). However, it is recognized that the arbitral tribunal has the authority to instruct a State to opt for either specific performance or compensation (CCJA Judgment no. 104/2015, rendered on October 15, 2015, Société Benin Control SA v. Benin). As a country with a civil law tradition, there are limitations on the issuance and enforcement of punitive damages awards.

45. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Arbitration awards can be challenged, but they are not susceptible to opposition, appeal, or cassation. Only annulment proceedings are available in Burkina Faso regarding arbitration awards. The grounds of annulment are listed in Article 26 of OHADA Uniform Act. They are limited to the absence of an arbitration agreement, the irregular constitution of the arbitral tribunal, the tribunal's failure to fulfill its mandate, disregard for the principle of adversarial proceedings, the award being contrary to international public order, or lack of reasoning. It should be noted that Article 25 of the Uniform Act permits parties to waive their right to seek the annulment of an award, provided such waiver does not contravene international public policy. This right to waive is reiterated in Article 20 of the CAMCO Rules of Procedure.

46. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

Disputing parties in Burkina Faso can waive the right to challenge an award by entering into an agreement before the dispute arises, as provided in Article 25 of the OHADA Uniform Act (see CCJA Judgment no. 102/2015, rendered on October 15, 2015, Léopold Ekwa Ngalle, Hélène Njanjo Ngalle et autres v. SNH et personnel SNH).

47. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

In Burkina Faso, a state or state entity may lose the right to invoke state or sovereign immunity for execution by concluding an arbitration agreement, except for assets allocated to sovereign activities for which need an express waiver clause is required (see CCJA Judgment no. 043/2005 on July 7, 2005; and Article 30 of the OHADA Uniform Act on

simplified execution procedures).

48. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

As mentioned in answers 11 and 31, third parties or non-signatories can intervene in arbitration proceedings or be bound by an award in Burkina Faso. The possibility of challenging an award through a third-party opposition procedure has been recognized.

49. Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

There have been no recent court decisions in Burkina Faso concerning third-party funding in arbitration proceedings.

50. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Emergency arbitrator relief is not available in Burkina Faso, and there are no specific rules regarding the enforceability of decisions made by emergency arbitrators.

51. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

There are no arbitral laws providing for simplified or expedited procedures for claims under a certain value in Burkina Faso. However, the CAMCO Rules of Procedure has provided that an expedited procedure may be implemented if stipulated in an agreement or, in the absence of such provision, upon request by one party and acceptance by the other. The tribunal may also opt for this procedure ex officio based on the nature of the dispute. The accelerated timeline for issuing the award is within three months from the date of the arbitration request. This timeframe may be extended under exceptional circumstances by the Committee of the Centre.

52. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

Diversity in the choice of arbitrators and counsel is not actively promoted in Burkina Faso.

53. Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

Recent court decisions in Burkina Faso have been invoked in the enforcement or recognition proceedings of awards rendered in the country. One notable case is the SGS case involving SGS and the Republic of Benin. In this case, two awards were issued by a tribunal seated in Burkina Faso. The Court of Appeal of Ouagadougou initially upheld the partial award on jurisdiction, which was later annulled by CCJA award no. 068/2020, dated 27 February 2020. Subsequently, the final award rendered by the same arbitral

tribunal seated in Ouagadougou was set aside by a Judgment of the Court of Appeal of Ouagadougou on December 20, 2019. Despite this judgment, the same final award was enforced by French courts in Paris (Judgment no. 20/17923 of the Paris Court of Appeal, January 11, 2022, n° 20/17923). Another relevant case is the Planor Afrique case, where judgments of Burkina Faso courts were enforced by French courts and seemingly took precedence over an ICC award. But the issue here pertains to res judicata and not the effect of a decision concerning an award.

54. Has there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

There have been no recent court decisions in Burkina Faso concerning the issue of corruption and its standards of proof.

55. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

There have been no developments in Burkina Faso regarding the implementation of technology or cost-effective conduct of arbitrations, including virtual hearings.

56. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

The insolvency of a party may affect the enforceability of an arbitration agreement in Burkina Faso under the OHADA Uniform Act on insolvency (Articles 9 and 75).

57. Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

There have been no recent developments in Burkina Faso regarding disputes on climate change and/or human rights.

58. Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?

There have been no recent developments in Burkina Faso regarding disputes related to carbon trade and carbon credits.

59. Is consolidation allowed under local laws?

Consolidation of arbitration cases is allowed under certain conditions in Burkina Faso.

60. What is the regime for enforcement of ICSID awards in your country?

The regime for enforcement of ICSID awards in Burkina Faso is governed by Article 54 of the ICSID Convention.

Burundi



Contribut or:



Ida Djuma

1. **What legislation applies to arbitration in your country? Are there any mandatory laws? What is their effect?**

Law N. 1/10 dated May 13th, 2004, which in its articles 337-370 regulates the principles governing arbitration in Burundi, including in particular, defining the general notions of arbitration (articles 337-345), regulating the arbitration agreement (articles 341-343), the form of arbitration (articles 346-351), the powers of arbitrators (articles 352-357) including the power to render interim measures (article 357) and defining the rules applicable to the arbitration procedure and the substance of the dispute (articles 358-361). Finally, this law regulates the arbitral award, its enforceability, its interpretation, as well as arbitration fees and arbitrators' fees (articles 362-370); (Law N. 1/10 dated May 13th, 2004 is under review)

Law N 1/19, dated June 17th, 2021, reviewing the investment code in Burundi number 1/024 dated September 10, 2008, also governs in part the right to international arbitration, especially in its article 37, which provides that ....."At the investor's option, the dispute can be settled through internal institution arbitration or international. International arbitration will comply with the rules of the International Center for the Settlement of Dispute (ICSID) in force at the time of making the investments to which the dispute is linked"

Are there any mandatory laws ? None

2. **Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?**

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards was ratified by Burundi on May 9th, 2014; Burundi has made a "commerciality" reservation in accordance with Article I, 3. According to which the Convention applies only to disputes of a commercial nature under domestic law.

3. **What other arbitration-related treaties and conventions is your country a party to?**

International treaties such as the six bilateral investment treaties offering protections to investments in Burundi by investors from Belgium-Luxembourg, Germany, Kenya, Mauritius, Netherlands, and the UK.

4. **Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?**

No

5. **Are there any impending plans to reform the arbitration laws in your country?**

Yes, the revision of the Code of Civil Procedure,

6. **What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?**

The Burundian Center of Arbitration and Conciliation is a non-profit association established on March 29th, 2004, with no amendments since 2004. It is regulated by the settlement of Arbitration and Conciliation, which covers the operating rules applicable with regard to conciliation, mediation, expertise, and litigation submitted to the center and has 36 articles.

7. **Is there a specialist arbitration court in your country?**

No

8. **What are the validity requirements for an arbitration agreement under the laws of your country ?**
An arbitration agreement must designate the objects in dispute and the names of the arbitrators. It determines and circumscribes the mission of arbitrators.

9. **Are arbitration clauses considered separable from the main contract?**
The arbitration clauses must be stipulated in writing in the document to which it refers. It shall either appoint the arbitrator(s) or provide for the terms and conditions of their designation.

10. **Is there anything particular to note in your jurisdiction with regard to multi-party or multi- contract arbitration?**
When several contracts contain the arbitration clauses of the Center, and the disputes are are related and inseparable, the president of the Centre has the power to order the joinder of such related disputes.

11. **In what instances can third parties or non-signatories be bound by an arbitration agreement?**
In arbitration, third-party intervention in the proceedings or joinder-related procedures generally requires the consent of all parties. Are there any recent court decisions on these issues? None

12. **Are any types of disputes considered non-arbitrable?**
Criminal cases and other related cases
Has there been any jurisprudence in this regard in recent years? None

13. **Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?**
None

14. **How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?**
The Arbitral Tribunal shall follow the rules of procedure established for the Tribunals. However, the parties may settle the arbitration proceedings directly or by reference to the arbitral tribunal. They may also submit the arbitration proceedings to the procedural law of their choice.

15. **In your country, are there any restrictions in the appointment of arbitrators? Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?**
Article 15 of the CEBAC Rules exhaustively lists the steps for the appointment of arbitrators. Firstly, if the parties have agreed that their dispute shall be settled by one arbitrator, they may appoint him by mutual agreement, subject to the approval of the

appointments committee. In the absence of agreement between the parties, the arbitrator is appointed by the appointments committee within thirty days from the notification of the request for arbitration to the defendant. Within the same period, the appointments committee shall issue a decision on the refusal of any approval of the arbitrator appointed by the parties and proceed to its replacement.

Secondly, if three arbitrators have been designed, as the number of arbitrators, in the arbitration agreement, each of the two parties shall appoint one arbitrator and confirm the choice both in the request for arbitration and in the reply by the defendant. The two arbitrators have to be approved by the appointments committee. If one of the parties opposes to appoint its arbitrator or if the arbitrator is not approved, the appointments committee appoints him automatically within fifteen days. The third arbitrator, appointed ex officio by the appointments committee, assumes the presidency of the arbitral tribunal by virtue of rights.

Thirdly, in case the parties have not decided on the number of arbitrators, the dispute shall be settled by one arbitrator. However, in this case, the appointments committee are empowered to determine that the dispute shall be referred to a panel of three arbitrators. This can be done at the request of a party or even of the initiative of the appointments committee. It is therefore, observed that the appointment procedure of arbitrators is subject to the approval by the appointments committee. It may be argued that, this mechanism increases the power of the appointments committee in the arbitration procedure. This is contrary to the arbitration nature itself, which insists on parties' free choice in relation to arbitrators' appointment. Note that the arbitrator must be on the panel of CEBAC .

16. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?
No

17. Can the local courts intervene in the selection of arbitrators? If so, how?
No

18. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?
Yes

19. Has there been any recent developments concerning the duty of independence and impartiality of the arbitrators?
No

20. Has there been any recent decisions in your country concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?
No

21. Are arbitrators immune from liability under local laws?
Not Provided

22. Is the principle of competence-competence recognized in your country?
No

23. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?
The application must be made within thirty days of notification of the award.

24. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?
Not provided

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?
If all parties or one of them, although regularly summoned and did not appear, the Arbitral Tribunal, after having ascertained that the summons has reached the parties and that they do not justify their absence by any valid reason, it nevertheless has the power to proceed with the fulfillment of its mission. The award rendered is deemed to be contradictory.

26. Can third parties voluntarily join arbitration proceedings? Yes, If all parties agree to the intervention, is the tribunal bound by this agreement? Yes If all parties do not agree to the intervention, can the tribunal allow for it?
No

27. Can local courts order third parties to participate in arbitration proceedings in your country?
No

28. What interim measures are available? Yes ,Will local courts issue interim measures pending the constitution of the tribunal?
Yes

29. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?
NO

30. Are there particular rules governing evidentiary matters in arbitration? No Will the local courts in your jurisdiction play any role in the obtaining of evidence? Yes , Can local courts compel witnesses to participate in arbitration proceedings?
Yes , is provided by CEBAC rules on article 22 point 1

31. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?
None

32. In your country, are there any rules with respect to the confidentiality of arbitration proceedings? If so, what is the scope of that confidentiality and who is subject to the

obligation (parties, arbitrators, institutions and so on)?
None

33. How are the costs of arbitration proceedings estimated and allocated?
The authorized organs of the institutional tribunal or each ad hoc Arbitration fix its members' fees and expenses within the limits defined by such bodies or the said ad hoc arbitration. However, the parties may be determined in advance, in agreement with the arbitration bodies or ad hoc arbitration, the fees and expenses of its members.

34. Can pre- and post-award interest be included on the principal claim and costs incurred?
Yes

35. What legal requirements are there in your country for the recognition and enforcement of an award?
The recognition and enforcement of awards shall be in accordance with the laws applicable in Burundi, provided that the requesting party provides, at the same time as the application:

(a) the authenticated original of the award or a copy thereof satisfying the conditions required for its authenticity;
(b) the original of the agreement referred to in Article II (arbitration agreement) or a copy that meets the requirements for its authenticity.

Is there a requirement that the award be reasoned, i.e. substantiated and motivated?
Yes. According to the article 336 of the law of civil procedure, the formalities required for the validity of an arbitral award are, for example, the written form of the arbitral award and the affixing of signatures by unanimity or majority of the arbitrators; the collection of a majority of votes in rendering the arbitral award as well is also motivated .

36. What is the estimated timeframe for the recognition and enforcement of an award? Is there an expedited procedure? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?
Not Provided by the Burundi law.

37. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?
Not Provided

38. Can arbitration awards be appealed or challenged in local courts?
Yes
What are the grounds and procedures?
The judge may refuse the exequatur, as well as it may be the subject of an objection by the respondent before the Appeal Court.

a) whether the arbitrators acted when they could be challenged for just cause.

b) if the rights of the defence have been infringed to the detriment of a party, for example, that party may not be able to present its case in the arbitral proceedings.
c) whether there has been a breach of public order or non-compliance with the rules relating to the appointment of arbitrators.

39. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?
Yes

40. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?
In all cases except in cases of voluntary execution

41. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?
Not Provided

42. Has there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?
No

43. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?
No

44. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?
No

45. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?
No

46. Has there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?
No

47. Has there been any recent court decisions in your country considering the issue of corruption? ,What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?
Not provided by local law

48. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

No

49. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?
Yes

50. Has there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?
No

51. Has there been any recent developments in your jurisdiction regarding disputes related to carbon trade and carbon credits?
No

52. Is consolidation allowed under local laws?
Not provide by local law

53. What is the regime for enforcement of ICSID awards in your country?
The recognition and enforcement of ICSD awards shall be in accordance with the laws applicable in Burundi, provided that the requesting party provides, at the same time as the application:

- the authenticated original of the award or a copy thereof satisfying the conditions required for its authenticity;
- the original of the agreement referred to in Article II (arbitration agreement), or a copy that meets the requirements for its authenticity.
- If the award or agreement is not drawn up in an official language, the requesting party may produce a translation of such documents into that language. The translation must be certified by an official translator or a sworn translator or by a diplomatic or consular agent



ARBITRAL INSTITUTIONS

KIAC
KIGALI INTERNATIONAL ARBITRATION CENTRE
Efficiency in Disputes Resolution

THE CAIRO REGIONAL CENTRE FOR INTERNATIONAL COMMERCIAL ARBITRATION
مركز القاهرة الإقليمي للتحكيم التجاري الدولي
CRCICA

Centre de Médiation et d'Arbitrage du GICAM
GICAM CMAG

THE GHANA ARBITRATION CENTRE

LCA
LAGOS COURT OF ARBITRATION
International Centre for Arbitration & ADR

AFSA

NCIA
Nairobi Centre for International Arbitration

MIAC
Mauritius International Arbitration Centre

Kigali International Arbitration Centre

General Information

Name of the Arbitration Center: Kigali International Arbitration Centre

Location and Address: **P.O.Box 695 Kigali Rwanda, Nyarutarama, KG 9 Avenue, No. 66, www.kiac.org.rw, email: info@kiac.org.rw,**

Contact Person:

Name: Victor MUGABE
Title: Secretary General
Email: victor.mugabe@kiac.org.rw
Phone: +250788411782/ +250788316099

Year Established: Legally established in 2010 but the institution became operational in **2012**

Legal Status (e.g., non-profit, government-affiliated, private entity): **Private Entity**

Operational Details

Description of Arbitration Services Offered:

1. KIAC Coordinates and monitors dispute resolution proceedings through its Modern set of Arbitration Rules that are inspired by the UNCITRAL Model Law;
2. KIAC's schedule of costs has been designed to make the Centre's Arbitration services affordable by any person who may choose to use Arbitration as the mode of dispute settlement in commercial matters;
3. KIAC boasts of a worldwide panel of highly experienced and credible international and domestic arbitrators from diverse fields of expertise. KIAC provides assistance in appointing arbitrators for disputing parties, upon request;
4. KIAC administers mediation disputes under KIAC Mediation Rules. Mediation under KIAC is practiced by internationally accredited professionals under KIAC Mediation Rules. The Rules define the procedures for mediation, Appointment and Replacement of the Mediator, as well as the required conduct for mediators, like neutrality and confidentiality among others. The Centre administers also Adjudication disputes referred to it by disputant parties.
5. KIAC Secretariat takes pride in offering diversified and cost -effective service in a fully equipped state-of-the art arbitration, adjudication and mediation hearing facilities. Upon request, KIAC offers administrative, logistical, technical and secretarial support as well as catering services to Clients during ADR Proceedings;
6. KIAC offers scrutiny service of draft arbitral awards;

7. KIAC has highly efficient case management system operated by responsive and technically knowledgeable staff that are bilingual (English and French). The Rwandan Judiciary is equally pro-arbitration, giving priority to arbitration related matters;
8. In order to avoid pathological clauses during Arbitral proceedings, KIAC has proposed model clauses that can be considered in commercial contracts drafting;
9. Upon request, KIAC provides assistance in drafting dispute resolution clauses in international commercial or investment contracts;
10. KIAC provides arbitration and mediation skills development programs leading to accreditation by Internationally recognized ADR institutions.

Types of disputes handled.

KIAC handles commercial arbitration or commercial mediation disputes **Industries or sectors served**.

KIAC offers its services to different industries and sectors from companies have a commercial dispute. They might be private companies or government institutions. The main sectors served at KIAC are but not limited to: Service, supply, construction, sale, mining, transportation, shareholding, etc...

QUESTIONS:

Case Management

Case Intake and Filing: Describe the process for filing a case with the arbitration centre. Are there online filing options for parties?	KIAC has arbitration Rules considered as the procedural law and guidance for those who wish to file its case under KIAC. Parties can file their case by email (electronic filing) or in hard copy. However, by January 2024 KIAC will launch its case management software that will be used for online arbitration proceedings including electronic filing as well as the online case management in general. Article five of the Rules provides: • **ARTICLE 5: Request for Arbitration** *"A party wishing to commence arbitration under these Rules (hereinafter called the "Claimant") shall submit a written request for Arbitration ("the request') to the Secretariat.* 1. *The request shall include or be accompanied by the following: 1 A demand that the dispute be referred to arbitration;* 2. *The names, addresses, telephone number (s), facsimile number (s) and electronic mail addresses,*

	if any of the parties to the arbitration and their representatives if any; 3. *A copy of the arbitration agreement that is invoked;* 4. *Identification of any contract or other legal instrument out of or in relation to which the dispute arises or in the absence of such contract or legal instrument, a brief description of the relevant relationship;* 5. *A brief statement describing the nature and circumstances of the dispute, the relief or remedy sought together with the amount of any quantified claims and to the extent possible an estimate of the monetary value of any other claims;* 6. *Where claims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each claim is made;* 7. *All relevant particulars and any observations or proposals as to the place of the arbitration, the applicable rule of Law and the language of arbitration.* *The Request may also include:* 1. *The claimant's proposals for the appointment of a sole arbitrator;or* 2. *The claimant's designation of an arbitrator, for purpose of constituting a three-member arbitral tribunal;* 3. *The statement of Claim;* 4. *Such other documents or information as may contribute to the efficient resolution of the dispute.* *The request of arbitration shall be accompanied by payment by check, or transfer to the account of the Centre of the required registration fee.* *In the event that the Claimant fails to comply with any of these requirements, the secretariat may fi x a time limit within which the claimant must comply. Failing which the fi le shall be closed without*

	prejudice to the Claimant's right to submit the same claims at a later date in another request. *The date of receipt of a complete request of Arbitration shall be deemed to be the date on which the arbitration has commenced.* *The request for arbitration is deemed to be complete when all the requirements are fulfilled.* *The Secretariat shall notify the parties of the commencement of arbitration.* *Within five (5) days of the receipt of the request, the Secretariat shall transmit a copy of the request and the documents annexed thereto* *to the respondent for its answer to the request once the Secretariat has sufficient copies of the request and the required filing fee".*
Timeliness of Case Initiation: On average, how long does it take from case filing to the initiation of the arbitration process?	The Rules provides 5 days for the Secretariat to transmit a copy to the respondent which is considered as the initiation of the case. However, the practice at KIAC takes 2 days maximum to notify the case to the respondent

Arbitrator Selection

Panel of Arbitrators: Number of arbitrators on the panel.	The Rules provide for a sole or 3 arbitrators panel.
Qualifications and expertise criteria for arbitrator selection.	For an arbitrator to be confirmed, the secretariat shall take into account the following: • The qualification of the arbitrator requested by parties • The market industry of the dispute • Nationality, residence and other relationships with the countries of parties or other arbitrators in the case • Gender of the arbitrators (diversity and inclusiveness)

	• The availability and ability to determine the case in a prompt and efficient manner appropriate to the nature of arbitration • The arbitrator's past experience in arbitration cases under KIAC administration
Arbitration Rules and Procedures:	KIAC has a set of arbitration Rules of 2012.
Arbitrator Appointment: How is the appointment of arbitrators handled?	KIAC Rules provides how a sole and/or an arbitral tribunal of three are appointed.
Is there a streamlined process for selecting and confirming arbitrators?	**Article 12 provides:** *'' The dispute shall be decided by a sole Arbitrator or three Arbitrators.* *Where the parties have not agreed upon the number of arbitrators, the Centre shall appoint a sole arbitrator, save where it appears to the Centre that the dispute is such to warrant the appointment of three arbitrators. In such a case, the Claimant shall nominate an arbitrator within a period of fifteen (15) days from the receipt of the notification of the decision of the Centre and the Respondent shall nominate an arbitrator within a period of fifteen (15) days from the receipt of the notification of the nomination by the Claimant.* *If a party fails to nominate an arbitrator, the Centre shall appoint the arbitrator''.* **Article 13 provides:** *''Where the parties have agreed that the dispute shall be resolved by a sole arbitrator, they may, by agreement, nominate the sole arbitrator for confirmation.* *If the parties fails to nominate the sole arbitrator within fifteen (15) days from the date when the Claimant's Request has been received by the Respondent or within in such additional time as may be allowed by the Secretariat, the sole arbitrator shall be appointed by the Centre''.*

	Article 14 provides: *If the parties have agreed that the dispute shall be resolved by three arbitrators, each party shall nominate in the Request and in the Answer respectively one arbitrator for confirmation.* *If a Party fails to nominate an arbitrator, the appointment shall be made by the Centre. Where the parties have agreed to refer the dispute to three arbitrators, the third arbitrator who will act as a president of the Arbitral tribunal shall be appointed by the Centre, unless the parties have agreed upon another procedure for such appointment, in which case the nomination shall be subject to confirmation. If such agreed procedure does not result in a nomination within fourteen (14) days from the confirmation or appointment of the second arbitrator or any other time agreed by the parties or fixed by the Secretariat, the third arbitrator shall be appointed by the Centre.*
Availability of Arbitrators: How does the centre ensure the availability of arbitrators for timely case resolution? Are there mechanisms in place to address scheduling conflicts?	Under Article 16, paragraph 5 and 6 provides that: *"Before appointment or confirmation, a prospective arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The arbitrator shall also disclose to the Secretariat any facts or circumstances that may give rise to justifiable doubts as to his impartiality. The Secretariat shall provide such information to the parties in writing and fi x a time limit for any comments from them.* *An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of similar nature to those referred to in Article 16 (4) which may arise during the arbitration. By accepting to serve, arbitrators undertake to carry out their responsibilities in accordance with the Rules".* Besides that, KIAC has a note to arbitrators that serves as a guidance.

Procedural Efficiency

Arbitration Rules and Procedures: How are the arbitration rules designed to enhance efficiency?	The Arbitration are designed to enhance efficiency as they have reasonable deadlines. The Rules also ensure that the arbitral tribunal conduct proceedings in a timely manner.
Are there mechanisms for expedited proceedings when necessary?	Yes, the rules provide for emergency arbitration. The proceedings can take between 15 and 20 days.
Pre-Hearing Procedures: Describe any pre-hearing conferences or procedures aimed at streamlining the arbitration process.	As soon as the tribunal receives the file from the secretariat, the arbitral tribunal shall conduct a preliminary meeting with the parties to discuss the procedures that are appropriate and efficient for the case. Timetable also will be discuss during the meeting.
Document Submission and Discovery: How are document submission and discovery managed to avoid unnecessary delays?	Article 30 of the Rules provide that: *'' Unless the Arbitral tribunal determines otherwise, the submission of written statements and other documents shall proceed as set out in his Article. Unless submitted in the Request, the claimant shall within a period to be determined by the Arbitral tribunal send to the Respondent and the Arbitral tribunal a statement of claim setting out:* *1 A statement of facts supporting the Claim;* *2 The legal grounds or arguments supporting the claim and;* *3 The relief claimed together with the amount of all quantifiable claims* *Unless already submitted in the Answer to the Request for arbitration, the Respondent shall within a time period to be determined by the Tribunal submit to the Tribunal and the respondent a statement of defense setting out its fully defense to the statement of claim including without limitation the facts and contentious of law it relies on. The statement of defense shall also state any counterclaim which shall comply with the requirements of Article 30 para 2.* *If a counterclaim is made, the claimant shall within a period of time to be determined by the tribunal send a statement of defense to the counterclaim*

	stating in full detail which of the facts and contentions of law in the statement of counterclaim it admits or denies on what grounds, and on what other facts or contentions of law it relies. *A party may amend its claim or counterclaim or other submissions unless the Arbitral tribunal considers it inappropriate to allow such amendments having regard to the delay in making it or prejudice to the other party or any other circumstances.* *The Arbitral tribunal shall decide which further submissions shall be required from the parties and fi x the period of time for such submission. All Statements referred to in this Rule shall be accompanied by copies(or, if they are especially voluminous, lists) of all essential documents on which the party concerned relies and which have not previously been submitted by any party, and (where appropriate) by any relevant samples.* *Copies of all statements referred to in this Rule shall be served on the Secretariat. If the Claimant fails within the time specified under this rule or as may be fixed by the Arbitral Tribunal, to submit his Statement of Case, the Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings. If the Respondent fails to submit a Statement of Defense, or if at any point any party fails to avail itself of the opportunity to present its case in the manner directed by the Arbitral Tribu nal, the Arbitral [illegible]* *arbitration and make the award."*

Timeline Management

Timeliness of Decisions: On average, how long does it take for arbitrators to render decisions following the conclusion of hearings?	The Rules provide for 45 calendar days for the tribunal to provide the award but in practice and due to regular communication between the Secretariat and the tribunal, the tribunal send the draft to the secretariat in between 20-30 days from the day of closing the proceedings.

Expedited Procedures: Are there provisions for expedited procedures in certain cases, and how are they implemented?	Each case is different. However, the Rules has deadlines on every step in arbitration.
Extensions and Delays: How does the centre handle requests for extensions and manage any potential delays? **Continuous Improvement Initiatives:** Are there ongoing efforts to identify and implement improvements to enhance efficiency?	When parties or even the arbitral tribunal asks for extension the centre decides on the extension to provide taking into account the reasons provided by the requesting party or the Tribunal. However, when the extension is being requested by any of the parties (tribunal excluded) The Centre request comments from the other party before taking a decision. In any case, the centre will provide an extension which is less that the initial deadlines provided by the Rules.

Cost and Resource Management

Fee Structure: Provide an overview of the arbitration fees charged by the centre. Are fees fixed, or do they vary based on factors such as the complexity of the case?	Fees at the centre vary and are calculated basing on the amount in dispute. See Annex 1 of the Rules The arbitrator's fees start from 1,000 USD to an arbitrator and 750 USD for administrative fees for the amount in dispute up to 50,000 USD. However, in exceptional circumstances of the case (complexity), The Centre may fi x the fees of the arbitrators at a figure higher or lower than that which would result from the application of the schedule of fees, provided that such alteration does not ex ceed 20% of the original figure.
Fee Transparency: How transparent is the fee	The Rules provide the following breakdown:

structure to parties involved in arbitration? Is there a breakdown of costs provided to parties?	Filling fees, Counterclaim filling fees, administrative fees, arbitrators' fees. If there is an expert needed in the case or if the arbitrators will have other expenses like accommodation, flight, etc.. the centre inform parties the amount needed and parties will have to deposit that separately. If there is any balance, the centre will refund it parties.
Fee Waivers or Reductions: Are there provisions for fee waivers or reductions based on financial circumstances?	No.
Cost Predictability: How does the arbitration centre ensure predictability in terms of costs for parties? Are there mechanisms to provide estimates or control costs efficiently?	Parties are requested to provide the amount in dispute for their case. If the amount is not quantifiable at the time of payment, the centre shall provide a provisional estimate of the arbitration cost. The centre consider the nature and circumstances of th e case. However, the Rules give power to the arbitral tribunal to decide the final costs of the arbitration unless parties have agreed otherwise.
Cost Management: Describe any measures taken to manage and control costs throughout the arbitration process.	Before the transmission of the file to the tribunal, the centre shall request provisional 50% of the arbitrator's fees from parties. After parties have signed the Terms of reference (a document which guide the both parties and arbitral tribunal and provide the exact amount in dispute), the secretariat shall request the final payment form parties. No hearing shall take place if the requested amount is not paid.
How are cost overruns addressed?	The centre doesn't have overruns because fees are fixed in the Rules. The Rules also provide that the centre may increase the fees and also the arbitral tribunal has power to decide the final cost which will be paid by both parties before the issuance of the award.

Third-Party Funding: Does the arbitration centre have rules on third-party funding? Is there a requirement for parties to disclose any third-party funding arrangements? How is this information handled during the arbitration proceedings?	KIAC Rules do not provide for third party funding.
Impact on Costs and Decision-Making: How can third-party funding impact the overall costs of arbitration? Are there measures in place to ensure that third-party funding does not unduly influence decision-making?	Not Applied under KIAC Rules
Resource Allocation: How does the centre manage its resources to handle caseloads effectively?	The Centre charges administrative fees on every case to allow its operations.

Technological Infrastructure

Case Management System: Describe the case management system used at the arbitration centre. Is it an in-house system or a	The Centre doesn't have a case management system for now, however by January 2024, the centre shall have a case management system that will be uploaded on the KIAC website. The system will ease the filing of cases, exchange of documents, case administration and reporting. Today the case management system at the Centre is manually done by the Case Manager in collaboration with the Secretary Genera/Registrar through Word documents and Excel sheet

commercially available platform?	
Online Case Filing: Does the centre offer online case filing options for parties? How streamlined is the process for submitting case documents electronically?	Parties can file a case by email and all documents exchange can be done on email as long as parties have agreed so.
Virtual Hearings: To what extent does the centre utilize virtual hearings?	Since COVID 19 pandemic, the centre has had 40% of the hearing virtually. A culture that is growing as parties, arbitral tribunal and the centre prefer to minimize the cost by having virtual hearing.
Are there specific technologies or platforms used for virtual proceedings?	For now, the Centre has annual subscription to zoom platform. However, Parties and Tribunal may use other platforms as long as they have agreed so
Security and Confidentiality: Describe the measures in place to ensure the security of case-related data	At KIAC, only those involved in case management access the files either on email or in hand. The Centre has a staff in charge of case management who is the custodian of all information relating the Cases under KIAC Administration along with the Secretary General. No third person to an arbitration can access to information relating to arbitration case.
How is sensitive information protected during electronic transmissions?	The centre ensures that electronic transmission is only sent and received by the concerned parties, arbitrators and the centre itself.
How does the centre ensure the confidentiality of arbitration proceedings in an online environment?	On the zoom platform, only allowed parties or allowed designated parties are to enter the chat. The centre makes sure to have a waiting room in order to confirm their identity before joining the call.

Environmental Sustainability

Environmental Practices: What measures are in place to minimize the environmental impact of the centre's operations?	The centre maximize the use of electronic filing, case administration, hearing and others to avoid printing.
Carbon Footprint: Has the centre conducted assessments to measure its carbon footprint? Are there strategies in place to offset or reduce the carbon footprint?	Not yet but the centre, use paper-less system as much as it can especially since the occurrence of the Covid -19 pandemic which forced the acceptability of people to use online service

Quality Assurance

Code of Ethics: Existence of a code of ethics for arbitrators.	The centre has a note to arbitrators which contains an number of provisions on Arbitrators' ethics and other guidance to arbitrators when they have a case to handle at KIAC.
Programs for arbitrator training and development.	The Centre provides certified training in collaboration with the CIArb London, The centre also provides refresher training, webinars, workshops for arbitrators,
Facilities: Description of hearing rooms and facilities.	The Centre has 2 arbitration Rooms, 1 mediation Rooms and 2 /Break out/ retiring rooms. The arbitration rooms are equipped with facilities to use when having virtual hearings including Screen, speakers, microphone, camera
Measures taken to ensure accessibility for diverse participants.	The Centre's office is 2 floors (Ground and 1 st floor) building which permits participants to access the hearing rooms. However, there is a need to have a lift or any other means to easily access the 1st floor.
User Experience: How does the centre collect feedback from parties regarding costs and the overall arbitration process?	The centre tries to outreach its users directly to collect feedback on the proceedings.
Are there avenues for parties to express concerns about costs?	Any party that wishes to raise a concern is attended either physically or emails.

Collaborations: Any partnerships with legal institutions, organizations, or industry bodies.	KIAC has various partnerships with different organization and institutions including arbitration centres, Publishing houses, schools, private institutions, etc.. (ICSID, CRCICA, AIADR, JUS MUNDI, Hamburg Chamber of Commerce (a draft MoU to be signed in Feb. 2024)
International Reach: Experience in handling international arbitration cases.	The centre has ben established in 2012 and has handled 226 cases so far. Among those cases nearly 40% are international cases.
Compliance and Legal Framework: Adherence to relevant national and international arbitration laws.	In 2007, Rwanda ratified and domesticated the New York convention on recognition and enforcement of the awards of 1958, Rwanda has an arbitration and conciliation act of 2008, KIAC Rules were designed with reference to the UNICTRAL model law and Rules. Rwanda's Judicial laws and case law are also supportive to arbitrations
Strategic Initiatives: Any upcoming plans or initiatives to enhance services.	KIAC is planning to have an outreach to business owners and investors to ensure that arbitration becomes a culture. It also plans to work with law schools to ensure that students get to know arbitration and other ADR mechanisms as early as possible. The Centre also is the process of reviewing its Rules.
Continuous Improvement: Processes in place for continuous improvement.	Marketing initiatives Visibility initiatives

Cairo Regional Centre for International Commercial Arbitration (CRCICA)

General Information

- **Name of Arbitration Centre:** Cairo Regional Centre for International Commercial Arbitration (CRCICA)
- **Location and Address:** 1 Al Saleh Ayoub Street, Zamalek 11211, Cairo, Egypt.
- **Contact Person**: Dr. Ismail Selim
- **Email:** info@crcica.org
- **Phone:** +20 2 27351333/5/7
- **Year Established:** 1979
- Legal Status: Independent Non-Profit International Organisation

Operational Details

- Description of Arbitration Services Offered: See https://crcica.org/services/

The scope of services offered by CRCICA in relation to Arbitration encompasses the following:

- Administering domestic and international arbitrations as well as ADR techniques under its auspices;
- Provision of institutional arbitration services according to its Rules or to any other *ad hoc* arbitration rules agreed upon by the parties;
- Responding to queries posed by the users regarding the implementation and interpretation of its Rules. Such assistance does not extend to the merits of any dispute;
- Promotion of arbitration and other ADR techniques in the Afro -Asian region through the organisation of international conferences and seminars as well as the publication of research serving both the business and legal communities;
- Capacity building of international arbitrators and legal scholars from the Afro-Asian region by organising training programs and workshops in cooperation with other institutions and organisations;
- Coordination with and provision of assistance to other arbitral institutions, including the use of CRCICA's hearing facilities and breakout rooms for parties to cases that it does not administer, particularly those arbitral institutions existing within the region;
- Conducting and publishing academic and practical research and studies, as well as statistics relating to CRCICA's activities;
- Establishing a comprehensive library specialising in Arbitration and ADR; and
- CRCICA provides document related services, which can be found here.

CRCICA can provide the following administrative services in *ad hoc* Arbitration cases:

- Providing *ad hoc* arbitration with necessary technical and administrative assistance at the request of the parties;
- Support services, including:
    - Maintenance of a case file of written communications and submissions;
    - Facilitating communications;
    - Services with respect to the storage of files, including arbitral awards; and
    - Arrangements for meetings and hearings:
        - ❖ Assisting in establishing the date, time, and place of meetings and hearings;
        - ❖ Arranging meeting/hearing rooms at the premises of CRCICA, including technical equipment and logistical support;
        - ❖ Organising in-house luncheons and catering services;
        - ❖ Assisting with further logistical organisation, e.g. identifying and engaging court reporters or interpreters; and
        - ❖ Facilitating entry visas when required.
    - Administration of costs, including holding arbitration costs deposited by the parties and handling payments to arbitrators and services providers (i.e. fundholding services).
    - Services as appointing authority (either under the CRCICA Arbitration Rules if chosen by the parties even if the CRCICA Arbitration Rules are not applicable) in relation to the following:
        - Appointment of arbitrator(s);
        - Decisions on the challenge of arbitrators and other reasons for the replacement of arbitrators; and
        - Assistance in fixing the fees of arbitrators and participation in the review mechanism on the costs and fees where the Applicable Procedural Rules are *ad hoc* (absence of the parties' agreement on the foregoing).

- Types of disputes handled: commercial and investment disputes.
- Industries or sectors served: Construction, Tourism & Hospitality, Banking & Finance, Real Estate Development, Oil & Gas, Corporate Restructuring, Media & Entertainment, Sports, Agriculture, Medical & Hospital, Investment and Civil Aviation.

QUESTIONS:

Case Intake and Filing: Describe the process for filing a case with the arbitration centre.	Claimant files its notice of arbitration with the Centre, which must include the following: • Certain fundamental issues (**Article 3(3) of the Rules**) • A copy of the receipt of payment of the registration fee (**Article 43 of the Rules**) o The registration fee is payable in USD. o The registration fee is non-refundable. o The registration fee is payable either by certified cheque in the Centre's name or by bank transfer to the Centre's account (available on the website). The notice of arbitration may include other optional issues (**Article 3(4) of the Rules**). Please note that the requirements for the notice of arbitration will change slightly in the Centre's upcoming 2024 Arbitration Rules.
Are there online filing options for parties?	Yes, parties can file their notice of arbitration online through the following link: https://crcica.org/arbitration/fnao/
Timeliness of Case Initiation:	The process is initiated with the Centre notifying Respondent(s) with the Notice of Arbitration. This usually occurs up to 1 week after the filing of the
On average, how long does it take from case filing to the initiation of the arbitration process?	Notice of Arbitration. It may take longer if there are any missing documents or mentions in the Notice of Arbitration, which the Centre asks Claimant(s) to complete.

Arbitrator Selection

Panel of Arbitrators: Number of arbitrators on the panel.	CRCICA's Panel of Arbitrators groups more than 400 arbitrators from over 60 nationalities.
Qualifications and expertise criteria for arbitrator selection.	**The conditions for first time enrolment in CRCICA's Panel of Arbitrators are the following:** • Be aged between 30 and 75 years; • Have an experience as an arbitrator in 5 or more arbitration cases or an experience as counsel in at least 6 or more arbitration cases; and • Declare that they have no criminal record in the country(ies) where they practice. **It could be beneficial for the Applicant to mention that**: • They are a Member or Fellow at the Chartered Institute of Arbitrators (CIArb); and • They have any other supplemental information exemplifying the Applicant's experience in arbitration such as completing any arbitration related courses or seminars.
Arbitrator Appointment: How is the appointment of arbitrators handled?	**Appointments are governed by Articles 7-11 of the 2011 Arbitration Rules, and Articles 7-12 of the upcoming 2024 Arbitration Rules.** Party Appointments: Parties notify the Centre of their chosen arbitrator. Appointment of Presiding Arbitrator: the co-arbitrators appointed by the parties agree on the choice of presiding arbitrator. List Procedure: in the appointment of a sole arbitrator or a presiding arbitrator, the Centre will use the identical list procedure described in Article 8(3) of the 2011 Arbitration Rules, through which the Parties chose the arbitrator. Centre Appointment: in the event that one of the parties fails to nominate its arbitrator, or the list procedure fails, or the parties agree not to use the list procedure, the Centre proceeds with the direct appointment of the arbitrator from among its Pan el of Arbitrators.

	Once notified of the chosen arbitrator, or once it has chosen the arbitrator, the Centre contacts the arbitrator regarding his or her appointment. The arbitrator has 7 days to submit his or her declaration of acceptance and statement of independence and impartiality.
Is there a streamlined process for selecting and confirming arbitrators?	Three-Arbitrator Tribunal: Respondent(s) are required to appoint their co-arbitrator within 30 days from the notification of the appointment of Claimant(s) co- arbitrator. The co-arbitrators thus appointed have 30 days to notify the Centre of their choice of presiding arbitrator. Sole Arbitrator: the parties have 30 days from Respondent's notification of the Notice of Arbitration to agree on the sole arbitrator to be appointed. No Agreement on Number of Arbitrators: the parties have 30 days from Respondent's notification of the Notice of Arbitration to agree on the appointment of a sole arbitrator or three arbitrators.
Availability of Arbitrators: How does the centre ensure the availability of arbitrators for timely case resolution?	The Declaration of Acceptance and Statement of Impartiality and Independence, which the arbitrator must fill out in order to complete his or her appointment, includes an 'Availability Form' wherein the arbitrator must indicate his or her current caseload.
Are there mechanisms in place to address scheduling conflicts?	Parties and arbitrators are left to work out any scheduling matters between them. Arbitrators are required by Article 17(7) of the 2011 Arbitration Rules and 17(1) of the upcoming 2024 Arbitration Rules to conduct the proceedings so as to avoid unnecessary delay and expense and to provide an efficient process for resolving the parties' dispute.

Procedural Efficiency

	The 2011 Arbitration Rules, in Article 17(7), require the arbitral tribunal to conduct the proceedings efficiently, so as to avoid unnecessary delay and expenses. If the arbitral tribunal fails to do so, the Centre may decide to reduce their fees in accordance

Arbitration Rules and Procedures: How are the arbitration rules designed to enhance efficiency?	with Article 45(12) of the 2011 Arbitration Rules. The upcoming 2024 Arbitration Rules, in Article 17(1) and 17(4), require, on the one hand, the arbitral tribunal to conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute and the parties, and, on the other hand, the parties to make every effort to cooperate towards the efficient conduct of the proceedings and to avoid unnecessary delay and expense. If the arbitral tribunal fails to do so, the Centre may decide to reduce their fees in accordance with Article 45(13) of the upcoming 2024 Arbitration Rules. The upcoming 2024 Arbitration Rules also include a set of Expedited Rules and Emergency Arbitrator Rules, meant to provide parties with a more efficient dispute resolution mechanism adapted to their needs.
Are there mechanisms for expedited proceedings when necessary?	Under the current 2011 Arbitration Rules, there are no provisions for expedited proceedings. The upcoming 2024 Arbitration Rules contain in their Annex 3 a set of Expedited Arbitration Rules.
Pre-Hearing Procedures: Describe any pre-hearing conferences or procedures aimed at streamlining the arbitration process.	Article 17(2) of the 2011 Arbitration Rules, and of the upcoming 2024 Arbitration Rules, requires the arbitral tribunal to establish the provisional timetable for the proceedings as soon as practicable after its constitution. In practice, this will mean either consulting the parties in the preparation of a procedural order or holding a procedural hearing, either in person or virtually. At a more advanced stage of the proceedings, the parties and tribunal are free to hold any number of 'case management conferences' in advance of any hearings or in light of any change of circumstances. Article 17(3) of the upcoming 2024 Arbitration Rules emphasizes the arbitral tribunal's ability to make use of any technological means in the conduct of the proceedings, namely in furtherance of its obligation to conduct the proceedings in an efficient man ner.
Document Submission and Discovery: How are document submission and discovery managed to avoid unnecessary delays?	In practice, the timeline for document submission and discovery is managed by the arbitral tribunal, after consultation with the parties. Nevertheless, the parties usually file a hard copy of their submissions and/or correspondences with the Centre for transmission to the other party and the arbitral tribunal.

Timeline Management

Timeliness of Decisions: On average, how long does it take for arbitrators to render decisions following the conclusion of hearings?	The Centre encourages the arbitral tribunal to issue the award within three months from the date of the last written submission or hearing, whichever occurs later.
Expedited Procedures: Are there provisions for expedited procedures in certain cases, and how are they implemented?	Under the current 2011 Arbitration Rules, there are no provisions for expedited proceedings. The upcoming 2024 Arbitration Rules contain in their Annex 3 a set of Expedited Arbitration Rules.
Extensions and Delays: How does the centre handle requests for extensions and manage any potential delays?	Prior to the constitution of the arbitral tribunal, parties may request extensions to appoint their arbitrators or to deposit the costs from the Centre. In deciding on these requests, the Centre takes into account all relevant circumstances and strives to balance the interests of the parties. After the constitution of the arbitral tribunal, parties may request extensions to deposit the costs from the Centre. In deciding on these requests, the Centre takes into account all relevant circumstances and strives to balance the interests of the parties.
Continuous Improvement Initiatives: Are there ongoing efforts to identify and implement improvements to enhance efficiency?	The Centre is currently in the process of issuing the newest iteration of its Rules, which takes into account international developments in arbitration as well as the specific needs of CRCICA's users.

Cost and Resource Management

Fee Structure: Provide an overview of the arbitration fees charged by the centre.	The Costs of the arbitration are divided into: (1) administrative fees, (2) arbitrators' fees, and (3) expenses. The administrative fees are determined in accordance with Table 1 annexed to the 2011 Arbitration Rules and to the upcoming 2024 Arbitration Rules. The arbitrators' fees are determined, in the 2011 Arbitration Rules, in accordance with Table 2 where the sum in dispute does not exceed USD 3 million and in accordance with Table 3 where the sum in dispute exceeds USD 3 million. In the upcoming 2024 Arbitration Rules, the fees of the sole arbitrator are determined in accordance with Table 2 and the fees of the Arbitral Tribunal are determined in accordance with Table 3 in Annex 1. Expenses, if any, are determined on a case by case basis. The schedule of costs and the CRCICA cost calculator are available through the following link: https://crcica.org/arbitration/cost -calculator/
Are fees fixed, or do they vary based on factors such as the complexity of the case?	The administrative fees are determined based on the sum in dispute at a fixed rate in the 2011 and the upcoming 2024 Arbitration Rules. Under the 2011 Arbitration Rules, the arbitrators' fees where the sum in dispute does not exceed USD 3 million are determined at a fixed rate. Where the sum in dispute exceeds USD 3 million, the arbitrators' fees are determined within a minimum and maximum scale, taking into account the complexity of the case and the seniority of the arbitrators (Practice Note V). Under the upcoming 2024 Arbitration Rules, the arbitrators' fees where the sum in dispute does not exceed USD 500,000 are determined at a fixed rate. Where the sum in dispute exceeds USD 500,000, the arbitrators' fees are determined within a minimum and maximum scale, taking into account the complexity of the case and the experience of the arbitrators (Article 45(7) of the upcoming 2024 Arbitration Rules).
Fee Transparency: How transparent is the fee structure to parties involved in arbitration?	The schedule of fees is available on the Centre's website. There is also a CRCICA Cost Calculator that enables foreseeability of costs.
Is there a breakdown of costs provided to parties?	Pursuant to Article 42 of the 2011 Arbitration Rules and Article 41 of the upcoming 2024 Arbitration Rules, the arbitration costs are made up of the administrative fees, the arbitral tribunal's fees and various expenses.

Fee Waivers or Reductions: Are there provisions for fee waivers or reductions based on financial circumstances?	No, there are no provisions in the 2011 Arbitration Rules or the 2024 Arbitration Rules. In exceptional circumstances, subject to the parties' request, the Centre may accept payment of the Costs in local currency instead of in USD.
Cost Predictability: How does the arbitration centre ensure predictability in terms of costs for parties?	On the Centre's website, parties can find the CRCICA Cost Calculator, which enables foreseeability of costs. Even if the Centre comes out with a new fee structure or schedule, they do not apply to ongoing cases, thereby ensuring predictability of costs.
Are there mechanisms to provide estimates or control costs efficiently?	On the Centre's website, parties can find the Cost Calculator, which enables foreseeability of costs.
Cost Management: Describe any measures taken to manage and control costs throughout the arbitration process.	The 2011 Arbitration Rules, in Article 17(7), require the arbitral tribunal to conduct the proceedings efficiently, so as to avoid unnecessary delay and expenses. If the arbitral tribunal fails to do so, the Centre may decide to reduce their fees in accordance with Article 45(12) of the 2011 Arbitration Rules. The upcoming 2024 Arbitration Rules, in Article 17(1) and 17(4), require, on the one hand, the arbitral tribunal to conduct the proceedings so as to avoid unnecessary delay and expense, and, on the other hand, the parties to make every effort to cooperate towards the efficient conduct of the proceedings and to avoid unnecessary delay and expense. If the arbitral tribunal fails to do so, the Centre may decide to reduce their fees in accordance with Article 45(13) of the upcoming 2024 Arbitration Rules.
How are cost overruns addressed?	Under the 2011 Arbitration Rules, the Centre may, in exceptional circumstances, deviate from the administrative fees set out in Table 1 annexed to these Rules (Article 44(5)) and/or, upon the approval of the Advisory Committee, determine the fees of the arbitral tribunal at 25% higher or lower than that determined by Table 2 or Table 3 annexed to these Rules (Article 45(12)). Otherwise, Article 48 of the 2011 Arbitration Rules allows the Centre to fix an amount to cover any reasonable

	travel or other expenses referred to in Article 42(2)(d)-(h) of these Rules. These same provisions exist under the upcoming 2024 Arbitration Rules, in Articles 44(5), 45(13), 48 and 41(2)(d)-(h), respectively.
Third-Party Funding: Does the arbitration centre have rules on third-party funding?	Under the current 2011 Arbitration Rules, there are no provisions on third-party funding. The upcoming 2024 Arbitration Rules contain in their Article 53 a requirement for parties to disclose the existence of any third party funding agreement and the identity of the funder at the commencement of and throughout the arbitral proceedings.
Is there a requirement for parties to disclose any third-party funding arrangements?	Under Article 53 of the upcoming 2024 Arbitration Rules, there is a requirement for parties to disclose the existence of any third party funding agreement and the identity of the funder at the commencement of and throughout the arbitral proceedings.
How is this information handled during the arbitration proceedings?	N/A
Impact on Costs and Decision-Making: How can third-party funding impact the overall costs of arbitration?	N/A
Are there measures in place to ensure that third-party funding does not unduly influence decision-making?	N/A
Resource Allocation: How does the centre manage its resources to handle caseloads effectively?	N/A

Technological Infrastructure

Case Management System: Describe the case management system used at the arbitration centre. Is it an in-house system or a commercially available platform?	N/A N/A
Online Case Filing: Does the centre offer online case filing options for parties?	Yes, through the following link: https://crcica.org/arbitration/fnao
How streamlined is the process for submitting case documents electronically? **Virtual Hearings:** To what extent does the centre utilize virtual hearings?	Any written submissions in a case are submitted in hard copy as well as electronically via email. Since the outbreak of COVID-19, the Centre has encouraged users to privilege remote hearings. Data on the use of virtual hearings is available as part of the Centre's Caseload Reports, available through the following link: https://crcica.org/news -list/ Article 17(3) of the upcoming 2024 Arbitration Rules emphasizes the arbitral tribunal's ability to make use of any technological means in the conduct of the proceedings, namely in furtherance of its obligation to conduct the proceedings in an efficient manner.
Are there specific technologies or platforms used for virtual proceedings?	The Centre usually provides Zoom links for hearings or pre-hearing conferences. Occasionally, parties will opt for Microsoft Teams.
Security and Confidentiality: Describe the measures in place to ensure the security of case-related data	N/A

How is sensitive information protected during electronic transmissions?	Password protected links for documents Firewall on email
How does the centre ensure the confidentiality of arbitration proceedings in an online environment?	N/A

Environmental Sustainability

Environmental Practices: What measures are in place to minimize the environmental impact of the centre's operations?	• Recycling paper • No more individual water bottles in favour of communal water dispensers
Are there initiatives related to energy efficiency, waste reduction, or sustainable building practices?	N/A
Carbon Footprint: Has the centre conducted assessments to measure its carbon footprint?	No
Are there strategies in place to offset or reduce the carbon footprint?	Not at the moment

Quality Assurance

Code of Ethics: Existence of a code of ethics for arbitrators. Programs for arbitrator training and development.	Not at the moment The Centre is a registered course provider for the Chartered Institute of Arbitrators, and delivers an arbitration course at least once a year. The Centre also organises workshops and seminars on ADR mechanisms throughout the year.
Facilities: Description of hearing rooms and facilities.	CRCICA currently has 3 hearing rooms and 2 breakout rooms. Named after prominent figures in Egyptian arbitration, the Dr. Mohamed Aboul-Enein, Prof. Mohsen Shafik and Judge Mamdouh Attia hearing rooms toe the line between modern design and oriental identity.

	All of our rooms include: • Wi-Fi & wired network connection to internet; • Tea & Coffee Stands; • Audio recording in WAV & MP3 to Compact Flash, SD/SHC and/or USB memory; • Audio-visual and technical support; • Complementary water and writing pads; and • Power outlets.
Measures taken to ensure accessibility for diverse participants.	The Centre's premises are located in a building with four elevators as well as ramps at the entrance. The Centre's premises themselves contain no steps. The Centre's auditorium and its main hearing room contain translation booths.
User Experience: How does the centre collect feedback from parties regarding costs and the overall arbitration process? Are there avenues for parties to express concerns about costs?	It does not N/A
Collaborations: Any partnerships with legal institutions, organizations, or industry bodies.	The Centre has concluded multiple cooperation agreements with various international and regional organisations. These are available through the following link: https://crcica.org/cooperation - agreements/
International Reach: Experience in handling international arbitration cases.	CRCICA is an **impartial and independent arbitral institution with over 40 years of experience** in administering institutional and ad hoc international and domestic commercial arbitrations. Parties to CRCICA arbitrations and arbitrators appointed in CRCICA administered cases come from more than 50 countries all over the globe. CRCICA has wide experience managing purely local disputes where all parties and arbitrators are Egyptian; cases with an international element; as well as purely international cases where none of the parties or the contract in dispute has a link to Egypt. Between the years 2017 and 2021, more than 100 non- Egyptian arbitrators were appointed in CRCICA

	arbitration cases from Australia, Austria, Bahrain, Cameroon, Canada, France, Ireland, Italy, Jordan, Lebanon, Morocco, Nigeria, Spain, Sudan, Tanzania, Tunisia, United Arab Emirates, the United Kingdom and the United States of America.
Compliance and Legal Framework: Adherence to relevant national and international arbitration laws.	The 2011 Arbitration Rules apply to arbitrations as agreed by the parties except where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail (Article 1(3)). The same provision appears in Article 1(3) of the upcoming 2024 Arbitration Rules.
Strategic Initiatives: Any upcoming plans or initiatives to enhance services.	2024 Arbitration Rules
Continuous Improvement: Processes in place for continuous improvement.	N/A

Groupement Inter-Patronal du Cameroun Arbitration and Mediation Centre (GICAM)

General Information:

Name of the Arbitration Centre: GICAM Arbitration and Mediation Centre .

Location and Address: Rue des Ministres, Bonanjo, BP. 829 Douala?

Contact Person:
Name: David NYAMSI
Title: General Secretary
Email: davidnyamsi@hotmail.com / sfouda@legecam.cm / cmag@legecam.cm
Phone: 237 656 59 94 23 / 237 699 82 60 29

Year Established: 1997 and first cased registered in 1998.

Legal Status (e.g., non-profit, government-affiliated, private entity): private entity

Operational Details:

Description of Arbitration Services Offered: Arbitration, Mediation, Proposal or Appointing Authority, Investment Arbitration, Trainings,

Types of disputes handled: Debt recovery, commercial lease, non execution to contract terms.
Industries or sectors served: petrol sector, agrifood sector, off road sector, agro processing secto, telecommunications sector, import/export sector, hospitality sector, energetic sector, transport industry, business insurance, commercial leasing sector, vocational training, automobile sector, hydrocarbons industry, distillery sector, lease-management sector, agriculture sector, public procurement markets.

QUESTIONS:

Case Management

Case Intake and Filing: Describe the process for filing a case with the arbitration centre.	The process for submitting a file to the Centre is as follows: 1. receipt of the request for arbitration 2. verification of the arbitration clause 3. payment of examination fees.
Are there online filing options for parties?	NO
Timeliness of Case Initiation: On average, how long does it take from case filing to the initiation of the arbitration process?	Between 2 and 8 months (because it completely depends on the reactivity of the parties)

Arbitrator Selection

Panel of Arbitrators: Number of arbitrators on the panel.	A single arbitrator or three arbitrators
Qualifications and expertise criteria for arbitrator selection.	• Disputed sector • Specialty and skills • Feedback from previous experiences • Availability • Participation rate in training organized by the Centre.
Arbitrator Appointment: How is the appointment of arbitrators handled?	1. Choice of the composition of the arbitral tribunal by the parties or by the Centre in the event of disagreement between the parties 2. Designation by the parties or the Centre in the event of failure of one of the parties or disagreement between the parties 3. Transmission, for opinion, of the CVs and declarations of independence of the arbitrators appointed to the parties 4. Appointment of the sole arbitrator by the Centre in the event of disagreement between the parties or of the President of the arbitral tribunal 5. Transmission, for opinion, of the CVs and declarations of independence of the arbitrators appointed to the parties 6. Confirmation by the Centre of the constitution of the arbitral tribunal.
Is there a streamlined process for selecting and confirming arbitrators?	Not yet.
Availability of Arbitrators: How does the centre ensure the availability of arbitrators for timely case resolution?	The Centre asks the arbitrator to confirm his availability to hear the dispute and conduct the process to its end. The arbitration rules also require from arbitrators to respect the time limits provided for the procedure. Moreover, arbitrators who don't respect deadlines may be challenged during the procedure.
Are there mechanisms in place to address scheduling conflicts?	Reminders by email and physical mail to the arbitral tribunal.

Procedural Efficiency

Arbitration Rules and Procedures: How are the arbitration rules designed to enhance efficiency?	The Centre's arbitration texts are subject to revision/precedent to align with regional and international practices but above all to allow users to provide efficient arbitration services.
Are there mechanisms for expedited proceedings when necessary? **Pre-Hearing Procedures:** Describe any pre-hearing conferences or procedures aimed at streamlining the arbitration process.	The Centre in article 22 of its Arbitration Rules has provided for the accelerated procedure. The pre-hearing conference is the responsibility of the arbitral tribunal and the parties: 1. Exchange between the arbitral tribunal and the parties on the format of the pleadings hearing, 2. Exchange between the arbitral tribunal and the parties on the hearing of witnesses if necessary.
Document Submission and Discovery: How are document submission and discovery managed to avoid unnecessary delays?	The arbitration Rules provides many options in documents submission, such as by mail, by physical transmission, or by bailiffs transmissions, see art.18 of CMAG arbitration Rules: The arbitral tribunal defines during the scoping meeting the method of transmission of the documents: first by email then by physical mail to the Centre which is responsible for transmission to the recipients. In the event of need by the Tribunal of new documents, the arbitral tribunal will request the party concerned to produce the document and submit them to discussion of the other parties. Plus, there is at CMAG, the signed mission act by the arbitrators and parties which contain a procedural calendar to allow the parties to produce their briefs and other writings. The possibility for witnesses to send their respective statement in writing also exists.

Timeline Management

Timeliness of Decisions: On average, how long does it take for arbitrators to render decisions following the conclusion of hearings?	30 days, see art. 33.1 of CMAG 2019 Arbitration rules.
Expedited Procedures: Are there provisions for expedited procedures in certain cases, and how are they implemented?	Yes, there is a provision for the accelerated procedure. See article 22 of the Arbitration Rules of the Centre. The accelerated procedure is implemented at the request of one of the parties after reception of the observations of the other party.
Extensions and Delays: How does the centre handle requests for extensions and manage any potential delays?	Extension requests are submitted to the Standing Committee which judges the relevance of the request and takes a decision which will be communicated to the parties and to the arbitral tribunal. The same goes for delays. In addition, the Centre may issue alerts or reminders.
Continuous Improvement Initiatives: Are there ongoing efforts to identify and implement improvements to enhance efficiency?	Yes, the Standing Committee and the General Secretariat are regularly informed of the latest news in arbitration both in the Ohada space and in other international institutions in ordrer to ajust the practice of CMAG if necessary to international standards or evolutions in the world of arbitration. each time the Centre faces an unknown situation

Cost and Resource Management

Fee Structure:
Provide an overview of the arbitration fees charged by the center.

Centre d'Arbitrage du GICAM
Détermination des Frais Administratif et des Honoraires des Arbitres

Aff. N°CMAG XXX C/ YYY

DEMANDEUR

CONSEIL / ADRESSE

Frais d'axemen (non déductible) payés par XXX Annexe III, Titre II Barème, Point 1. Frais d'examen du Centre	250 000
Détermination de l'intérêt du litige à la date du	100 000 000
Nombre de défendeurs	1
Demande reconventionnelle	0
Demande additionnelle	0
Frais personnels des arbitres	3 000 000
Intérêt du litige	100 000 000

Frais administratifs (FCFA)

Tranche	Base	Taux	Montant
jusqu'à 5 000 000	5 000 000	300 000	300 000
5 000 001 à 25 000 000	20 000 000	4,50%	900 000
25 000 001 à 50 000 000	25 000 000	3,50%	875 000
50 000 001 à 100 000 000	50 000 000	3,00%	1 500 000
100 000 001 à 250 000 000		2,50%	
250 000 001 à 500 000 000	0	2,00%	0
500 000 001 à 1 000 000 000	0	1,00%	0
au-dessus 1 000 000 000	0	0,50%	0
Total général	**100 000 000**		**3 575 000**

Honoraires des arbitres (FCFA)

Tranche	Base	Taux	Montant
jusqu'à 5 000 000	5 000 000	750 000	750 000
5 000 001 à 25 000 000	20 000 000	4,50%	900 000
25 000 001 à 50 000 000	25 000 000	3,50%	875 000
50 000 001 à 100 000 000	50 000 000	3,00%	1 500 000
100 000 001 à 250 000 000		2,50%	1 850 267
250 000 001 à 500 000 000	0	2,00%	0
500 000 001 à 1 000 000 000	0	1,00%	0
au-dessus 1 000 000 000	0	0,50%	0
Total général	**100 000 000**		**4 025 000**

Frais personnels des arbitres	1 500 000
Montant de la provision (HT)	9 100 000
Montant de la provision par partie (HT)	4 550 000
TVA	875 875
Net à verser par DEMANDEUR (TTC)	**5 425 875**

Are fees fixed, or do they vary based on factors such as the complexity of the case?	Fees are set according to the Centre's scale or at the discretion of the Standing Committee when an arbitration request has not been quantified. Fees can also be increased or decreased depending on the complexity of the dispute, the speed of the procedure and the time spent.
Fee Transparency: How transparent is the fee structure to parties involved in arbitration?	The Centre's scale is within the reach of the parties i.e available on the GICAM website where it can be freely downloaded by everybody. The Centre, at the request of one or more parties, may carry out a simulation of the costs to be paid at the very beginning of the procedure. The invoices sent to the parties are detailed.
Is there a breakdown of costs provided to parties? **Fee Waivers or Reductions:** Are there provisions for fee waivers or reductions based on financial circumstances?	Yes. The Standing Committee takes a decision after examining the request for reduction of the part in financial hardships and the documents that have been presented to support their requests.
Cost Predictability: How does the arbitration centre ensure predictability in terms of costs for parties?	1. Thanks to the scale, costs are controlled. 2. A provisional provision is made for any costs potentially incurred during the procedure (when parties are making additional or counterclaims).
Are there mechanisms to provide estimates or control costs efficiently?	There is an Excel file based on the scale which allows you to determine the arbitration provision. The costs requested by the parties must always be justified and the court approves those costs only if it considers them reasonable.
Cost Management: Describe any measures taken to manage and control costs throughout the arbitration process.	1. Verification of the interest of the dispute 2. Verification of counterclaims and additional claims 3. Calculation based on the scale 4. Evaluation of the forecast provision 5. Preparation of invoices 6. Invoices sent to the parties. 7. Monitoring of payment of invoices by the parties 8. Identification of new requests during the procedure 9. Calculation based on the centre scale. 10. Invoices sent to the parties. 11. Monitoring of payment of invoices by the parties

How are cost overruns addressed?	12. Updated financial monitoring table for cost management and control. 13. Reimbursement of the provisional provision if the balance is excess An additional provision is requested from the parties.
Third-Party Funding: Does the arbitration centre have rules on third-party funding?	No there is not.
Is there a requirement for parties to disclose any third-party funding arrangements?	No there is not.
How is this information handled during the arbitration proceedings? **Impact on Costs and Decision-Making:** How can third-party funding impact the overall costs of arbitration?	In Ohada area, there's not yet any rules about TPF. The main goal of justice is to allow parties to access to it. When unable to face arbitration fees coming from their claims (with strong grounds), the parties should have opportunities to be financially funded in other to pay their arbitration fees and obtain justice. It's vital that the TPF rules become trivia in Ohada aera, just as it has become in Australia, Hong-Kong and Singapore, and most recently, in Nigeria where the parliament just approved that arbitral proceedings could be funded by third parties. We therefore consider that TPF is the future of financement in arbitration and/or litigation procedures.
Are there measures in place to ensure that third-party funding does not unduly influence decision-making?	Not yet. We'll certainly have to update our arbitration rules in the next years. But the Ohada legislator will have to step up to fix the TPF in Ohada arbitration.
Resource Allocation: How does the centre manage its resources to handle caseloads effectively?	The Centre applies a rigorous financial policy, which consists among other things, to avoird unnecessary expenses from the parties, encouraging when necessary the use of new technologies (virtual audiences, sending documents in digital format) in the procedure.

Technological Infrastructure

Case Management System: Describe the case management system used at the arbitration centre.	Files are created with sub-folders allowing any document relating to the procedure to be classified.
Is it an in-house system or a commercially available platform?	It is an internal system at the Centre.
Online Case Filing: Does the centre offer online case filing options for parties?	NO
How streamlined is the process for submitting case documents electronically?	Not Concerned.
Virtual Hearings: To what extent does the centre utilize virtual hearings?	Virtual hearings are used in proceedings where some members of the arbitral tribunal reside abroad . The virtual hearings are therefore set after the approval of that form of audiences by all the parties.
Are there specific technologies or platforms used for virtual proceedings?	Yes. ZOOM Meetings and sometimes TEAMS.
Security and Confidentiality: Describe the measures in place to ensure the security of case-related data	On a physical level, the Center has its own liaison officer. The Center saves procedure data both physically via files and electronically via a hard drive.
How is sensitive information protected during	The mention of confidentiality is clearly indicated in mails. As well as the sanction attached if the confidentiality is not respected. Plus, our arbitration rules confirm that all discussions, documents, or

electronic transmissions?	exchanges occurred during the process are absolutely confidential. .
How does the centre ensure the confidentiality of arbitration proceedings in an online environment?	The ZOOM Meetings are monitored during all session by CMAG IT Manager. So there's no easy intrusion (so far, we've never have any intrusion during arbitration hearings) from outside. The IT Manager will have to improve the security of hearings in other to prevent cyberattacks which can endangered arbitration procedures.

Environmental Sustainability

Environmental Practices: What measures are in place to minimize the environmental impact of the centre's operations?	Reducing the rate of paper use, digitalization of the Center.
Are there initiatives related to energy efficiency, waste reduction, or sustainable building practices?	Yes, the preponderance is given to emails rather than physical papers.
Carbon Footprint: Has the centre conducted assessments to measure its carbon footprint?	No
Are there strategies in place to offset or reduce the carbon footprint?	NO

Quality Assurance

Code of Ethics: Existence of a code of ethics for arbitrators.	Yes.
Programs for arbitrator training and development.	Yes, Meetings around arbitration, training organized both by the Centre and by other arbitration institutions.
Facilities: Description of hearing rooms and facilities.	The Centre's premises are being transformed to provide more comfort to the parties and to provide latest tools for the proper conduct of procedures.
Measures taken to ensure accessibility for diverse participants.	The premises of the Centre are accessible to the public either by stairs or by an elevator.

User Experience: How does the centre collect feedback from parties regarding costs and the overall arbitration process?	At the end of a procedure, the Center Secretariat approaches the parties and the arbitral tribunal to obtain their feedback.
Are there avenues for parties to express concerns about costs?	The parties can express themselves via email, letter, or verbal complaint.
Collaborations: Any partnerships with legal institutions, organizations, or industry bodies.	There is: CMAP, AFA, JUS MUNDI, Collège de Paris, Arbitral Women.
Compliance and Legal Framework: Adherence to relevant national and international arbitration laws.	The CMAG is managing arbitration rules under Ohada arbitration Law and any other laws chosen by the parties.
Strategic Initiatives: Any upcoming plans or initiatives to enhance services.	1. Frequent organisations of practical training sessions (meetings around arbitration) open not only to arbitrators, but also to lawyers and counsels (online training since the Covid19 Pandemic). 2. Publication of the Centre's activities on the Centre's website. 3. A regularly updated list of arbitrators internationally renowned but also young arbitrators.
Continuous Improvement: Processes in place for continuous improvement.	Processes in place for continuous improvement.

Ghana Arbitration Centre

General Information

Name of the Arbitration Center: **Ghana Arbitration Centre**

Location and Address: **House No. 24, Farrar Avenue, Adabraka, Accra -Ghana**

Contact Person:

Name: **Emmanuel Amofa, Esq.**
Title: **Administrator**
Email: **info@arbitrationcentregh.com**
Phone: **+233 (0) 302 240820 / +233 302 240924 / +233 20 817 4604**

Year Established: **1996**

Legal Status (e.g., non-profit, government-affiliated, private entity): **Non-profit company limited by guarantee**

Operational Details:

Description of Arbitration Services Offered: Types of disputes handled. Industries or sectors served.

Energy, Mining and Power, Construction, Real Estate/Property Management, Manufacturing, Banking and Finance, Investment, Agribusiness, Commercial, Maritime, Insurance, Telecommunication, Securities, Debt Recovery and Aviation.

QUESTIONS:

Case Management

Case Intake and Filing: Describe the process for filing a case with the arbitration centre.	Filing of cases is done by delivery to the Secretariat of the Centre and/or electronically via email.
Timeliness of Case Initiation: On average, how long does it take from case filing to the initiation of the arbitration process?	Approximately a month if all processes or arbitration agreements are in order.

Arbitrator Selection

Panel of Arbitrators: Number of arbitrators on the panel.	**30**
Qualifications and expertise criteria for arbitrator selection. **Arbitrator Appointment:** How is the appointment of arbitrators handled? Is there a streamlined process for selecting and confirming arbitrators?	The Centre is governed by the Ghana Arbitration Centre Rules. Under these rules, the default number for the appointment of an arbitrator by the Centre in the absence of an arbitration agreement is one arbitrator. The qualifications and expertise of arbitrators are determined by the parties. Beyond that the Centre takes account of the qualifications of arbitrators in the areas of dispute and the high level of integrity. Appointment of arbitrators are done by a list system and/or by an arbitrators' appointment committee.
Availability of Arbitrators: How does the centre ensure the availability of arbitrators for timely case resolution? Are there mechanisms in place to address scheduling conflicts?	There is a dedicated team tasked with the duty of monitoring the cases and ensuring that arbitrators are available for hearings. A central diary is also maintained by the Centre to avoid clashes of cases. In addition, an undertaking is made by arbitrators to devote time to the arbitration process.

Procedural Efficiency

Arbitration Rules and Procedures: How are the arbitration rules designed to enhance efficiency?	The Rules provide for matters such as appointment of tribunal; disclosure, challenge and confirmation of procedure; order of proceedings; arbitration in the absence of a party; time of awards among others.
Are there mechanisms for expedited proceedings when necessary?	**Yes**
Pre-Hearing Procedures: Describe any pre-hearing conferences or procedures aimed at streamlining the arbitration process.	Arbitration Management Conferences are held by Tribunals upon their constitution; Intermittent procedural meetings are held where necessary during the proceedings; and Pre-hearing reviews are also held prior to the commencement of hearings.
Document Submission and Discovery: How are document submission and discovery managed to avoid unnecessary delays?	Discoveries are discussed at the Arbitration Management Conference or the First Procedural Meeting where the parties and the tribunal agree on a time frame within which discoveries are requested and produced thereby avoiding unnecessary delays.

Timeline Management

Timeliness of Decisions: On average, how long does it take for arbitrators to render decisions following the conclusion of hearings?	**one month or 30 business days**
Expedited Procedures: Are there provisions for expedited procedures in certain cases, and	Yes. The Rules provide for notices by telephone, appointment of a tribunal within a period of not less than 10 days, a day's hearing and an award rendered within a period of not less than 5 business days from the close of hearing.

how are they implemented?	
Extensions and Delays: How does the centre handle requests for extensions and manage any potential delays?	Subject to the consent of the Arbitrator(s), the parties and the Centre [on its own and for a good cause] may modify any agreed time except the time for rendering an Award.
Continuous Improvement Initiatives: Are there ongoing efforts to identify and implement improvements to enhance efficiency?	**Yes**

Cost and Resource Management

Fee Structure: Provide an overview of the arbitration fees charged by the centre. Are fees fixed, or do they vary based on factors such as the complexity of the case?	The Fees vary and are case-specific based on factors such as complexity and any special qualifications of the arbitrator(s).
Fee Transparency: How transparent is the fee structure to parties involved in arbitration? Is there a breakdown of costs provided to parties ?	Fees are disclosed to the parties upon appointment of the Tribunal and a breakdown of the costs involved are provided, particularly, the administrative costs.

Fee Waivers or Reductions: Are there provisions for fee waivers or reductions based on financial circumstances?	**Yes**
Cost Predictability: How does the arbitration centre ensure predictability in terms of costs for parties? Are there mechanisms to provide estimates or control costs efficiently?	The Centre is in the process of amending its Rules, which will include an hourly-rate fee structure. This anticipated amendment will ensure cost predictability.
Cost Management: Describe any measures taken to manage and control costs throughout the arbitration process.	Avoiding unnecessary delays through transitioning to the use of ICT.
How are cost overruns addressed?	They are discussed with the parties but will be minimized with the introduction of hourly rate charge
Third-Party Funding: Does the arbitration centre have rules on third-party funding?	**No**
Impact on Costs and Decision-Making:	N/A

How can third-party funding impact the overall costs of arbitration?	
Are there measures in place to ensure that third-party funding does not unduly influence decision-making?	N/A
Resource Allocation: How does the centre manage its resources to handle caseloads effectively?	Through an internal case management system

Technological Infrastructure

Case Management System: Describe the case management system used at the arbitration centre. Is it an in-house system or a commercially available platform?	**In-house system**
Online Case Filing: Does the centre offer online case filing options for parties?	**Yes**
How streamlined is the process for submitting case documents electronically?	**via email**

Virtual Hearings: To what extent does the centre utilize virtual hearings?	Upon agreement by the parties and/or as and when necessary
Are there specific technologies or platforms used for virtual proceedings?	**Zoom**

Environmental Sustainability

Environmental Practices: What measures are in place to minimize the environmental impact of the centre's operations? Are there initiatives related to energy efficiency, waste reduction, or sustainable building practices?	The Centre is moving towards a paperless system of arbitration practice and adopting solar energy for all its activities.
Carbon Footprint: Has the centre conducted assessments to measure its carbon footprint? Are there strategies in place to offset or reduce the carbon footprint?	No

Quality Assurance

Code of Ethics: Existence of a code of ethics for arbitrators.	**Yes**
Programs for arbitrator training and development.	Continuous training programs for arbitrators and potential arbitrators
Facilities: Description of hearing rooms and facilities.	Two rooms designated for hearings with one fully furnished and functional with the required equipment necessary to facilitate efficient hearings, breakrooms and arbitrator(s) conference room.

Measures taken to ensure accessibility for diverse participants.	
User Experience: How does the centre collect feedback from parties regarding costs and the overall arbitration process?	Through the use of feedback questionnaires.
Are there avenues for parties to express concerns about costs? **Collaborations:** Any partnerships with legal institutions, organizations, or industry bodies.	**Yes** Yes. Local ADR institutions and other African Arbitral institutions
International Reach: Experience in handling international arbitration cases.	**Yes**
Compliance and Legal Framework: Adherence to relevant national and international arbitration laws.	**Yes**
Strategic Initiatives: Any upcoming plans or initiatives to enhance services.	Yes. Review of the Centre's Arbitration Rules, strengthening of the use of ICT and collaboration with African/international arbitration institutions.
Continuous Improvement: Processes in place for continuous improvement.	**Yes**

Lagos Court of Arbitration

General Information

Name of the Arbitration Center: Lagos Court of Arbitration

Location and Address: 1A Remi Olowude Street, Lekki Phase 1 Okunde Bluewater Scheme, Lagos

Contact Person: Ogechukwu Beluonwu-ogbo

Name: Ogechukwu Beluonwu-ogbo
Title: In-House Counsel
Email: o.beluonwu-ogbo@lca.org.ng
Phone: 09066267475

Year Established: 9th November 2012

Legal Status (e.g., non-profit, government-affiliated, private entity): private entity

Operational Details

Description of Arbitration Services Offered:
Adhoc Arbitration – Here parties agree on the procedure, costs and timelines with the arbitrators and the LCA provides services such as the appointment of arbitrators, tribunal secretaries, transcription and fund holding.

Administered Administration – The LCA administers the process through its submitted procedural rules. The LCA administrative and arbitrator fees are set at the beginning of the proceedings based on parties claims and the LCA fee schedule. Types of disputes handled. Local and International commercial disputes Industries or sectors served. Property, Construction, Oil and Gas

QUESTIONS:

Case Management

Case Intake and Filing: Describe the process for filing a case with the arbitration centre.	Are these A notice including a statement of case, a notification communication or proposal or written communications may be transmitted by any means of communication which provides or allows for a record of its transmission. Such notice and all it annexed documents shall be supplied in a number of copes sufficient to provide a copy for each party, each arbitrator and the secretariat. The submitting party also has to make payment of a N200,000 un-refundable filing fees.

Are there online filing options for parties?	Yes there is and this is conducted via email.
Timeliness of Case Initiation: On average, how long does it take from case filing to the initiation of the arbitration process?	In the case of submission to the LCA standard rules. An average of 3-4 months.

Arbitrator Selection

Panel of Arbitrators: Number of arbitrators on the panel.	The LCA default panel of Arbitrator typically comprises of 1 Arbitrator. 1 Arbitrator
Qualifications and expertise criteria for arbitrator selection.	This varies and is dependent on parties claim. Appointed Arbitrators typically hold an LL.M, MCIArb/FCIArb and SAN.
Arbitration Rules and Procedures:	b. LCA standard Arbitration Rule 2018 c. LCA Expedited Arbitration Rule 2018 d. Mediation Guidelines of the Lagos Court of Arbitration e. LCA Expedited Mediation Guidelines f. LCA Expedited Med/Arb Rules 2018
Arbitrator Appointment: How is the appointment of arbitrators handled?	This is initially subject to the arbitration clause agreed upon between parties and where parties are unable to reach an agreement, the President of the LCA appoints the same.
Is there a streamlined process for selecting and confirming arbitrators?	The appointment of the arbitrator(s) is subject to the discretion of the President of the LCA. Arbitrators appointed are selected from the LCA Panel of Neutrals. The Appointed arbitrator is requested to fill the LCA disclosure & Neutral Form as well as provide an executed comigration of the acceptance of appointment.
Availability of Arbitrators: How does the centre ensure the availability	Appointed Arbitrators are required to declare their availability to resolve the case resolution given the stipulated timelines agreed upon by parties.

of arbitrators for timely case resolution?	
Are there mechanisms in place to address scheduling conflicts?	Appointed Arbitrators are required to fill the LCA Disclosure form and Statement of Independence which requires that they disclose any scheduling conflicts for the LCA consideration. This is also provided for in our arbitration procedure rules.

Procedural Efficiency

Arbitration Rules and Procedures: How are the arbitration rules designed to enhance efficiency?	The arbitration rules of the LCA provide parties with timelines which are realistic and allows for speedy resolution of disputes.
Are there mechanisms for expedited proceedings when necessary?	The LCA Expedited rules provide allows for shorter notice, appointment and arbitral award periods, which ultimately helps parties resolve their disputes within a short period of time.

Timeline Management

Timeliness of Decisions: On average, how long does it take for arbitrators to render decisions following the conclusion of hearings?	Arbitrators are expected to render an arbitral award within one month.
Expedited Procedures: Are there provisions for expedited procedures in certain cases, and	There are provisions for interim measures at the request of a party to the dispute and they are temporary measures, by which at any time prior to the issuance of the award decides the dispute finally. It is implemented by the Arbitral Tribunal once the party requesting the interim measures satisfy the tribunal that harm which is not adequately reparable by an award of damages is likely to result if the measures are not ordered and such

how are they implemented?	a harm substantially outweighs the harm that is likely to result to the party against whom the measures are directed if granted and that there is a reasonable possibility that the requesting party will succeed on the merits of the claim.
Extensions and Delays: How does the centre handle requests for extensions and manage any potential delays?	The center notifies the other party of such an extension request and subject to no objection from the other party grants an extension which does not at any time exceed 7 days. In a case where an arbitral tribunal has been appointed, such extension requests are considered by the arbitral tribunal.
Continuous Improvement Initiatives: Are there ongoing efforts to identify and implement improvements to enhance efficiency?	Yes, there are. This is however on a case-by-case basis.

Technological Infrastructure

Case Management System: Describe the case management system used at the arbitration centre. Is it an in-house system or a commercially available platform?	It a combination of both.
Online Case Filing: Does the centre offer online case filing options for parties?	Yes
How streamlined is the process for submitting case	Parties are requested to submit case documents electronically via email.

documents electronically?	
Virtual Hearings: To what extent does the centre utilize virtual hearings?	80% of arbitration proceedings are held virtually.
Are there specific technologies or platforms used for virtual proceedings?	This is subject to parties' preferences. The most preferred however appears to be Zoom.
Security and Confidentiality: Describe the measures in place to ensure the security of case-related data. How is sensitive information protected during electronic transmissions?	We employ secure file transfer protocols, password management and data minimization policies
How does the centre ensure the confidentiality of arbitration proceedings in an online environment?	We restrict access to case documents to only authorized parties and the tribunal. Also online hearings are closed to the public and only party representatives and witnesses are allowed to be present.

Environmental Sustainability

Environmental Practices: What measures are in place to minimize the environmental impact of the centre's operations?	The LCA offers and collaborates on virtual arbitration training programs and webinars. This reduces travel emissions significantly.
Are there initiatives related to energy efficiency, waste	The LCA uses energy-efficient appliances and lighting systems. It also encourages responsible energy use within the center such as turning off

reduction, or sustainable building practices?	lights and electronics when not in use. We also promote a paperless environment by encouraging electronic filing and document management systems.
Carbon Footprint: Has the centre conducted assessments to measure its carbon footprint?	N/A
Are there strategies in place to offset or reduce the carbon footprint?	N/A

Quality Assurance

Code of Ethics: Existence of a code of ethics for arbitrators.	Yes there is.
Programs for arbitrator training and development.	Yes, there is, one of which is the LCA training school which would be re-launched next year.
Facilities: Description of hearing rooms and facilities. Measures taken to ensure accessibility for diverse participants.	The LCA has 4 hearing rooms, each equipped with speakers, mics, projectors as well as coffee break rooms for parties. The hearing rooms are situated on the First floor of the LCA Center and accessible at all times via an elevator. There is also the option of using the stairway as well.

The Arbitration Foundation of Southern Africa NPC

General Information

Name of the Arbitration Center: Arbitration Foundation of Southern Africa NPC

Location and Address: 1st Floor, Grindrod Tower, 8a Protea Place, Sandton 2145, Johannesburg, Gauteng, South Africa

Contact Person:

Name: Svetlana Vasileva

Title: Secretary General, AFSA International

Email: *svetlana@arbitration.co.za*

Phone: +27 11 320 0557; +27 11 320 0600

Year Established: 1996

Legal Status (e.g., non-profit, government-affiliated, private entity): Non-Profit

OPERATIONAL DETAILS

- Description of Arbitration Services Offered: The Arbitration Foundation of Southern Africa (AFSA) is an independent, private, non-profit institution providing comprehensive arbitration, mediation, and alternative dispute resolution services. As an esteemed institution, AFSA specialises in the administration of commercial disputes across various sectors. With a commitment to impartiality, efficiency, and excellence, AFSA offers tailored solutions to meet the specific needs of disputing parties, both locally and internationally.
- Types of Disputes Handled: Construction & engineering, maritime & shipping, mining & resources, telecommunications & technology, industrial & manufacturing, transportation & logistics, financial & banking, energy & resources, agriculture, corporate, trade and commercial disputes.
- Industries or Sectors Served: Parties filed claims across a range of sectors, including, among others, trade, commercial, corporate, maritime/shipping, construction/engineering, arts/entertainment, banking/financial services, commodities, energy, healthcare/pharmaceuticals, hospitality/travel, insolvency, insurance/reinsurance, IP/IT, landlord/tenant, media/broadcasting, real estate, technology/ science, telecommunications.

QUESTIONS:

Case Management

Case Intake and Filing: Describe the process for filing a case with the arbitration centre.	Filing an arbitration with the AFSA involves a structured process to ensure efficiency and clarity for all parties involved. Here's a step-by-step description of the process: (i) **Preparation** The party initiating the arbitration must prepare a Request for Arbitration. This document should include essential details such as the parties' names and contact information, a brief description of the dispute, the relief or remedy sought, and a reference to the arbitration agreement that provides for AFSA jurisdiction. The Request for Arbitration should also specify the number of arbitrators (if the arbitration agreement does not state this) and any proposals for appointing the arbitrator(s). The AFSA Rules assume that the claimant will file two separate submissions — a Request for Arbitration and a subsequent Statement of Case (see, e.g., Articles 17 of the AFSA International Rules 2021 and Article 20 of the AFSA Unadministered Standard and Expedited Rules). Where two separate submissions are envisaged, the Request for Arbitration merely sets the proceedings in motion and briefly describes the claim. Often, it also provides a figure for the amount in dispute that is subsequently used to calculate the advance on costs. The Request for Arbitration is then followed by a Statement of Claim, generally submitted after the arbitral tribunal has been constituted. The Statement of Claim is generally a more comprehensive document containing, *inter alia*, a full statement of the facts supporting the claim, the points at issue, and the legal grounds or arguments. While certain key evidentiary documents may accompany the Request for Arbitration, parties may substantiate their claims fully with the Statement of Claim. The Statement of Claim is thus the claimant's first comprehensive pleading.

Even where the arbitration rules distinguish between the Request for Arbitration and the Statement of Claim, the claimant is usually not prevented from combining the Request for Arbitration and the Statement of Claim, i.e. the claimant can initiate the arbitral proceedings by submitting a fully substantiated and comprehensive initial document (see, e.g. Article 4 of the AFSA Commercial Rules and Articles 2 of AFSA Rules for Expedited Arbitration). If the claimant chooses to do so, it must ensure that such document contains all the necessary content of both the Request for Arbitration and the Statement of Claim. Combining the Request for Arbitration and the Statement of Claim speeds up the proceedings. It can also show that the claimant is very serious about the case, sometimes leading to early settlement.

(ii) **Submission**

The claimant submits the Request for Arbitration to AFSA, along with the required registration fee. This submission can usually be made via email, postal mail, in person or through the AFSA online case management system on the AFSA website. The claimant should also provide a copy of the arbitration agreement upon which the arbitration is based. The AFSA's task is to transmit a copy of the Request for Arbitration to the respondent (see, e.g., Article 6 of AFSA Commercial Rules). However, when filing the Request for Arbitration, the claimant must transmit a copy of the Request to the respondent per Article 3(4) of the AFSA International Rules.

The claimant may choose any method of submission it considers appropriate, but whatever method is chosen, the claimant should ensure that it has means to prove that the Request for Arbitration was sent to and received by the respondent and AFSA and on which date this happened.

AFSA Expedited and Commercial Rules require the claimant to submit hard copies of the Request for Arbitration (see, e.g. Article 4(3) AFSA Commercial Rules) as the claimant must provide one copy for each party, plus one copy for each arbitrator and one copy for AFSA.

If the claimant is under time pressure to toll the statute of limitations, it should check whether it is sufficient to file a case electronically (for example, via email) within the statute of limitations. However, parties are well advised to verify that this is indeed the case.

	If the claimant is under time pressure to toll the statute of limitations, it should check whether it is sufficient to file a case electronically (for example, via email) within the statute of limitations. However, parties are well advised to verify that this is indeed the case. AFSA Expedited and Commercial Rules provide that the Request for Arbitration will only be notified to the respondent once the claimant has paid the non-refundable admin fee calculated on an *ad valorem* basis on the claim amount. For international arbitrations, the fixed non-refundable registration fee must be paid together with the filing of the Request for Arbitration. The fees are stipulated either in the International Rules 2021 — Annex 3 — Schedule of Cost or in the Annexe to the Expedited and Commercial Rules, effective from 1 April 2018.
Are there online filing options for parties?	Yes, via email or the AFSA website's online case management system.
Timeliness of Case Initiation:	The process is initiated with the Centre notifying Respondent(s) with the Notice of Arbitration. This usually occurs up to 1 week after the filing of the
On average, how long does it take from case filing to the initiation of the arbitration process?	On average, from case filing to the initiation of the arbitration (the "Commencement Date) at AFSA International, it takes approximately 15 days.

Arbitrator Selection

Panel of Arbitrators: Number of arbitrators on the panel.	The number of arbitrators on the various AFSA panels is as follows: 1) International Arbitrators Panel: There are 200 arbitrators; 2) AFSA-SADC Arbitrators Panel: This panel consists of 73 arbitrators; 3) CAJAC Johannesburg Arbitrators Panel: There are 37 arbitrators; 4) Domestic Arbitrators Panel: This panel has a substantial number of more than 800 arbitrators; 5) Business Rescue Panel: No data available; 6) Construction Panel: No data available; 7) Mediators Panel: No data available;

	8) Expert Panel: No data available; 9) Reserve Arbitrators Panel: In the process of establishing and will comprise AFSA Young members. The exact number is yet to be determined; AFSA panels are designed to cater to a wide range of arbitration needs, each focusing on specific areas of expertise. The numbers reflect AFSA's commitment to providing a diverse and extensive pool of skilled arbitrators to meet the varying demands of arbitration cases.
Qualifications and expertise criteria for arbitrator selection.	To be considered for inclusion in the AFSA Panels of Arbitrators, individuals must fulfil specific criteria that attest to their experience, expertise, and ethical standards in arbitration. These criteria vary depending on the particular panel. (i) **AFSA International Panel Requirements** Substantial arbitration experience: Demonstrated extensive experience as an arbitrator. Award drafting skills: The candidate should draft at least three arbitral awards in the last five years, with sanitised versions of two submitted to AFSA upon application. References: Provision of two written references. Professional conduct: Confirmation of no past misconduct findings by a court or disciplinary tribunal. Connection with Africa: An advantage for potential candidates. Exceptional cases: Consideration of eminent persons with substantial arbitration experience who may not meet the first two criteria. AFSA's discretion: Admission to the International Panel is at AFSA International discretion, and their decision is final. Membership tenure: Panel membership is for three years, ending on December 31 of the third year. (ii) **SADC Arbitration Panel Requirements** Educational background: Minimum undergraduate or equivalent and an advanced degree in a relevant legal field or substantive experience. Legal practice admission: Admission to practice law in SADC member states. Membership in SADC Legal Society (SADC LA): Good standing with the law society in the nominating member state and SADC LA.

	Arbitration/mediation training: Specific training from a renowned institution. Practical knowledge: Demonstrable practical knowledge in arbitration/mediation. References: Two traceable references from reputable practitioners with arbitration/mediation credentials.
(iii)	**CAJAC Johannesburg** Every CAJAC centre operates with its distinct criteria for panel nominees, tailoring its selection process to meet specific requirements. The centres maintain their own lists of arbitrators, ensuring that the professionals chosen align with the specific legal, commercial, and cultural contexts relevant to their regions. This approach allows each CAJAC centre to handpick experts who meet not only general standards of arbitration proficiency but also possess specific skills and knowledge pertinent to the centre's geographical and economic focus. The objective is to assemble panels adept in arbitration practices and deeply familiar with the regional nuances, legal frameworks, and business practices of the areas they serve. This method ensures a high level of expertise and relevance in handling disputes, contributing to the effectiveness and credibility of the arbitration process at each CAJAC centre.
(iv)	**AFSA Domestic Panel Requirements** Arbitration experience: Significant legal practice experience in areas relevant to domestic arbitration, such as commercial, contract, or corporate law, and experience in arbitration. Knowledge of AFSA Rules and procedures: Familiarity with AFSA's Domestic Rules and the legal framework of arbitration. Industry expertise: In-depth knowledge of industries related to potential disputes. Ethical standards: A strong reputation for ethical conduct, impartiality, independence, and confidentiality. Language proficiency: Proficiency in the language(s) of the arbitration. Professional development: Ongoing engagement in learning and staying updated with arbitration developments.

	These criteria ensure that arbitrators on the AFSA Panels are legally qualified and possess the practical experience, industry knowledge, and ethical integrity needed to arbitrate disputes in their respective contexts effectively.
Arbitration Rules and Procedures	There are seven different sets of the AFSA Rules (including their amendments) (the "AFSA Rules"): (i) AFSA International Rules 2021; (ii) AFSA International Rules 2017; (iii) AFSA Domestic Commercial Rules 2018; (iv) AFSA Domestic Arbitration Rules for Expedited Arbitration 2018; (v) AFSA Business Rescue Rules; (vi) AFSA Construction Unadministered Standard and Expedited Rules; (vii) AFSA Mediation Rules.
Arbitrator Appointment: How is the appointment of arbitrators handled?	It depends on whether the parties agree upon the number of arbitrators. If they do not, one arbitrator will be appointed by default as per all AFSA Rules. Agreement on the number of arbitrators by the parties The parties often agree on the number of arbitrators in the arbitration agreement. The parties' agreement on the number of arbitrators is generally upheld unless exceptional circumstances warrant a departure therefrom. Subsequent agreement on the number of arbitrators by the parties The initial determination of the number of arbitrators in the arbitration agreement may also be amended by a new agreement between the parties before the constitution of the arbitral tribunal. Number of arbitrators provided for in the applicable AFSA Rules AFSA Rules have, in default, a sole arbitrator. The advantage of a sole arbitrator is that the arbitrators' fees are lower than in a tribunal with three arbitrators. Also, the proceedings tend to be quicker because there are no consultations between the tribunal members. In addition, it is easier to organise the proceedings because dates for oral hearings and other appointments need to be fixed with only one arbitrator.

	If a sole arbitrator is to be appointed, the applicable AFSA Rules usually provide that the parties may agree on the sole arbitrator within a specified time limit. If the parties are unable to agree on the sole arbitrator within the time limit, the AFSA Rules provide that the task of appointing the arbitrator shifts to a neutral authority, for example, the AFSA Court. AFSA also acts as an appointing authority even if the arbitration is not conducted under the aegis of its Rules. Ways to overcome difficulties in reaching an agreement on an arbitrator provided by AFSA Rules By exchanging suggestions, parties can often agree on a suitable arbitrator. However, a party may be reluctant to consent to a candidate arbitrator proposed by the other party merely because the opposing party suggested the candidate. One way of dealing with such concerns is for both parties to provide a list of arbitrators to be exchanged simultaneously. If at least one arbitrator candidate appears on both lists, the parties can often agree on this candidate. As per AFSA International Rules, if the parties fail to nominate a sole arbitrator within 30 days from Commencement Date or any other time limit agreed upon by the parties or fixed by the International Secretariat, the sole arbitrator will be appointed by the Court (Articles 7 and 8 of the AFSA International Rules). The AFSA Court also decides the number, which may be one or three, depending on the case's complexity, the amount in dispute and other relevant circumstances. In AFSA Commercial Rules, the Secretariat will appoint an arbitrator(s) following any agreement between the parties, and to the extent that there is no such agreement on the number of arbitrators or the choice of arbitrator(s), the Secretariat shall appoint a single arbitrator; and provided further that, where three arbitrators are appointed, the Secretariat will appoint one of them as chairman (Article 9 AFSA Commercial Rules). In Construction Unadministered Standard and Expedited Rules, if the parties have not previously agreed on the number of arbitrators, and if within 14 days after the receipt by the respondent of the notice of arbitration, the parties have not agreed that there shall be three arbitrators, AFSA shall appoint a sole

	arbitrator. If no other parties have responded to a party's proposal to appoint a sole arbitrator within 14 and the party or parties concerned have failed to appoint a second arbitrator, the Secretariat may, at the request of a party, appoint a sole arbitrator according to the procedure provided in these rules if it determines this to be more appropriate. Notwithstanding any statutory or regulatory provision to the contrary, any decision by the parties for purposes of the Rules that the arbitral tribunal shall comprise three arbitrators shall imply that the third arbitrator is the presiding arbitrator, not an umpire. The appointment • Articles 7, 8 and 9 of the AFSA International Rules Appointment of sole arbitrator: Where the dispute is to be resolved by a sole arbitrator, the parties may, by agreement, nominate a sole arbitrator for confirmation pursuant to Article 6(2). If the parties fail to nominate a sole arbitrator within 30 days from Commencement Date or any other time limit agreed upon by the parties or fixed by the International Secretariat, the sole arbitrator shall be appointed by the Court. Appointment of three arbitrators: Where the dispute is to be resolved by three arbitrators, each party shall nominate one arbitrator for confirmation in the Request and the Answer, respectively, pursuant to Article 6(2). If a party fails to nominate an arbitrator, the Court will make the appointment. The third arbitrator, who will act as president of the arbitral tribunal, will be appointed by the Court unless the parties have agreed upon another procedure for such appointment; in this case, the nomination will be subject to confirmation pursuant to Article 6(2). Should such procedure not result in a nomination within 30 days from the nomination or appointment of the co-arbitrators or any other time limit agreed by the parties or fixed by the International Secretariat, the third arbitrator will be appointed by the Court. Arbitrator appointments in cases involving three or more parties: Where each party may nominate an arbitrator and there are multiple claimants or multiple respondents, the claimants, jointly, and the respondents, jointly, shall nominate an arbitrator for confirmation by the Secretary-General. Without such a joint nomination, the Court may appoint each member of the arbitral tribunal and designate one to act as presiding arbitrator.

	Right to be heard and equal treatment in the constitution of the arbitral tribunal in multiparty arbitrations In the case of a multi-party arbitration, it is crucial to ensure that each party's right to equal treatment is respected, i.e. no party should be placed in a less favourable position than any of the other parties concerning the right to participate in the constitution of the arbitral tribunal. Otherwise, the future award will be in danger of being challenged, or the recognition and enforcement of the award might be refused on public policy grounds.
	• Article 9 of the AFSA Commercial Rules Appointment of arbitrator: Where the Secretariat is satisfied that a dispute is prima facie arbitrable by an arbitrator to be appointed by the Registrar and that the defendant is in default timeously to deliver a response, or that the response, if applicable, has or has been delivered; and that the claimant has paid a first fee; and that a first fee has been paid by the defendant, or, in default of such payment by the defendant, that the claimant has paid it; the Secretariat will appoint an arbitrator(s) following any agreement between the parties, and, to the extent that there is no such agreement on the number of arbitrators or the choice of arbitrator(s), the Secretariat will appoint a single arbitrator; and where three arbitrators are appointed, the Secretariat will appoint one of them as chairman. The Registrar will thereupon in writing notify the arbitrator(s) of his or their appointment; in writing notify the parties of the appointment of the arbitrator(s); forward the file to the arbitrator(s), and inform him or them as the case may be, that the arbitration may, proceed.
	• Article 4 of AFSA Rules for Expedited Arbitration Selecting the arbitrator: The AFSA Secretariat will enquire from the parties whether they have agreed on an arbitrator, and if so, the Secretariat will then appoint such an arbitrator to resolve the dispute. If, on enquiry, it appears that the parties have not agreed on an arbitrator, then the Secretariat will select and appoint a suitable arbitrator and, if necessary, any substitute or alternative arbitrator where appropriate. Any arbitrator appointed through the AFSA Secretariat will be required to accept the Code of Conduct for Arbitrators, a copy of which is available from the AFSA Secretariat.

•	Section 2 of the Construction Unadministered Standard and Expedited Rules Appointment of sole arbitrator: Where the tribunal is to comprise one arbitrator, if the parties have not agreed on such arbitrator within 14 days of the receipt of the notice of arbitration, a sole arbitrator may, at the request of a party, be appointed by the Registrar. Appointment of tribunal of three arbitrators: If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator, who will act as the presiding arbitrator. If within 14 days after receiving a party's notification of the appointment of an arbitrator, the other party has not notified the first party of the arbitrator it has appointed, the first party may request the Registrar to appoint the second arbitrator. If, within 14 days after the appointment of the second arbitrator, the two arbitrators have not agreed on the identity of the presiding arbitrator, the Registrar may appoint the presiding arbitrator in the same way as a sole arbitrator would be appointed (Articles 7,8 and 9). In other words, if the parties have agreed on the procedure for appointing the arbitrators, for example, in the arbitration clause, the agreed appointment procedure must be followed (unless there is a new agreement). Otherwise, the validity, recognition, and enforcement of the future arbitration award will be in danger (see Article V(1)(d) New York Convention). If the parties have not agreed on the procedure for appointing the arbitrators, the applicable AFSA Rules usually stipulate the procedure. If they do not, the applicable Arbitration Law contains default provisions on the appointment procedure. This systematic approach facilitates the appointment of the most suitable arbitrator for each case, contributing to the effective and fair resolution of disputes under AFSA's auspices.
Is there a streamlined process for selecting and confirming arbitrators?	AFSA International Rules have a provision for an Emergency Arbitrator (Article 11) and an Expedited Procedure (Expedited Arbitrations, Article 10), which provide for a streamlined arbitration process but do not have an Expedited Tribunal appointment similar to Article 9A (9.1) of the LCIA Rules.
Availability of Arbitrators:	AFSA selection: AFSA International has a rigorous process for selecting and confirming arbitrators, ensuring that only those with confirmed availability and relevant expertise are appointed.

How does the centre ensure the availability of arbitrators for timely case resolution?	Arbitrator database: AFSA International maintains a comprehensive database of arbitrators, which helps quickly identify and appoint suitable arbitrators for specific disputes. Arbitrator commitment: Before appointment, arbitrators are required to affirm their availability and ability to devote the necessary time and attention to the arbitration. This includes confirming their ability to meet the expected timelines for case resolution. For instance, in the Arbitrator Statement of Acceptance, Availability, Impartiality and Independence, as per Article 6(4) of the AFSA International Rules, there is a section where the prosperous arbitrator needs to disclose their appointment 3 years ahead, and depending on their busiest, the appointment is decided. Time efficiency rules: The AFSA Rules encourage time efficiency. For example, the AFSA International Rules introduced a provision allowing expedited arbitration (Article 10) and a streamlined arbitration process in cases of exceptional urgency. Arbitrator replacement: In cases where an arbitrator is unable to perform their duties within the required timeframe, the AFSA has the authority to replace the arbitrator to avoid delays (Article 14 of the International Rules). AFSA International Secretariat also closely monitors arbitration progress and arbitrator performance. This active case management helps identify and address potential delays. Procedural timelines: The AFSA International Rules contain provisions that set clear procedural timelines, including for the constitution of the arbitral tribunal. Administrative sessions: Early in the process, the AFSA encourages holding administrative sessions to establish procedural timetables and deadlines, which arbitrators and parties are expected to adhere to. All AFSA Rules have developed mechanisms to enhance the arbitration process's efficiency and ensure that arbitrators are available and committed to timely resolution. This approach helps minimise delays and

	contributes to the effectiveness and credibility of the arbitration proceedings.
Are there mechanisms in place to address scheduling conflicts?	Yes, all AFSA Rules have mechanisms to address scheduling conflicts, ensuring that the arbitration proceedings are efficient and responsive to the needs of all parties involved. AFSA International Rules: Early communication: All AFSA Rules encourage early communication among the parties and the arbitral tribunal to identify and address potential scheduling conflicts. This is typically done during the Case Management Conference. The CMC is one of the first steps in any AFSA arbitration, where the tribunal and parties discuss the procedural timetable. This conference is an opportunity to address and resolve any scheduling conflicts. Procedural timetables: The arbitral tribunal often sets procedural timetables during the initial stages of the arbitration. These timetables are created with input from all parties to accommodate their availability and avoid conflicts. The AFSA Rules enable dynamic adjustment of these timetables. The tribunal has the authority to modify deadlines to accommodate changes in circumstances or to resolve scheduling conflicts. Flexibility in scheduling: The AFSA Rules provide flexibility to the tribunal to reschedule hearings and extend deadlines where necessary, considering the availability and convenience of all parties involved. Consultation with parties: The AFSA Rules also emphasise the importance of consulting with the parties when setting dates for submissions and hearings, ensuring that the schedule is agreeable to everyone involved. Remote hearings: The AFSA Rules allow for remote hearings, which can be a solution to scheduling conflicts, especially those arising from geographical constraints or unforeseen circumstances like travel restrictions. All AFSA Rules also support electronic communications, which can be particularly helpful in resolving scheduling conflicts. These mechanisms under AFSA Rules ensure that scheduling conflicts are addressed promptly and

	effectively, focusing on fairness and the efficiency of the arbitration process.

Procedural Efficiency

Arbitration Rules and Procedures: How are the arbitration rules designed to enhance efficiency?	AFSA Rules introduce some noteworthy provisions, including expedited arbitration procedures, the availability of urgent interim relief procedures, confidentiality and remote hearings. AFSA Rules are designed to enhance efficiency in several ways: Streamlined procedures: AFSA Rules provide streamlined arbitration proceedings, minimising unnecessary delays and procedural complexities. This ensures that arbitrations are conducted swiftly and effectively. Expedited procedures: AFSA International and domestic rules include provisions for expedited procedures (Article 10 of the AFSA International Rules and Domestic Rules for Expedited Arbitration). These procedures allow for shortened timelines for each arbitration stage, leading to quicker dispute resolution. Clear timelines: AFSA Rules set clear timelines for each stage of the arbitration process, including the submissions and evidence. This provides predictability and helps keep the arbitration on track. Electronic communications: AFSA Rules facilitate the use of electronic communications for the submission of documents, notices, and other communications, which speeds up the exchange of information and reduces delays associated with physical delivery. Flexible hearing formats: AFSA Rules allow for flexibility in the format of hearings, including teleconferences and videoconferences. This can reduce the time and cost of inperson hearings, mainly when parties and arbitrators are in different locations. AFSA International Rules, for instance, allow tribunals to hold hearings in person or by “any other means” they consider appropriate, including video and phone conferences or a combination of methods. This allows the tribunal to be more flexible in conducting its hearings.

	Appointment of arbitrators: AFSA Rules provide efficient mechanisms for selecting and appointing arbitrators, ensuring that the arbitral tribunal is constituted without unnecessary delay and that arbitrators are suitably qualified and available to deal promptly with the matters at hand. Emergency arbitrator: To enable urgent interim or conservatory relief, Article 11 of AFSA International Rules allows for the appointment of an emergency arbitrator before the tribunal is constituted. The arbitrator must decide the claim for interim conservatory relief. Article 11 of the updated AFSA International Rules further recommends an emergency arbitrator's appointment within 48 hours of receipt of the application (Article 11(7)). The emergency arbitrator has the discretion to conduct the emergency proceedings as they choose, but a decision on the application must be rendered within 14 days of their appointment (Article 11(11)). However, parties to arbitration agreements concluded before 1 June 2020 will not have access to an emergency arbitrator unless they have expressly agreed to "opt-in" to Article 11 (Article 11(18)). This was a valuable addition to the AFSA International Rules 2017 as it meant that parties in an international dispute would not need to go to court for urgent relief, which, in cross-border disputes, may pose complex jurisdictional challenges. However, the Rules do not limit a party's rights to apply for any interim or conservatory relief from the appropriate courts. The application under Article 11(1) is first made to the International Secretariat and should include, among other things, the specific grounds for requiring the appointment of an emergency arbitrator, including reference to the particular claim, with reasons, for emergency measures. If the Secretary-General accepts the application under Article 11(1), the Court will seek to appoint an emergency arbitrator within 48 hours of the Secretariat receiving the application, accompanied by the payment of the administration fee and deposits. The emergency arbitrator is empowered to conduct the emergency proceedings however they deem appropriate. Interestingly, the emergency arbitrator may not act as an arbitrator in any future arbitration relating to the dispute unless the parties agree.

	Early dismissal: Article 12 of AFSA International Rules also provides for the early dismissal of a claim or defence on the basis that a claim or defence is manifestly without legal merit or the claim or defence is manifestly outside the tribunal's jurisdiction. Applications for early dismissal must be made within 30 days of the tribunal's constitution. The early dismissal rule is intended to ensure unsustainable arbitrations are dealt with efficiently at the outset without the parties incurring substantial costs pursuing or defending unsustainable claims. Proactive case management: The AFSA Rules empower arbitrators to manage the arbitration proactively. Arbitrators can issue directions and make decisions to prevent unnecessary delays and ensure that the arbitration proceeds efficiently. Consolidation and joinder: The AFSA International Rules provide for consolidating arbitrations and adding additional parties under certain conditions. This can lead to more efficient resolution of disputes involving multiple parties or contracts (Articles 29 and 30). Prior to the constitution of the tribunal, Article 29 allows a party or non-party to an arbitration to apply for one or more additional parties to be joined in the arbitration by consent or if the additional party is prima facie bound by the arbitration agreement. After the tribunal has been constituted, a joinder of an additional party will only be granted where all parties to the arbitration consent, including the additional party to be joined (Article 29(8)). After giving all parties the opportunity to be heard, the tribunal will decide whether to grant the joinder. Limitations on challenges: AFSA International Rules contain provisions that limit the grounds and timeframes for challenging arbitrators, thus avoiding potential delays and disruptions in the arbitration process. (Article 13 of the International Rules). Costs and fees: AFSA's Rules on costs and fees are designed to be transparent and reasonable, encouraging efficiency from both the arbitrators and the parties.

	AFSA Rules reflect AFSA's commitment to providing an arbitration framework that is fair, impartial, efficient, and responsive to the needs of the parties involved.
Are there mechanisms for expedited proceedings when necessary?	Yes, under AFSA Rules, specific mechanisms are in place to facilitate expedited proceedings or "Fast Track Rules" when necessary. These mechanisms are designed to ensure a faster resolution of disputes, particularly when time is of the essence. Key aspects of these expedited procedures include: For instance, to promote the efficient and timely resolution of disputes, AFSA introduced Article 10 of the International Rules to provide an expedited arbitration procedure when the quantum in dispute of any claim (or counterclaim) does not exceed the equivalent amount of USD 500,000. Any parties to a dispute may also agree to "opt-in" to the expedited procedure under Article 10, whatever the amount claimed. Article 10 empowers the AFSA International Secretariat to shorten any time limits under the Rules and vests the tribunal with the power to decide the dispute between the parties based on documentary evidence alone unless the tribunal deems it appropriate to hold one or more hearings. Further, Article 12 provides a welcome addition to any litigant's arsenal in warding off claims or defences that are plainly without merit at an early stage before substantial legal costs are incurred. Other noteworthy features of AFSA International Rules include rules on multi-party/multicontract issues and rules that deal with the event that a party indicates an intention not to participate or to no longer participate in an arbitration. In summary, AFSA International Rules promise to bring international arbitration under the auspices of AFSA in line with innovations embraced by other leading international arbitral institutions. The AFSA Domestic Rules for Expedited Arbitration also provide an option for a streamlined arbitration process designed to resolve disputes quickly and efficiently. The rules establish a time limit of 60 days from the date the demand for arbitration is filed to the date the arbitrator issues a final award. The rules also limit the amount of permitted discovery and provide for a simplified hearing process.
Pre-Hearing Procedures:	In the context of AFSA Rules, "pre-hearing conferences" refer to meetings akin to case management conferences/pre-arbitration meetings rather than pre-hearing procedures as understood

Describe any pre-hearing conferences or procedures aimed at streamlining the arbitration process.	in traditional litigation. These conferences focus on organising and streamlining the arbitration process before the actual hearing of the dispute occurs. Key functions of these pre-hearing conferences in arbitration include: Planning and scheduling: Establishing a timetable for all stages of the arbitration, including submission deadlines, document exchange, and hearing dates. Clarifying issues: Identifying and narrowing down the issues in dispute to ensure focused and efficient proceedings. Procedural agreements: Discussing and agreeing on procedural matters such as the format of hearings, the necessity and extent of discovery, the use of written statements, and other procedural arrangements. Logistical arrangements: Deciding on the practical aspects of the arbitration, like the venue, language, and use of technology for remote hearings or document management. Efficiency measures: Agreeing on strategies to ensure an efficient arbitration process, which might include limiting the length of written submissions or oral arguments and deciding on the need for expert witnesses. Generally, pre-hearing conferences under AFSA Rules are geared towards efficient case management. They resemble pre-arbitration meetings or case management conferences. Their primary aim is to ensure that the actual arbitration hearings are conducted smoothly and efficiently and are focused on the pertinent issues of the dispute.
Document Submission and Discovery: How are document submission and discovery managed to avoid unnecessary delays?	In AFSA-administered arbitrations, document submission and discovery are managed carefully to avoid unnecessary delays and ensure the efficiency of the arbitration process. Key aspects of this management include: Limited discovery: AFSA arbitrations typically involve more limited discovery than litigation processes. The AFSA Rules allow for the exchange of only essential documents directly relevant to the dispute. This targeted approach to discovery prevents the process from becoming overly burdensome and time-consuming. Tribunal's discretion: The arbitral tribunal has the discretion to determine the scope and extent of document production. The tribunal can order the production of specific documents or categories of documents rather than allowing for broad and

	unfettered discovery, thereby keeping the process focused and relevant. Pre-defined timelines: AFSA Rules prescribe clear timelines for document submission and discovery phases. These timelines are established early in the proceedings, often during the pre-arbitration meeting/case management conference, to ensure that parties adhere to a schedule that facilitates the timely progression of the arbitration. Electronic document submission: Using electronic means for document submission is encouraged under AFSA Rules. Electronic submissions streamline the process, making it faster and more efficient than traditional paper-based methods. Proactive case management: The arbitral tribunal actively manages the arbitrations to avoid delays. This includes following up on submission deadlines, assisting promptly with any disputes over document production, and ensuring that the parties comply with procedural orders. Use of Redfern Schedules: A common practice in AFSA arbitrations is using Redfern Schedules for document production. This helps organise and present document requests and objections in a structured manner, facilitating the tribunal's decision-making and keeping the process orderly. Avoidance of fishing expeditions: The arbitral tribunal ensures that discovery requests are not used as "fishing expeditions." Only documents relevant and material to the outcome of the dispute are considered, which helps avoid delays caused by extensive and irrelevant document searches. Consequences for non-compliance: There are consequences for parties failing to comply with the tribunal's orders regarding document submission and discovery. This can include drawing adverse inferences or penalising non-compliant parties in cost awards, which encourages timely compliance. By managing document submission and discovery in these ways, AFSA arbitrations are able to minimise unnecessary delays, ensuring efficient resolution of disputes.

Timeline Management

Timeliness of Decisions:	On average, it takes approximately 48 days or 1,6 months for arbitrators to render decisions following the conclusion of the hearing.

On average, how long does it take for arbitrators to render decisions following the conclusion of hearings?	
Expedited Procedures: Are there provisions for expedited procedures in certain cases, and how are they implemented?	Yes, AFSA Expedited Commercial Rules and the Expedited Procedure in Article 10 of AFSA International Rules refer to specific provisions established to fast-track arbitration proceedings in certain scenarios. These provisions are designed to streamline the arbitration process, making it quicker and more efficient, particularly in cases where a standard, lengthier process might be impractical or unnecessary. These procedures are often employed when parties want a faster resolution than traditional arbitration can provide. Here are some key points and considerations related to tests for expedited arbitrations: Criteria for Expedited Procedures: Parties involved in a dispute typically need to meet specific eligibility criteria to qualify for expedited arbitration. These criteria might include the amount in dispute, the complexity of the case, and the parties' consent. For instance, Article 10 of the AFSA International Rules, Article 5 of the AFSA Commercial Rules and Article 2 of AFSA Rules for Expedited Arbitration. Implementation of Expedited Procedures: The implementation involves several adjustments to the standard arbitration process: Expedited timelines: One of the primary features of expedited arbitrations is the shorter dispute resolution timeframe. These timelines are often established in the arbitration rules and are designed to expedite the entire process, from filing the claim to the final award. For instance, Rules for Expedited Arbitration Article 10.1 provides that “The Arbitrator must give his/her award within 30 (thirty) days after finalisation of the proceedings unless the parties otherwise agree or unless the AFSA Secretariat permits an extension of that time” compared to Article 12.1 of the AFSA Commercial Rules “The arbitrator shall make his final award as soon as may be practicable, and in any event not later than 60 calendar days after completion of the hearing, unless the parties in writing agree to an extension of this period or, in exceptional circumstances, the Secretariat extends such period.” Finally, Article 10 of the AFSA International Rules provides in paragraph 3(d) that “the final award shall be communicated within six months from the date when the Secretariat transmitted the case file to the

	Arbitral Tribunal unless in exceptional circumstances, the Secretariat extends the time for making such award." Decision-making authority: AFSA Rules also specify who has the authority to decide whether arbitration is eligible for expedited procedures. This could be an administrative decision by the Registrar in the case of Commercial and Rules for Expedited Arbitration or AFSA Court in the case of AFSA International Rules, as the determination is made based on the specifics of the dispute. Test for relief in Expedited Arbitrations: In order to be accepted, the application for Expedited Arbitration must have prima facie jurisdiction (that is, there must seem to be jurisdiction at first sight), the applicant must have a prima facie case on the merits, there must be a threat of irreparable harm, and the case must be so urgent that it cannot await the regular way for the composition of the tribunal. Modified procedures: Certain procedural steps may be simplified or skipped altogether to save time. For example, hearings might be conducted remotely instead of in person, or written submissions might be shortened. Reduced discovery: Expedited arbitrations often involve limited or streamlined discovery procedures. This means that the parties have fewer opportunities to request documents, information, or depositions, which helps accelerate the process. Single arbitrator: Expedited arbitrations involve a single arbitrator rather than a panel of arbitrators, which can further expedite the proceedings. Emergency relief: Some expedited arbitration procedures may include provisions for emergency relief, allowing parties to seek interim measures or injunctions when necessary to protect their interests. Costs and fees: While expedited arbitrations can save time, they may still incur costs. Parties should be aware of the arbitration fees and costs associated with the proceedings, which can vary based on the arbitrator and the case's complexity. Enforceability: Arbitration awards resulting from expedited proceedings are generally enforceable following applicable laws and international conventions, such as the New York Convention. Effectiveness and efficiency: The expedited procedures aim to resolve disputes faster without compromising the arbitration process's fairness and thoroughness. AFSA Rules are particularly valuable for commercial parties seeking a timely resolution to avoid prolonged disruption or financial implications. In summary, the AFSA's provisions for expedited procedures in their domestic and international rules are

	designed to offer a quicker, more efficient alternative to the standard arbitration proceedings, tailored to meet the needs of specific disputes where speed is of the essence.
Extensions and Delays: How does the centre handle requests for extensions and manage any potential delays?	In AFSA arbitrations, handling requests for extensions and managing potential delays are governed by a combination of applicable AFSA Rules and the discretion of the Secretariat or arbitrator(s) overseeing the dispute. The approach is designed to balance the need for a fair and thorough arbitration process with the efficiency and timeliness that parties often seek in arbitration. Here's how it typically works: **Requests for extensions:** When parties involved in an arbitration under AFSA Rules request an extension, the Secretariat typically grants the extension at the early stages or the arbitrator(s) when appointed. Before allowing extensions, factors such as the reason for the request, the potential impact on the arbitration timeline, and the views of the other party or parties involved will be considered, and all this is considered with the importance of avoiding unnecessary delays. **Managing delays:** AFSA understands that delays can be costly and counterproductive. Therefore, the Secretariats and arbitrators proactively manage and mitigate delays. This could involve setting strict deadlines, encouraging or facilitating settlement discussions, or employing expedited procedures where appropriate. **Arbitrator's discretion and case management: Central** to the AFSA Rules approach is the arbitrator's role in managing the proceedings. The arbitrator is usually responsible for ensuring the process is conducted efficiently and without undue delay while ensuring all parties have a fair opportunity to present their case. **Rules and guidelines:** AFSA provides rules and guidelines to assist arbitrators and parties in managing the arbitration proceedings effectively. These may include provisions for interim measures, timelines for various stages of the arbitration, and procedures for handling unforeseen circumstances that could lead to delays. **Communication and transparency:** Effective communication is key in managing extensions and delays. AFSA Rules encourage transparent communication between the arbitrator, the parties, and the institution to ensure that issues are addressed promptly and effectively.

	In summary, AFSA's handling of requests for extensions and management of potential delays in its arbitrations is a careful balance of adherence to rules, arbitrator discretion, and effective case management, all aimed at achieving a fair and timely resolution of disputes.
Continuous Improvement Initiatives: Are there ongoing efforts to identify and implement improvements to enhance efficiency?	Yes, AFSA continuously strives to identify and implement improvement initiatives to enhance efficiency in its arbitrations. These efforts include regular reviews of the procedures, adoption of advanced technological tools, and training programs for the staff and arbitrators to ensure up-to-date practices. Feedback from parties and practitioners involved in AFSA-administered arbitration is also actively solicited and considered for future enhancements. AFSA's commitment to continuous improvement is a cornerstone of its dedication to providing effective, fair, and expedient dispute resolution services. .

Cost and Resource Management

Fee Structure: Provide an overview of the arbitration fees charged by the centre.	The arbitration fee structure at AFSA includes the following: Registration Fee: A non-refundable fee of USD 345 or ZAR 5,500 is required from the Claimant along with the Request for Arbitration. This fee is mandatory for the initiation of the arbitration process. Administration Fee: The fee varies based on the amount in dispute and is calculated according to the schedule provided by AFSA as part of its rules. It covers the costs associated with the administrative support provided by AFSA during the arbitration process. Arbitrators' Fees: These fees are payable to the appointed arbitrators based on the agreed hourly and daily arbitrator rates. AFSA International pays the arbitrators, but parties are required to ensure that funds are available in advance to cover these expenses. Additional Expenses: Additional reasonable and actual expenses may be incurred during the administration of the arbitration, which will be charged accordingly. The specific administration fees depend on the amount in dispute and are structured to cater to various dispute sizes, ensuring fairness and accessibility for all parties involved. These fees are subject to a 15% VAT where applicable. Referring directly to the AFSA Schedule of Costs is advisable for detailed calculations and specific scenarios. This comprehensive framework ensures transparency and helps parties effectively manage their resources throughout the arbitration process.

Are fees fixed, or do they vary based on factors such as the complexity of the case?	The arbitration fees charged by AFSA International are structured to include both fixed and variable components based on the information provided in the attachments: **Fixed Fees:** Registration Fee: There is a fixed registration fee of USD 345 or ZAR 5,500, payable by the Claimant and the Request for Arbitration. This fee is non-refundable. **Variable Fees:** Administration Fees: These fees are ad valorem and vary according to the amount in dispute, with specific fee scales provided for different ranges of the amount in dispute. For example, for disputes up to USD 50,000, the administration fee is USD 1,000. This fee increases as the amount in dispute rises, with additional percentages applied to amounts exceeding certain thresholds. **Arbitrators' Fees:** These are hourly/daily and therefore variable. AFSA pays them to the appointed arbitrators. The parties are required to cover these expenses in advance, and while not explicitly detailed, arbitrators' fees generally vary depending on factors such as the case's complexity, the time spent, and the number of arbitrators. Additionally, there may be fees for extra reasonable or actual expenses incurred in administering the arbitration, which would also vary based on the specifics of the case. In summary, while there is a fixed registration fee, other fees, such as administration and arbitrators' fees, can vary based on the amount in dispute and potentially other factors related to the complexity and demands of the case. Also, it needs to be considered that based on the general understanding of arbitration fee structures, the fees typically vary based on several factors, including but not limited to: **Amount in dispute:** The larger the sum, the higher the administrative and arbitrator's fees may be. This scaling is due to the increased complexity and stakes in handling larger disputes. **The complexity of the case:** While the fee schedules are primarily based on the financial value of the dispute, additional charges may apply if the arbitration is

	particularly complex and requires more time and resources than usual. **Number of arbitrators:** Fees can also vary depending on whether a single arbitrator or a tribunal is chosen — the more arbitrators, the higher the cost. **Length of proceedings:** If the arbitration process extends beyond the anticipated time frame, additional fees may be incurred for extra hearing days or prolonged deliberations. **Additional expenses:** These can include venue rental costs, arbitrators' travel expenses, expert witness fees, and any other unforeseen expenses related to a particular arbitration.
Fee Transparency: How transparent is the fee structure to parties involved in arbitration?	The fee structure for AFSA arbitrations is designed to be highly transparent to all parties involved. AFSA provides a detailed schedule of costs and fees associated with arbitration proceedings, which is readily available to the public and can typically be found on the AFSA website or obtained directly from the AFSA Secretariats. This schedule includes all possible charges incurred during arbitration, such as registration fees, administration fees, arbitrators' fees, and any potential additional expenses. AFSA ensures that all parties are aware of these costs from the outset, aiding in informed decision-making and financial planning for the arbitration process. In addition, AFSA's Rules and guidelines clearly outline how fees are calculated based on factors such as the amount in dispute and the case's complexity. This ensures that parties clearly understand how their fees are determined and what they can expect in terms of financial obligations. Transparency in the fee structure is fundamental to AFSA's approach, ensuring that parties are fully informed and can proceed with arbitration without concerns of hidden costs or unexpected fees.
Is there a breakdown of costs provided to parties?	Yes, AFSA provides a detailed breakdown of costs to parties involved in arbitration with invoices. This breakdown ensures transparency and understanding of all potential charges associated with the arbitration process.
Fee Waivers or Reductions: Are there provisions for fee	In AFSA arbitrations, there are no explicit provisions for fee waivers or reductions based on the parties' financial circumstances. Typically, these provisions are considered caseby-case to ensure fairness and access to arbitration for all parties, regardless of their financial situation.

waivers or reductions based on financial circumstances?	Parties experiencing financial hardship can apply for a fee waiver or reduction by providing detailed evidence of their financial status and explaining why they are unable to meet the standard fee requirements. AFSA will review these applications carefully, considering the merits and the party's financial condition, to determine whether a fee waiver or reduction is justified. Parties seeking such financial accommodations should contact the AFSA Secretariat directly to inquire about the application process and required documentation. AFSA is committed to promoting access to justice and may offer solutions to ensure that financial constraints do not prevent parties from seeking arbitration.
Cost Predictability: How does the arbitration centre ensure predictability in terms of costs for parties?	As previously mentioned, AFSA ensures cost predictability for parties involved in its arbitration by providing a clear and detailed fee structure. This structure outlines all potential costs associated with the arbitration process, allowing parties to anticipate their financial obligations from the outset. In addition, AFSA operates under a Schedule of Cost fee structure, which allows for an upfront estimate of the expected costs. These schedules are designed to avoid surprises and ensure parties understand the maximum possible expenses clearly. In addition, AFSA may also provide parties with an estimate of additional costs, such as those for hearing venues, translation services, or expert witnesses, which could be required during the arbitration process. By offering transparency and detailed information on all potential fees and expenses, AFSA aids parties in planning and budgeting for the arbitration, contributing to cost predictability and reducing the likelihood of unexpected financial burdens.
Are there mechanisms to provide estimates or control costs efficiently?	In AFSA arbitrations, several mechanisms are implemented to provide estimates and control costs efficiently: **Fee schedules:** AFSA provides detailed fee schedules based on the amount in dispute, which serve as an initial cost estimate for the parties. These schedules cover registration, administration, and arbitrator fees, enabling parties to forecast the basic costs associated with their arbitrations. **Cost estimates:** Upon request, AFSA can provide parties with more detailed cost estimates, considering the specific circumstances of their arbitration, including potential additional expenses such as venue, translation, or expert witness fees.

	Case management: AFSA employs efficient practices to minimise unnecessary delays and expenditures. By streamlining processes and encouraging effective communication, AFSA helps to keep the arbitration proceedings on schedule and within budget. **Cap on arbitrators' fees:** In AFSA International arbitrations, a cap is set on the arbitrator's fees to prevent unexpected increases and ensure that the costs remain reasonable. **Budget management:** Parties are encouraged to discuss and agree on a budget for the arbitration proceedings. AFSA can assist in monitoring the costs against this budget and advising on ways to manage expenses effectively. **Transparency and communication:** AFSA maintains transparency about the costs and ensures that parties are informed about any potential changes to the estimated expenses. Open communication is encouraged, allowing parties to promptly address any concerns regarding costs. Through these mechanisms, AFSA aims to provide parties with clear estimates and maintain efficient control over arbitration costs, ensuring that the process remains accessible and manageable for all involved.
Cost Management: Describe any measures taken to manage and control costs throughout the arbitration process.	AFSA implements several measures to manage and control costs throughout its arbitrations, ensuring an efficient and cost-effective resolution for all parties involved: **Detailed fee structure:** AFSA provides a transparent and detailed schedule of fees that outlines all potential costs associated with the particular arbitration. This helps parties understand and anticipate expenses, contributing to effective budget management. **Early case assessment:** By encouraging parties to assess their cases early, AFSA promotes a clear understanding of the dispute's scope, leading to a more streamlined and less costly arbitration process. Case management techniques: AFSA employs effective case management techniques to streamline the arbitration process. This includes setting clear timelines, limiting unnecessary delays, and encouraging parties to focus on the core issues, which in turn can reduce time and costs. **Encouragement of settlement:** AFSA encourages parties to consider settlement at various stages of the arbitration process. Early settlement can significantly reduce costs associated with prolonged disputes.

	Cap on arbitrators' fees: AFSA International implement caps on arbitrators' fees based on the amount in dispute or the complexity of the case to prevent unexpected costs. **Transparent communication:** Throughout the arbitration process, AFSA ensures clear and transparent communication with all parties regarding potential costs and any changes that may impact the final fees. Use of technology: Incorporating technology, such as electronic document submission and remote hearings, can reduce the costs associated with physical meetings, travel, and document handling. AFSA aims to provide an effective and economical dispute resolution process by adopting these measures, ensuring that costs are managed and controlled efficiently throughout the arbitration. Cost-Duration Analysis for AFSA International Arbitrations (2021-2023) **Average cost:** The average cost of an AFSA international arbitration from 2021 to 2023 has been ZAR 747,796.32, equivalent to approximately USD 40,690.88. This figure provides an overarching view of what parties might expect to spend in arbitration proceedings under AFSA International Rules. **Average duration:** Based on an analysis of 12 finalised matters, the average duration to complete an AFSA international arbitration is approximately 414 days, equating to 1 year and 1 month. This duration encompasses the entire process from issuing the Request for Arbitration (RfA) to delivering the final award. **Cost implications:** The cost of AFSA international arbitration is relatively consistent with international standards, especially when considering the comprehensive nature of dispute resolution services provided. However, parties should be aware that this average cost can vary significantly based on factors such as the complexity of the case, the number of arbitrators, and any unforeseen procedural issues. **Duration implications:** The average duration of over one year indicates a commitment to thoroughness and diligence in resolving disputes. However, parties should plan accordingly for this budgeting and strategic planning time frame. Prolonged disputes may incur additional costs, primarily if the arbitration involves

	complex issues requiring extensive evidence and testimony. **Efficiency:** When juxtaposed, the cost and duration reflect AFSA's efficiency in managing international arbitrations. Given the global benchmark, the duration and costs are reasonable, especially for parties seeking a comprehensive resolution mechanism outside of traditional courtroom litigation. **Budget planning:** Parties considering AFSA international arbitration should budget not just for the average cost but also for potential variables that could extend the duration and increase expenses. These include additional hearings, expert witnesses, legal fees, and document management. **Preparation and settlement encouragement:** To manage both duration and costs effectively, parties are encouraged to prepare thoroughly before commencing arbitration and to remain open to settlement opportunities throughout the process. Efficient preparation and a willingness to negotiate can significantly reduce arbitration's duration and cost. In conclusion, while the average cost and duration provide a baseline for parties considering AFSA international arbitration, individual circumstances will greatly influence the final figures. Parties should engage with legal counsel to navigate the process efficiently, considering these averages for planning and budgetary expectations.
How are cost overruns addressed?	In AFSA arbitrations, cost overruns are addressed through clear communication and transparent billing practices. When potential cost overruns are identified, AFSA typically notifies the parties involved, providing them with detailed information about the additional expenses and the reasons for these overruns. The arbitration process under AFSA is designed to be cost-effective, with measures in place to prevent unnecessary expenses. However, should unforeseen complexities arise, leading to increased costs, AFSA would: **Review and approval:** The tribunal and the parties involved must review and approve any additional costs. This ensures that all parties are aware of and agree to the additional expenses before they are incurred. Detailed breakdown: AFSA provides a detailed breakdown of the costs, explaining the factors contributing to the overrun. This can include extended

	hearing dates, cancellation fees, additional document reviews, or the need for expert witnesses. **Negotiation and mediation:** AFSA encourages parties to discuss potential cost overruns and find mutually agreeable solutions. Mediation may sometimes be recommended to resolve disputes over fees quickly. Payment arrangements: If additional fees are unavoidable, AFSA may work with the parties to establish acceptable payment arrangements, ensuring that the arbitration can continue without financial strain on the involved parties. **Cost management strategies:** AFSA may suggest strategies to minimise further expenses, such as streamlining the remaining arbitration process or using technology to reduce costs. By addressing cost overruns transparently and collaboratively, AFSA ensures that the arbitration process remains fair and accessible while also maintaining the integrity and efficiency of the proceedings.
Third-Party Funding: Does the arbitration centre have rules on third-party funding?	Yes, AFSA International has explicit rules regarding Third-Party Funding outlined in Article 27 of the AFSA International Rules. These rules mandate that if there is a Third-Party Funding Agreement, the funded party must inform all other parties involved, the arbitral tribunal, and the Secretariat of: The existence of the Third-Party Funding Agreement; - The identity of the Third-Party Funder. This disclosure should occur on or before the Commencement Date of the arbitration. If the Third-Party Funding Agreement is established after the Commencement Date, the funded party must notify all relevant parties and the tribunal as soon as practicable after agreeing. Additionally, any changes to the information initially disclosed must be promptly communicated. These rules ensure transparency in the arbitration process and help manage any potential conflicts of interest.
Is there a requirement for parties to disclose any third-party funding arrangements?	Yes, according to Article 27 of the AFSA International Rules, parties must disclose any third-party funding arrangements. If a party has entered into a Third-Party Funding Agreement, it must notify all other parties, the arbitral tribunal, and the Secretariat of the agreement's existence and the identity of the Third-Party Funder.
How is this information	The information regarding Third-Party Funding arrangements disclosed under the AFSA International

handled during the arbitration proceedings?	Rules is handled with due consideration during the arbitration proceedings to maintain transparency and fairness among all parties involved. Here's how this information is typically handled: **Confidentiality and disclosure:** While the existence of a Third-Party Funding Agreement and the identity of the Third-Party Funder must be disclosed to all parties, the arbitral tribunal, and the Secretariat, the specifics of the agreement may remain confidential unless there is a specific reason within the proceedings to disclose further details. **Conflict of interest checks:** The disclosed information is used primarily for conflict of interest checks. Upon receiving notification of third-party funding, the arbitration tribunal will assess whether there are any potential conflicts of interest between the funder and the tribunal members. This ensures the impartiality and integrity of the arbitration process. **Case management:** The disclosed information may influence certain case management decisions, particularly if the Third-Party Funder's involvement impacts the funded party's ability to participate in the arbitration, such as in matters related to costs and security for costs. **Decisions on costs:** Information on third-party funding can be relevant when the tribunal makes decisions regarding the allocation of costs at the conclusion of the arbitration. While the existence of funding does not inherently affect cost decisions, it might be considered in the context of security for costs or if cost orders might be sought directly against the Third-Party Funder. **Transparency:** The requirement for disclosure ensures transparency in the proceedings, allowing all parties to be aware of the involvement of external funders and to address any issues that may arise from this involvement. Throughout the arbitration proceedings, handling this information seeks to balance the need for transparency with respect for confidentiality, ensuring that the arbitration remains fair, impartial, and effective for all involved parties.
Impact on Costs and Decision-Making:	Third-party funding can impact the overall costs of arbitration in several ways: **Upfront costs reduction**: Third-party funding can significantly reduce the immediate financial burden of

How can third-party funding impact the overall costs of arbitration?	arbitration costs for the funded party, as the funder covers all or part of the expenses associated with the arbitration proceedings. This can make arbitration a more accessible dispute resolution option for parties that might otherwise lack the resources to initiate or sustain a case. **Risk sharing:** The financial risk associated with arbitration is shared with the third-party funder, which might encourage parties to pursue or defend claims they consider just but might have otherwise avoided due to cost considerations. **Potential for increased costs:** While third-party funding can reduce upfront costs for the funded party, it can potentially lead to increased overall costs for the arbitration. Knowing that the opposing party is funded, the non-funded party might adopt a more aggressive strategy, leading to a lengthier and more costly process. **Cost orders:** The presence of third-party funding might influence the tribunal's decisions regarding cost orders. For instance, knowing that a funder supports a party, the tribunal may be more inclined to award costs against that party if it loses, or it may take the existence of a funding agreement into account when apportioning costs. **Decision-making influence:** While third-party funders typically do not have formal control over the arbitration proceedings, their interest in the outcome could influence strategic decisions in the funded party's case. This aspect could indirectly affect the conduct and costs of the arbitration, as the funded party might pursue strategies or claims aligned with the funder's expectations. **Transparency and conflicts of interest:** The requirement to disclose third-party funding aims to maintain transparency and manage potential conflicts of interest, contributing to the fairness and integrity of the arbitration process. However, this requirement also adds a layer of consideration for both the funded party and the tribunal, impacting the proceedings' conduct and decision-making. In summary, while third-party funding provides essential financial support for parties unable to afford the costs of arbitration, it introduces additional dynamics that can influence the overall costs and decision-making processes in the arbitration.

Are there measures in place to ensure that third-party funding does not unduly influence decision-making?	Yes, there are measures in place within AFSA International's arbitration framework to ensure that third-party funding does not unduly influence decision-making: **Disclosure requirements:** As outlined in Article 27 of the AFSA International Rules, any party that has entered into a Third-Party Funding Agreement must disclose the existence of such an agreement and the identity of the third-party funder. This transparency helps the arbitral tribunal and other parties understand the financial dynamics behind the scenes and monitor potential influences on the funded party. Conflicts of interest: The required disclosure of third-party funding allows the arbitral tribunal to identify and manage any potential conflicts of interest. For example, an arbitrator might have a conflict if they have a relationship with the third-party funder, which could be grounds for disqualification. **Independence of the tribunal:** AFSA ensures the independence and impartiality of the arbitrators. Despite the presence of third-party funders, arbitrators are bound by ethical rules that require them to make decisions based on the case's merits, free from external influence. Procedural orders: The arbitral tribunal has the authority to issue procedural orders restricting undue influence from third-party funders. For example, the tribunal can determine that certain decisions, particularly those affecting the arbitration's integrity, remain solely in the hands of the parties themselves. **Scrutiny of the award:** Before the final award is issued, the AFSA Court scrutinises it to ensure that the decision complies with applicable laws and the parties' agreement, further mitigating the risk of undue influence from third-party funding. By implementing these measures, AFSA International aims to maintain the fairness and integrity of the arbitration process, ensuring that decisions are made based on the case's facts and applicable law rather than the interests of external financiers.
Resource Allocation: How does the centre manage its resources to	AFSA manages its resources to handle the caseload efficiently through several strategic measures: Skilled staff and arbitrators: AFSA employs a dedicated and experienced administrative staff and maintains a panel of qualified arbitrators with diverse legal and industry expertise. This ensures that arbitrations are

handle caseloads effectively?	allocated to individuals with the appropriate skills and knowledge, contributing to efficient case management. Case management systems: AFSA employs advanced case management systems to streamline processes and ensure that all arbitrations are tracked and managed efficiently. These systems facilitate communication, document management, and scheduling, reducing delays and improving overall case handling. Training and development: AFSA invests in ongoing training and professional development for its staff and arbitrators to ensure they are up-to-date with the latest arbitration practices and legal developments. This enhances their ability to manage arbitrations effectively and make informed decisions. Procedural guidelines: AFSA has established clear procedural guidelines and rules for arbitration, which help to reduce uncertainties and streamline the arbitration process. This includes timelines for submissions and decisions, which contribute to the timely resolution of disputes. Customised solutions: AFSA offers a range of arbitration rules, including expedited procedures, which allow for customising the arbitration process based on the complexity and needs of each arbitration. This flexibility ensures that resources are allocated efficiently and arbitrations are resolved most appropriately. Technology integration: AFSA incorporates technology into its operations, including remote hearings and electronic document submissions, which reduce physical resource requirements and enhance efficiency, particularly in managing cross-border disputes. Feedback and continuous improvement: AFSA actively solicits feedback from parties and practitioners involved in arbitrations and continually uses this information to improve its services and resource management strategies. AFSA ensures efficient resource allocation and management through these measures, thereby maintaining high service standards and effectively handling its caseload.

Technological Infrastructure

Case Management System: Describe the case management	AFSA uses a comprehensive case management system to efficiently handle and administer its arbitrations. The system is designed to streamline the arbitration process, from filing to award, ensuring that all arbitrations are managed effectively and transparently. AFSA Case Management System features include:

system used at the arbitration centre.	Secure online portal: Parties and arbitrators can access a secure online platform to submit documents, view case materials, and communicate with each other and the AFSA Secretariats. This ensures confidentiality and accessibility. Automated notifications: The system sends updates and reminders to all parties involved, ensuring deadlines are met, and the arbitration proceeds smoothly without unnecessary delays. Document management: The platform provides document management capabilities, allowing for the efficient organisation, filing, and retrieval of case-related documents. This reduces the risk of document loss and enables easy access to case materials. Case tracking: Parties and arbitrators can track the progress of their cases through the system, which provides transparency and keeps all parties informed about the case status. Reporting and analytics: The system offers reporting tools that allow AFSA to monitor case progress, manage caseloads effectively, and analyse arbitration trends, helping to improve services and efficiency. Integration with AFSA's Rules and Procedures: The Case Management System is fully integrated with AFSA's Rules and Procedures, ensuring that all arbitrations are managed according to the established guidelines. By leveraging the Case Management System, AFSA ensures that its resources are allocated effectively to handle the caseload efficiently, enhancing the overall arbitration experience for all parties involved.
Is it an in-house system or a commercially available platform?	The Case Management System used by the AFSA is a commercially available platform. This choice allows AFSA to leverage advanced technology and robust features developed by legal and arbitration case management experts. Using a commercially available platform ensures that the system is regularly updated with the latest security measures and functionalities, which aligns with AFSA's commitment to providing secure, efficient, and effective arbitration services. By adopting this external platform, AFSA benefits from comprehensive support and maintenance, ensuring that the case management process remains seamless and responsive to the needs of all parties involved. This approach also allows AFSA to focus its resources on arbitration expertise and client service rather than software development and IT infrastructure. The commercial platform is selected based on its ability to meet the specific needs of AFSA arbitration proceedings, including document management, case tracking, and secure communication channels. This

	ensures the system aligns with international best practices and meets the high standards expected by parties engaging in arbitration under AFSA's auspices.
Online Case Filing: Does the centre offer online case filing options for parties?	Yes, AFSA offers online case filing options for parties. This modern, user-friendly approach aligns with AFSA's commitment to providing accessible and efficient arbitration services. Through AFSA's online portal on the website, parties can submit their arbitration requests, upload necessary documents, and initiate their arbitration without physical paperwork. The online filing system is designed to ensure confidentiality and security, providing a secure environment for transmitting sensitive information. Parties benefit from the convenience of being able to file their arbitration from anywhere in the world at a ny time, thereby streamlining the initial stages of the arbitration process. Furthermore, the online platform is integrated with AFSA's Case Management System, allowing for seamless transition and management of the arbitration once it has been filed. This integration ensures that all case-related information is easily accessible to the relevant parties and the AFSA Secretariats, facilitating efficient arbitration progression and management. By offering online case filing options, AFSA enhances the accessibility and efficiency of initiating arbitration proceedings, catering to the evolving needs of global and local parties seeking resolution through arbitration.
How streamlined is the process for submitting case documents electronically?	The process for submitting arbitration documents electronically at the AFSA online case management portal is designed to be streamlined and user-friendly. AFSA recognises the importance of efficiency and accessibility in arbitration proceedings, so it has invested in an online case filing system. Here is how the process is managed: User-friendly interface: The online platform offers an intuitive interface, making it easy for parties to submit their arbitration documents without technical difficulties. Clear instructions and support are provided throughout the submission process. Secure submission: The platform uses advanced security protocols to ensure that all documents are submitted securely, protecting the confidentiality and integrity of the information. Automated acknowledgement: Upon submission, parties receive immediate automated confirmation, ensuring they know their documents have been successfully received. Document management: The system allows for organised document submission, including uploading multiple files

	and categorising them according to the case needs. This ensures that all documents are filed correctly and are easily accessible by the case managers and arbitral tribunal. Real-time updates: Parties can track the status of their submissions in real-time, providing transparency and peace of mind that all materials have been properly filed. Technical support: Should parties encounter any issues during the submission process, AFSA provides technical support to assist with troubleshooting and ensuring that filings are completed successfully. Compatibility with case management: The electronic submission integrates seamlessly with AFSA's case Management system, ensuring that documents are directly associated with the relevant arbitration and are immediately available for review by the arbitral tribunal and case managers. By providing a streamlined process for submitting arbitration documents electronically, AFSA facilitates an efficient and accessible arbitration process, reducing delays and improving the experience for all parties involved.
Virtual Hearings: To what extent does the centre utilize virtual hearings?	AFSA extensively uses remote hearings to ensure the continuation of arbitration proceedings in a flexible and accessible manner. This approach has been particularly emphasised due to the global shift towards remote operations following the COVID-19 pandemic. As the AFSA Remote Hearing Protocol outlines, the centre has adapted to include comprehensive guidelines and best practices for conducting remote and hybridremote hearings, ensuring fairness and efficiency. By incorporating these technological solutions, AFSA enables parties from different jurisdictions to participate in hearings without physical travel, reducing costs and environmental impact. The protocols and systems in place ensure that the remote hearings are conducted with the same level of professionalism and rigour as traditional in-person hearings. The inclusion of remote hearings in AFSA's procedural framework illustrates the centre's commitment to innovation and accessibility. This, in turn, significantly contributes to the efficient management of AFSA arbitrations, especially in times of global challenges. This adaptability ensures that parties can proceed with their arbitrations uninterrupted, maintaining timelines and reducing delays.
Are there specific technologies or platforms used for virtual proceedings?	The AFSA uses a licensed Zoom Remote Hearing Platform, provided as part of the administrative package at no additional cost, underlining the AFSA's commitment to maintaining the integrity and continuity of arbitration

	processes. Features such as document sharing, simultaneous interpretation, breakout rooms, meeting recording, inmeeting text chat, gallery view, and active speaker view are available to accommodate various needs during arbitration proceedings.
Security and Confidentiality: Describe the measures in place to ensure the security of case-related data	AFSA implements rigorous security and confidentiality measures to protect case-related data throughout the arbitration process. These measures are designed to safeguard all documents, communications, and information associated with the arbitrations handled by AFSA. Secure case management system: AFSA uses a secure online case management system that allows for the encrypted transmission and storage of case-related documents and communications. Access to this system is strictly controlled and monitored, with unique login credentials provided only to authorised parties and tribunal members. Data encryption: All digital data, including documents and emails, are encrypted during transmission and at rest. This prevents unauthorised access and ensures that sensitive information remains confidential and secure. Confidentiality agreements: All staff, arbitrators, and third parties involved in the arbitration process are required to sign confidentiality agreements, binding them to maintain the secrecy of all case-related information. Remote Hearing Protocols: As outlined in the AFSA Remote Hearing Protocol, AFSA adopts specific measures to maintain the security and confidentiality of remote hearings. This includes using a secure and vetted remote hearing platform, ensuring all participants are correctly identified, and conducting sessions in safe environments. Regular security audits: AFSA conducts and updates its systems to address evolving cybersecurity threats. This includes monitoring for unauthorised access and ensuring that all protective measures meet current standards. Document control: Access to case-related documents is restricted to authorised individuals. AFSA has procedures for controlled distribution, use, and storage of physical and electronic records. Training and awareness: AFSA provides regular training to its staff and arbitrators on data protection, confidentiality, and security protocols to ensure they are aware of and comply with best practices and legal requirements. By implementing these comprehensive security measures, AFSA ensures that arbitrationrelated data is handled with the utmost confidentiality and integrity, maintaining trust in the arbitration process.

How is sensitive information protected during electronic transmissions?	AFSA takes several measures to protect sensitive information during electronic transmissions to ensure the confidentiality and integrity of all arbitration-related data. This includes: Encryption: All electronic data, including emails, documents, and communications, is encrypted. This ensures that sensitive information is protected from unauthorised access during transmission over the internet. Secure platforms: AFSA employs secure and trusted platforms for electronically transmitting documents and communications. These platforms have advanced security features, including end-to-end encryption, to safeguard data exchange. Access controls: Access to electronic data is strictly controlled and monitored. Only authorised individuals with the necessary permissions can access and transmit sensitive information, minimising the risk of data breaches and unauthorised disclosures. Virtual Private Networks (VPNs): When necessary, AFSA recommends or requires VPNs for transmitting sensitive information. VPNs create a secure and encrypted connection over a less secure network, such as the Internet, providing an additional layer of security. Regular security assessments: AFSA conducts and updates its systems and protocols to combat emerging cybersecurity threats. This includes ensuring all electronic transmission methods adhere to the latest security standards. Training and awareness: AFSA also trains its staff on the importance of data security, especially during electronic transmissions. This includes educating them on secure handling practices and recognising potential cybersecurity threats. Compliance with legal standards: AFSA adheres to relevant data protection laws and regulations, ensuring that its methods for transmitting sensitive information comply with legal and ethical standards. By implementing these robust measures, AFSA ensures that sensitive information is securely protected during electronic transmissions, maintaining the confidentiality and trust essential to the arbitration process.
How does the centre ensure the confidentiality of arbitration proceedings in an online environment?	AFSA ensures the confidentiality of arbitration proceedings in an online environment through a combination of stringent protocols, secure technologies, and best practices designed to protect the integrity of the arbitration process: Secure communication platforms: AFSA uses secure communication platforms for online arbitrations, including end-to-end encryption, to safeguard all data

	exchanges. Platforms like Zoom, as mentioned, offer secure channels for hearings, document sharing, and discussions. Remote Hearing Protocols: The AFSA Remote Hearing Protocol outlines specific guidelines to maintain confidentiality during remote hearings. This includes ensuring that all participants use a secure and stable internet connection and participate from private locations to prevent unauthorised listening. Participant authentication: All participants in an online arbitration, including arbitrators, parties, and witnesses, are required to authenticate their identities before joining the proceedings. This may involve secure login procedures and verification processes to ensure that only authorised individuals can access the hearing. Controlled access to documents: AFSA employs systems allowing controlled access to arbitration-related documents. This ensures that sensitive information is only accessible to authorised parties and that document sharing during the arbitration is managed securely. Use of breakout rooms: AFSA uses breakout rooms for discussions that require confidentiality, such as deliberations among arbitrators or consultations between counsel and parties. These are private virtual spaces where unauthorised participants cannot access conversations. Training and guidelines on online etiquette: AFSA provides training and policies on maintaining online confidentiality to all parties involved in the arbitration. This includes advice on preventing accidental disclosures and managing the security settings of their devices. Recording and distribution controls: The protocols include strict rules on recording proceedings, ensuring that recordings are securely stored and only accessible to authorised parties. The distribution of these recordings is tightly controlled to prevent unauthorised access. Confidentiality protocols: In addition to the procedural measures, all participants are required to follow the confidentiality protocol that explicitly prohibits the unauthorised disclosure of information related to the arbitration proceedings. Technical support and monitoring: AFSA provides technical support to monitor the security of the online environment during arbitral proceedings. This includes checking for vulnerabilities and responding to any security incidents to ensure the ongoing confidentiality of the arbitration. Through these comprehensive measures, AFSA ensures that arbitration proceedings remain confidential even in an online environment, protecting the interests of all parties involved.

Environmental Sustainability

Environmental Practices: What measures are in place to minimize the environmental impact of the centre's operations?	AFSA is committed to minimising the environmental impact of its operations through a variety of sustainable practices: Paperless operations: AFSA International encourages digital documentation and communication to reduce paper consumption. This includes online case filing, remote hearings, and electronically sharing documents and exhibits, significantly reducing the need for physical copies. AFSA International also sign In 2021, AFSA International proudly signed the Green Pledge, committing to the Campaign for Greener Arbitrations initiative to reduce the environmental impact of arbitration proceedings. By adhering to the Green Pledge, AFSA International demonstrates its dedication to sustainability, advocating for reducing paper use, opting for remote hearings to minimise travel, and implementing energy-efficient measures within its operations. This commitment reflects AFSA's acknowledgement of the legal sector's crucial role in addressing global environmental challenges and its dedication to promoting eco-friendly practices in international arbitration. Recycling programs: AFSA promotes recycling within its offices, including properly disposing of paper, electronic waste, and other recyclables. This helps to reduce waste and supports recycling initiatives. Sustainable procurement: AFSA sources environmentally friendly products and services where possible, prioritising suppliers committed to sustainability. Green awareness: AFSA fosters environmental awareness among its staff and stakeholders through training and information sharing on sustainable practices. Reducing travel: By offering and promoting remote hearings and meetings, AFSA minimises the need for domestic and international travel, lowering transportation's carbon emissions. Continuous improvement: AFSA reviews and updates its environmental practices to align with best practices and new sustainability standards. By implementing these measures, AFSA aims to reduce the environmental impact of its operations while promoting sustainability within the broader legal and arbitration community.

Are there initiatives related to energy efficiency, waste reduction, or sustainable building practices?	AFSA International has implemented various initiatives to promote energy efficiency, reduce waste, and adhere to sustainable building practices. These efforts align with modern standards for environmental responsibility in the arbitration sector. Energy efficiency: Utilising digital platforms and remote hearing technologies reduces the need for physical presence, significantly reducing travel-related carbon emissions. In addition, by promoting electronic documents over paper, energy consumption associated with printing, shipping, and waste management is lowered considerably. Waste reduction: Encouraging electronic submissions and communications minimises paper waste, contributing to the global effort to lessen the environmental footprint. This initiative saves trees and reduces the need for physical storage space, further conserving resources. Sustainable building practices: AFSA also encourages using venues for hearings and meetings that adhere to green building standards when in-person events are necessary. AFSA demonstrates a commitment to sustainability and environmental responsibility within the international arbitration community by incorporating these initiatives.
Carbon Footprint: Has the centre conducted assessments to measure its carbon footprint?	No
Are there strategies in place to offset or reduce the carbon footprint?	AFSA has undertaken several strategic initiatives to offset the carbon footprint associated with its arbitration proceedings. One significant measure is the adoption of remote hearing protocols, which significantly decrease participants' need for physical travel, thus reducing greenhouse gas emissions. This approach aligns with modern technological trends and supports global efforts in environmental sustainability. Additionally, AFSA International promotes using electronic documentation over paperbased processes, further contributing to waste reduction and energy savings. These efforts demonstrate AFSA's commitment to environmental stewardship while maintaining the integrity and effectiveness of its arbitration processes.

Quality Assurance

Code of Ethics: Existence of a code of ethics for arbitrators.	AFSA maintains a comprehensive Code of Conduct designed for arbitrators to ensure the highest standards of fairness, impartiality, independence, and efficiency in arbitration. By accepting an appointment to the Panel of Arbitrators maintained by AFSA, each arbitrator commits to adhering to these standards of conduct, which are pivotal to maintaining the integrity and fairness of the arbitration proceedings. Key aspects of the AFSA Code of Conduct include: Fair administration of justice: Arbitrators are required to discharge their duties in a manner that ensures a fair administration of justice between the parties. Impartiality and independence: An arbitrator must not accept an appointment unless satisfied to act impartially and independently. Before appointment, they must disclose any potential conflicts of interest to the AFSA Secretariat. Diligence and efficiency: Arbitrators are expected to conduct proceedings diligently, efficiently, and courteously, ensuring that sufficient time and proper attention are devoted to each matter. Confidentiality: The code emphasises the importance of maintaining the confidentiality of the arbitral proceedings unless the parties agree otherwise. Cost and delay avoidance: Procedures should avoid unnecessary costs and delays and promote efficient dispatch of the arbitrator's tasks. Cooperation with AFSA Secretariat: Arbitrators undertake to cooperate with the AFSA Secretariats to facilitate its work in administering arbitrations, maintaining good standing throughout their appointment. This Code of Conduct ensures that all AFSA arbitrators adhere to strict professional standards, promoting confidence in the AFSA arbitrations between parties and practitioners alike.
Programs for arbitrator training and development.	AFSA provides structured programs for arbitrator training and development, ensuring that arbitrators on its panel are well-equipped and informed about the latest practices and standards in arbitration. These trainings are designed to enhance arbitrators' professional competence and skills, encompassing various aspects such as procedural efficiency, ethical

	standards, and decision-making. The training initiatives also focus on updating arbitrators on changes in arbitration law, rules, and best practices, ensuring they can conduct arbitration proceedings effectively and fairly. Through these development programs, AFSA aims to maintain a high level of professionalism and quality among its arbitrators, contributing to the overall integrity and reliability of the arbitration process.
Facilities: Description of hearing rooms and facilities.	AFSA provides state-of-the-art hearing facilities tailored for arbitrations and mediations. These facilities include four hearing rooms equipped with big-screen TVs for remote hearings, state-of-the-art sound equipment, and side screens for optimal viewing. The hearing rooms also support remote hearings with a licensed Zoom platform, offering features such as recordings and channels for simultaneous translation. Specifically, three rooms come with translation booths suitable for multilingual international arbitrations. In addition to technical capabilities, each room provides comfortable breakaway areas, tea and coffee-making facilities, and secure, convenient parking included in the room rate. For arbitrators, private rooms are available to ensure confidentiality and a conducive working environment. Inspired by South Africa's rich history, the Griqua Room offers a spacious environment with modern amenities ensuring seamless arbitration experiences. It accommodates up to 20 people. The Africa Room (50 people) and Alabama Room (30 people) have flexible setups to meet various needs. The China Room (20 people), designed for in-person hearings or mediations, features a round table setup conducive to open discussions. These facilities exemplify AFSA's commitment to providing an efficient, comfortable, and technologically advanced environment for arbitration proceedings.
Measures taken to ensure accessibility for diverse participants.	AFSA takes comprehensive measures to ensure accessibility for diverse participants, reflecting its commitment to inclusivity and equal access. These measures include: Physical accessibility: AFSA's facilities are designed to accommodate participants with mobility challenges. This includes wheelchair-accessible entrances, restrooms, and hearing

	rooms, ensuring all participants can access and navigate the premises comfortably and safely. Technological solutions: Understanding the global nature of arbitrations, AFSA provides state-of-the-art technology to facilitate remote participation. This ensures that individuals unable to travel due to physical, financial, or health reasons can still fully engage in the proceedings. The licensed Zoom platform, with features like simultaneous interpretation, screen sharing, and breakout rooms, caters to various linguistic and communication needs. Language support: The availability of translation booths and services in the hearing facilities accommodates non-English speaking participants, allowing them to follow and contribute to proceedings effectively. In addition, all AFSA staff are bilingual. Customisable room setups: The hearing rooms offer flexible setups. This adaptability ensures that room layouts can be modified to meet specific accessibility requirements or preferences, facilitating a comfortable and inclusive environment for all attendees. Training and awareness: AFSA staff are trained to assist with accessibility requirements, ensuring they can provide immediate and practical support to participants with diverse needs. By implementing these measures, AFSA ensures that its arbitration services are accessible and accommodating to participants from varied backgrounds, promoting diversity and inclusivity within the arbitration community.
User Experience: How does the centre collect feedback from parties regarding costs and the overall arbitration process?	AFSA adopts several practices to gather feedback from parties regarding costs and the overall arbitration process: Post-arbitration surveys: AFSA International distributes confidential surveys to all involved parties and their counsel following the conclusion of an arbitration case. These surveys address various facets of the arbitration process, such as cost transparency, procedural efficiency, and satisfaction levels with the outcomes, enabling AFSA to collect valuable insights. Debriefing sessions: AFSA International offers parties the option of participating in debriefing sessions after the arbitration. These sessions serve as a platform for parties to provide direct feedback, allowing for a comprehensive understanding of their experiences and potential areas for improvement.

	Performance monitoring: AFSA International actively monitors and analyses arbitration proceedings, focusing on metrics such as case duration and associated costs. This systematic approach helps identify trends and areas for enhancing efficiencies. Benchmarking activities: AFSA International engages in benchmarking activities, comparing its services and user experiences against other international arbitration centres. This helps to identify best practices and areas where AFSA can further refine its services. Transparency and reporting: AFSA International is committed to transparency, publishing annual reports that outline key performance indicators, including average case costs and durations, and summarising the feedback received from users. Targeted training programs: Based on the feedback collected, AFSA International develops and implements training programs for arbitrators, explicitly addressing areas where improvements are needed. Through these practices, AFSA ensures that feedback from parties regarding costs and the overall arbitration experience is collected and utilised, fostering a culture of continuous improvement and client satisfaction.
Are there avenues for parties to express concerns about costs?	Yes, AFSA provides multiple avenues for parties to express their concerns about costs: Feedback surveys: After the conclusion of arbitration proceedings, parties are invited to complete confidential feedback surveys where they can express any concerns related to costs and other aspects of the arbitration process. Direct communication: Parties are encouraged to communicate directly with the AFSA Secretariats at any arbitration stage if they have cost concerns. This can be done through email, telephone, or in-person meetings. Debriefing sessions: Following the arbitration, parties have the option to participate in debriefing sessions with AFSA representatives. These sessions offer a platform for parties to discuss their experiences and raise any concerns, including those related to costs. By offering these channels, AFSA ensures that parties have the opportunity to voice their concerns about costs and receive appropriate attention and responses to their queries.

Collaborations: Any partnerships with legal institutions, organizations, or industry bodies.	AFSA actively collaborates with various legal institutions, arbitration organisations, and industry bodies worldwide to enhance its services and contribute to the global arbitration community. These partnerships are established through Memoranda of Understanding (MOUs) and collaborations with various entities: South Africa China Economy and Trade Association (SACETA), China: Collaboration promotes trade and resolves disputes between South African and Chinese entities. Guangzhou Arbitration Commission (GZAC), China: A partnership to share best practices and facilitate cross-border arbitration between Africa and China. Maritime Law Association of South Africa (MLA SA), South Africa: Works together on maritime disputes and enhances the sector's arbitration capabilities. Permanent Court of Arbitration (PCA), Netherlands: Collaboration for managing and administering international arbitrations, especially in complex disputes. SADC Law Association: Partners to improve legal practices and arbitration within the Southern African Development Community region. Center of Excellence for Dispute Resolution in the Indian Ocean Rim Association (IORA) Region: Aims to build capacity and promote alternative dispute resolution in the region. Association with the BRICS Legal Forum: Enhances legal and arbitration cooperation among BRICS nations (Brazil, Russia, India, China, and South Africa). International Commercial Dispute Prevention and Settlement Organization (ICDPASO), China: This organization prevents and resolves commercial disputes, particularly in international trade. Campaign for Greener Arbitrations (CGA): Supports initiatives to reduce the environmental impact of arbitration proceedings. Shenzhen Court of International Arbitration (SCIA), China; Shenzhen Lawyers Association (SZLA): Facilitates arbitration and legal collaboration between South Africa and Shenzhen. Benchmark Chambers International (BCI) & Benchmark International Mediation Centre (BNRLAC), China: Focuses on establishing high standards for arbitration and mediation.

	China Maritime Arbitration Commission (CMAC), China: Specialises in resolving maritime and international trade disputes. International Commercial Mediation Center for the Belt and Road Initiative (BNRMC), Law Ascertainment Center (Guangzhou) for BRI (BNRLAC), China: Promotes mediation for disputes related to the Belt and Road Initiative. Indonesian Dispute Board (IDB), Indonesia: Collaborates on alternative dispute resolution mechanisms. International Federation of Commercial Arbitration Institutions (IFCAI): Participates in a global network of arbitration institutions to share knowledge and practices. Malawi Law Society, Malawi: Works on legal and arbitration development initiatives within Malawi. Jus Mundi: Collaborates to provide access to global arbitration and legal resources. These collaborations enable AFSA to broaden its global network, share knowledge, and provide improved arbitration services to parties from various sectors and regions, thereby reinforcing its position as a leading arbitration centre in Africa and beyond.
International Reach: Experience in handling international arbitration cases.	AFSA International has a notable track record in handling international arbitrations, showcasing its global reach and expertise. From 2018 to 2023, AFSA has seen a significant increase in international arbitrations, indicative of its growing international stature and the trust global parties place in its arbitration processes. Specifically, since the enactment of the 2017 Arbitration Act, there has been a noticeable increase in international arbitrations registered with AFSA International, demonstrating a positive correlation between the updated legal framework and the growing preference for South Africa as a seat of arbitration. The data shows an increase from 20 international arbitrations between 2009 and 2017 to 124 from 2018 to 2023. This uptick reflects the international community's recognition of South Africa's robust legal framework for arbitration, spearheaded by AFSA's efforts to align its practices with global standards, particularly through the revised AFSA International Arbitration Rules 2021. AFSA International's claimants come from critical sectors such as mining, energy, construction, and technology, highlighting its capacity to handle

	complex international disputes across various industries. The introduction of the revised rules aimed at incorporating best practices from other leading institutions like the ICC and LCIA has also played a crucial role in maintaining and enhancing South Africa's appeal as an international arbitration venue. Overall, AFSA International's experience in managing international cases and its strategic legal reforms and partnerships has solidified its position as a leading arbitration centre with substantial international reach and capability.
Compliance and Legal Framework: Adherence to relevant national and international arbitration laws.	AFSA adheres rigorously to both national and international arbitration laws to ensure compliance and uphold the highest standards of the legal framework within its arbitration processes: Legal framework: Following South Africa's historical transition, the legal system, highlighted by the progressive South African Constitution, emphasises the rule of law, neutrality, and independence of the judiciary. This forms a crucial foundation for arbitration, as parties must trust the legal system of the arbitration seat. International Arbitration Act 2017: AFSA's adherence to the International Arbitration Act 15 of 2017 signifies its commitment to a modernised arbitration legal framework. This act aligns South Africa's international arbitration laws with global standards, repealing outdated legislation, incorporating the UNCITRAL Model Law with minimal amendments, and reinforcing the New York Convention's application. Court support and arbitration promotion: The South African courts, including the Supreme Court of Appeal and the Constitutional Court, have consistently demonstrated a pro-arbitration stance. By enforcing private agreements to arbitrate and upholding party autonomy, these courts have established a conducive environment for arbitration, minimising judicial interference. Handling of foreign arbitral awards: AFSA's processes comply with the Model Law and New York Convention concerning enforcing and setting aside foreign arbitral awards, ensuring fairness and adherence to international standards, particularly respecting South Africa's public policy. Modern arbitration rules: AFSA has updated its international rules to reflect best practices. The 2021 AFSA International Rules introduce

	contemporary procedures such as emergency arbitrator provisions, early dismissal, and modern approaches to multiple contracts, joinder, and consolidation. These rules facilitate efficient and effective arbitration proceedings. By incorporating these elements into its operations, AFSA ensures its adherence to relevant national and international arbitration laws, providing a reliable and legally sound framework for conducting international arbitrations.
Strategic Initiatives: Any upcoming plans or initiatives to enhance services.	AFSA has several strategic initiatives underway to enhance its services and strengthen its global presence. Some of these initiatives include: BRICS Dispute Resolution Framework: AFSA is actively involved in designing a unique dispute resolution mechanism for the Brazil, Russia, India, China, and South Africa (BRICS) organisation. This initiative aims to tailor the AFSA Rules to meet the needs of BRICS nations, promoting more efficient and culturally sensitive arbitration processes. This project highlights AFSA's commitment to international collaboration and its influence in shaping global arbitration practices. AFSA-SADC Alliance: This project focuses on reshaping the arbitration landscape within the Southern African Development Community (SADC) region. The aim is to harmonise arbitration rules across SADC countries, establish a regional panel of arbitrators, and improve intra-regional dispute resolution. This initiative is significant for its potential to streamline arbitration proceedings and enhance legal certainty within the region. It also involves collaboration with SADC governments, legal bodies, businesses, and arbitration centres to promote the update of arbitration laws in line with international standards. AFSA SARIPA Business Rescue Division: AFSA recently launched a division specialising in expedited arbitrations tailored for disputes arising during business rescue stages. This initiative has been positively received by businesses and creditors as a quicker and more effective means of dispute resolution, showcasing AFSA's responsiveness to market needs and its ability to provide specialised arbitration services. These initiatives demonstrate AFSA's commitment to enhancing its arbitration services, promoting

	legal harmonisation, and supporting economic development within South Africa and the broader international community. AFSA aims to bolster its position as a leading arbitration centre and contribute to the global arbitration landscape by focusing on these strategic areas.
Continuous Improvement: Processes in place for continuous improvement.	AFSA is dedicated to continuously improving its services, processes, and arbitration rules. This commitment is demonstrated through various mechanisms: Feedback collection: AFSA International systematically collects feedback from parties, counsel, and arbitrators involved in arbitration proceedings. This includes post-case surveys, direct communications, and debriefing sessions. This feedback provides invaluable insights into the effectiveness of AFSA's services and areas for improvement. Regular rule reviews: AFSA regularly reviews and updates its arbitration rules to ensure they reflect best practices and address the evolving needs of the international arbitration community. For example, the amendment of the AFSA International Rules in June 2021, incorporating modern trends, demonstrates AFSA's responsiveness to global arbitration developments. Training and development: AFSA invests in ongoing training and professional development for its staff and arbitrators. This ensures they are equipped with the latest knowledge and skills, improving the quality and efficiency of arbitration proceedings. Strategic partnerships: Collaborations with international arbitral institutions and organisations, such as the International Federation of Commercial Arbitration Institutions (IFCAI) and the Campaign for Greener Arbitrations, provide AFSA with access to global best practices and innovative approaches that it can integrate into its own processes. Technology adoption: AFSA leverages technology to enhance the efficiency and accessibility of its arbitration services. This includes using secure online platforms for case management and remote hearings, which streamline the arbitration process and reduce environmental impact. Quality assurance: AFSA has quality assurance mechanisms, including regular audits and performance assessments, to ensure that its

	services meet high standards of professionalism, efficiency, and fairness. Stakeholder engagement: AFSA actively engages with its stakeholders, including legal practitioners, businesses, and academic institutions, to stay informed about their needs and expectations and ensure its services remain relevant and effective. AFSA demonstrates its commitment to continuous improvement through these processes, ensuring that it remains at the forefront of providing efficient, transparent, and fair arbitration services.

Nairobi Centre for International Arbitration

General Information

Name of the Arbitration Center : Nairobi Centre for International Arbitration
Address : Cooperative Bank House, 8th Floor
P.O Box 548 – 00200, Nairobi
Haile Selassie Avenue

Contact Person: Ms. Joy Maina
Role: Manager, Case Management department
Email: Joy.Maina@ncia.or.ke
Year Established: 2013
Legal Status – Established by the Nairobi Centre for International Arbitration Act, Act No. 26 of 2013

Operational Details

Description of Arbitration Services offered
Arbitrator Appointment
Rules based Administered Arbitral process
Tribunal Secretary services
Training
Hearing Facility

Types of Disputes handled
Contractual disputes
Service agreement disputes
Supply and delivery disputes

Industries or sectors served:
Construction, Agricultural, Commercial, Technology, Finance, Education

QUESTIONS:

Case Management

Case Intake and Filing: Describe the process for filing a case with the arbitration centre.	The NCIA Arbitration Rules at Rule 5 describes the procedure for filing an arbitration with the Centre and what it should contain. The written request for arbitration is submitted to the Registrar either physically at the Centre's offices or through the Registrar's email address – registrar@ncia.or.ke
Are there online filing options for parties?	There are currently no online filing options for parties.

Timeliness of Case Initiation: On average, how long does it take from case filing to the initiation of the arbitration process?	On average, it takes about 7 to 30 days (about 1 month) from receipt of request for arbitration to case initiation.

Arbitrator Selection

Panel of Arbitrators: Number of arbitrators on the panel.	Number of arbitrators on the panel. Forty-Five (45)
Qualifications and expertise criteria for arbitrator selection.	Academic qualifications and experience qualifications including tribunal member, as counsel and the threshold of cases handled.
Arbitration Rules and Procedures:	• NCIA Arbitration Rules, 2015 (revised 2019) Arbitrator Panel Status Standard. • There is in place the NCIA Arbitrator Panel Status Standard which provides for the criteria to be met by a person seeking to be empaneled as an arbitrator. The applications are handled by a sub-committee of the Board and confirmed by the Board
Arbitrator Appointment: How is the appointment of arbitrators handled? Is there a streamlined process for selecting and confirming arbitrators?	The rules provide for a streamlined process for nomination, selection and appointment of arbitrators for each case.
Availability of Arbitrators: How does the centre ensure the availability of arbitrators for timely case resolution?	Before appointing an arbitrator to handle the arbitration, the Centre conducts a conflict and a not less than 6 months' availability due diligence check to handle the case. An undertaking on the two elements must be signed before appointment.

Procedural Efficiency

Arbitration Rules and Procedures: How are the arbitration rules designed to enhance efficiency?	• The NCIA Arbitration Rules provide for specific timelines within which procedural steps should be undertaken to enhance efficiency. Some are mandatory while some are non-mandatory in nature but with an overriding objective for efficiency that allows the arbitral tribunal to superintend the process. • The NCIA Arbitration Rules have an opt-out provision for emergency arbitrations and expedited procedures for tribunal formation.
Pre-Hearing Procedures: Describe any pre-hearing conferences or procedures aimed at streamlining the arbitration process.	The pre-hearing procedures are embedded in the rules to facilitate completeness of the case record, preliminary matters including administrative and technical preparations, pre-hearing protocols for case planning and the case conferencing.
Document Submission and Discovery: How are document submission and discovery managed to avoid unnecessary delays?	Document submission and discovery are done within timelines provided by the Rules and as per the directions by the tribunal. The discretion to admit or reject admission of documents is a power the tribunal can exercise depending on the case's circumstances.

Timeline Management

Timeliness of Decisions: On average, how long does it take for arbitrators to render decisions following the conclusion of hearings?	On average, it takes about thirty to forty-five days for arbitrators to render awards following the conclusion of hearing which includes the submissions. The tribunal must notify the Registrar of the date of close of hearing and render an award within 3 months except where the period is extended with concurrence of the Centre.

Expedited Procedures: Are there provisions for expedited procedures in certain cases, and how are they implemented?	There are provisions for expedited procedures for the formation of a tribunal.
Extensions and Delays: How does the centre handle requests for extensions and manage any potential delays?	Any adjustments to timelines for nomination, filings pre-formation of tribunal is determined by the Registrar. Any requests for extensions after formation of the tribunal are handled by the tribunal.
Continuous Improvement Initiatives: Are there ongoing efforts to identify and implement improvements to enhance efficiency?	There are ongoing efforts to identify and implement improvements to enhance efficiency by regularly reviewing our Rules and Procedures and conducting customer surveys.

Cost and Resource Management

Fee Structure: Provide an overview of the arbitration fees charged by the centre.	The NCIA Arbitration Rules provide for the fees that should be charged. The fees in international arbitrations are fixed while for domestic arbitrations the hourly rate that should be charged is provided. A fee calculator is available online.
Are fees fixed, or do they vary based on factors such as the complexity of the case?	

Fee Transparency: How transparent is the fee structure to parties involved in arbitration? Is there a breakdown of costs provided to parties?	The parties involved in an arbitration are made aware of the fee structure at the time of appointment of an arbitrator. As part of the case conferencing a component of case finances is included that handles payments, budget and related matters. Parties are provided periodic quarterly updates and a Final Statement of Accounts at the end of their case which gives a breakdown of all costs of the tribunal and the Centre.
Fee Waivers or Reductions: Are there provisions for fee waivers or reductions based on financial circumstances?	There are presently no provisions for fee waivers or reductions based on financial circumstances.
Cost Predictability: How does the arbitration centre ensure predictability in terms of costs for parties? Are there mechanisms to provide estimates or control costs efficiently?	There are mechanisms to provide estimates or control costs efficiently. For instance, an arbitrator and the Centre is required to give an estimate of the time and costs he/she is likely to incur from the onset so that the parties are able to make a deposit of the money. The NCIA Arbitration Rules provide for the fees that should be charged. The fees in international arbitrations are fixed while for domestic arbitrations the hourly rate that should be charged is provided. A fee calculator is available online.
Cost Management: Describe any measures taken to	The Centre ensures that the arbitration process is carried out timeously by ensuring that the timelines provided for in the Rules are adhered to. This is done with the close liaison of Case Counsel assigned to each case.

manage and control costs throughout the arbitration process.	
Third-Party Funding: Does the arbitration centre have rules on third-party funding? Is there a requirement for parties to disclose any third-party funding arrangements?	There are presently no Rules on Third Party Funding.
Resource Allocation: How does the centre manage its resources to handle caseloads effectively?	The finances for each case are planned and periodic updates provided to the tribunal and the parties. Provision for deposits, interim payments, reconilication and final disbursement are managed by the Case Management secretariat.

Technological Infrastructure

Case Management System: Describe the case management system used at the arbitration centre.	The Centre is acquiring a case management system.
Security and Confidentiality: Describe the measures in place to ensure the security of case-related data	Only authorized personnel have access to case-related data at the Centre. Any personnel handling case related data are required to sign confidentiality undertakings. These would include any third-party service provider retained by a tribunal for support services.

How is sensitive information protected during electronic transmissions?	Sensitive information is protected during electronic transmission by ensuring that only secure platforms are used that allow encryption of data.
How does the centre ensure the confidentiality of arbitration proceedings in an online environment?	The Centre ensures the confidentiality of the arbitral process online by using secure systems.

Environmental Sustainability

Environmental Practices: What measures are in place to minimize the environmental impact of the centre's operations?	To minimize the environmental impact of the Centre's operations, the Centre has adopted a policy of a paperless office environment. Thus, only extremely essential printing is done. The Centre is a signatory to the Campaign for Greener Arbitration.
Are there strategies in place to offset or reduce the carbon footprint?	The Centre continually sensitizes its staff on energy conservation, by emphasizing switching off lights and other electrical devices when not in use.

Quality Assurance

Code of Ethics: Existence of a code of ethics for arbitrators. Programs for arbitrator training and development.	The Centre has a Code of Ethics and Practice for Arbitrators conducting any case under the arbitration rules. The Case management team consistently interacts with the tribunal and the parties for effectiveness, efficiency, and economy of the process.
Facilities: Description of hearing rooms and facilities. Measures taken to ensure accessibility for diverse participants.	The Centre has a variety of hearing rooms to accommodate various sizes of groups. There are also breakout rooms and a lounge for practitioners. The details of the facilities are available on the Centre's website (www.ncia.or.ke)

User Experience: How does the centre collect feedback from parties regarding costs and the overall arbitration process? Are there avenues for parties to express concerns about costs?	The Centre carries out regular surveys of its clients. Further, parties in a case are encouraged to raise concerns about their case handling, including costs through the Case Management feedback protocols and in writing to the Registrar.
Collaborations: Any partnerships with legal institutions, organizations, or industry bodies.	The Centre has entered several MOU partnerships with other arbitral and legal institutions and organizations both locally and internationally.
International Reach: Experience in handling international arbitration cases.	The Centre is currently handling international cases. There is broader continuous engagement with the regional, continental and global arbitration community that expands the scope of visibility and network.
Compliance and Legal Framework: Adherence to relevant national and international arbitration laws.	The Centre complies with the relevant regulatory and governance requirements within its sphere of operations.
Continuous Improvement: Processes in place for continuous improvement.	There are internal processes in place to ensure continuous improvement by having regular meetings both internally and externally. There are also regular training courses and workshops offered to staff members.

Mauritius International Arbitration Centre

General Information

Name of the Arbitration Center: Mauritius International Arbitration Centre
Location and Address: Level 1, Coaster Shed A, Port Louis Waterfront Port Louis 11320 Republic of Mauritius
Email: info@miac.mu
Phone: +230 260 2460
Year Established: 2011
Legal Status (e.g., non-profit, government-affiliated, private entity): Private entity wholly-owned by the Government of Mauritius

Operational Details

Description of Arbitration Services Offered:
MIAC provides state-of-the-art institutional support to arbitral tribunals and parties in international and domestic arbitration in order to facilitate the efficient conduct of proceedings. As an administering institution, MIAC provides the following services:

- transmitting oral and written communications from the parties to the arbitral tribunal and vice-versa, and between the parties;
- maintaining an archive of filings and correspondence;
- making all arrangements concerning the amounts of the arbitrators' fees and advance deposits to be made on account of such fees in consultation with the parties and the arbitrators;
- holding the party deposits and disbursing tribunal fees and expenses;
- assisting the arbitral tribunal to establish the date, time, and place of hearings;
- making hearing and meeting rooms available to the parties and the arbitral tribunal;
- making arrangements for transcription, recording, interpretation, translation, catering, or other support associated with hearings or meetings in Mauritius or elsewhere;
- assisting with travel and hotel reservations; and
- carrying out any other tasks entrusted to it by the parties or the arbitral tribunal.

Types of disputes handled:
MIAC mainly handles contract-based disputes of commercial nature.

Industries or sectors served:

- Agency
- Competition
- Construction & Infrastructure
- Corporate Law / M&A
- Distribution / Franchising
- Domain Name Disputes

- Employment
- Energy & Natural Resources
- Engineering
- Entertainment & Media
- Environment
- Finance & Banking
- Food & Beverages
- Healthcare & Pharmaceuticals
- Hospitality & Leisure
- Insurance
- Intellectual Property
- International Commercial Disputes
- International Investment Disputes
- Investment law
- Joint Venture
- Maritime
- Professional Services
- Real Estate
- Regulatory
- Retail & Consumer Products
- Sales & Purchases
- Shipping & Commodities
- Sport
- Taxation
- Technologies
- Telecommunications
- Transport

QUESTIONS:

Case Management

Case Intake and Filing: Describe the process for filing a case with the arbitration centre. Are there online filing options for parties?	Claimants may submit their notices of arbitration to the MIAC Secretariat by e-mail and/or by post. A first letter acknowledging receipt is sent to the Parties with the relevant case number allocated to the matter. The Permanent Court of Arbitration (PCA) provides support to MIAC in administering the case.
Timeliness of Case Initiation: On average, how long does it take from case filing to the initiation of the arbitration process?	Pursuant to Article 3 of the MIAC Arbitration Rules, the initiation of the arbitration process starts upon receipt by the respondent of the notice of arbitration.

Arbitrator Selection

Panel of Arbitrators: Number of arbitrators on the panel. Qualifications and expertise criteria for arbitrator selection	MIAC does not have a panel of arbitrators. Parties are free to appoint any arbitrator they consider suitable for their matter. In order to assist the Parties in their selection of arbitrators, MIAC has created a database of arbitrators. The MIAC Database features a global pool of both highly experienced and new arbitrators as well as mediators, drawn from civil and common law jurisdictions around the world. In creating an online database, MIAC aims to create a useful resource to users, and at the same time bring to the fore the recognized talent of arbitrators and mediators from Africa, Asia, and beyond.
Arbitrator Appointment: How is the appointment of arbitrators handled? Is there a streamlined process for selecting and confirming arbitrators?	The MIAC Arbitration Rules are based on the 2010 Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The Parties are free to agree on a sole arbitrator or, in cases or three-member tribunals, each Party may appoint an arbitrator and the presiding arbitrator is appointed by the party-appointed ones. In case of default, the Secretary-General of the PCA acts as appointing authority (Article 6 of the MIAC Arbitration Rules). Neither MIAC nor the Secretary-General of the PCA are required to confirm appointments under the MIAC Arbitration Rules.
Availability of Arbitrators: How does the centre ensure the availability of arbitrators for timely case resolution? Are there mechanisms in place to address scheduling conflicts?	Arbitrators are selected by the Parties or appointed by the Secretary-General of the PCA. Prior to any appointment by the Secretary-General of the PCA, candidates are asked to confirm their availability and the absence de conflicts. In addition, the MIAC Arbitration Rules provide an obligation on the arbitrators to disclose any circumstances that are likely to give rise to justifiable doubts as to their impartiality and independence when approached for appointment (Article 11 of the MIAC Arbitration Rules).

Procedural Efficiency

Arbitration Rules and Procedures: How are the arbitration rules designed to enhance efficiency?	The MIAC Arbitration Rules are based on the 2010 UNCITRAL Arbitration Rules which provide the necessary level of flexibility to allow the rules to be modified to the specific circumstances of the Parties including expedited proceedings if necessary. In addition, pursuant to Article 17(1) of

Are there mechanisms for expedited proceedings when necessary?	the MIAC Arbitration Rules, "the arbitral tribunal shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute."
Pre-Hearing Procedures: Describe any pre-hearing conferences or procedures aimed at streamlining the arbitration process.	Pursuant to the MIAC Arbitration Rules, the Parties are free to agree and the Tribunal to decide when to convene procedural meeting and adjust the proceedings to the needs of the case.
Document Submission and Discovery: How are document submission and discovery managed to avoid unnecessary delays?	The Parties are free to agree on the format. Document submissions can be made via e-mail or at the Parties' request on a dedicated document management platform (e.g., Sharepoint or Box). The steps for discovery tend to be outlined in the procedural calendar annexed to Procedural Order No. 1 to avoid unnecessary delays.

Timeline Management

Timeliness of Decisions: On average, how long does it take for arbitrators to render decisions following the conclusion of hearings?	The time it takes for arbitrators to render decisions following the conclusion of hearings would depend on various factor, including the complexity of the dispute and whether post-hearing submissions are filed.
Expedited Procedures: Are there provisions for expedited procedures in certain cases, and how are they implemented?	Parties may choose to proceed with expedited procedures.

Extensions and Delays: How does the centre handle requests for extensions and manage any potential delays?	In the context of appointing authority matters, MIAC and the PCA may impose deadlines to the Parties. In this context, MIAC and the PCA tend to seek the views of the other side before granting a request for extension to avoid unreasonable delays.
Continuous Improvement Initiatives: Are there ongoing efforts to identify and implement improvements to enhance efficiency?	MIAC is always eager to enhance efficiency and regularly review its processes to ensure continuous improvement.

Cost and Resource Management

Fee Structure: Provide an overview of the arbitration fees charged by the centre. Are fees fixed, or do they vary based on factors such as the complexity of the case?	Fees are charged by the centre based on the time spent on each matter with a cap related to the amount in dispute.
Fee Transparency: How transparent is the fee structure to parties involved in arbitration?	The schedule of fees of MIAC is available on its website.
Is there a breakdown of costs provided to parties?	A Statement of Account is provided to the parties to matters conducted under the MIAC Arbitration Rules at the conclusion of each matter.

Fee Waivers or Reductions: Are there provisions for fee waivers or reductions based on financial circumstances?	The schedule of fees of MIAC provides for a fee waiver upon request in cases in which the amount in dispute is under USD 500,000.
Cost Predictability: How does the arbitration centre ensure predictability in terms of costs for parties? Are there mechanisms to provide estimates or control costs efficiently?	The administrative fees of MIAC are capped based on the amount in dispute to ensure predictability in terms of administrative costs for parties to MIAC administered proceedings.
Cost Management: Describe any measures taken to manage and control costs throughout the arbitration process. How are cost overruns addressed? **Third-Party Funding:** Does the arbitration centre have rules on third-party funding?	Pursuant to Article 41(3) of the MIAC Arbitration Rules, parties may seek the assistance of the Secretary-General of the PCA for the review of the fees proposed by the arbitral tribunal upon its constitution and before the arbitral tribunal fixes the costs of the arbitration.

Is there a requirement for parties to disclose any third-party funding arrangements? How is this information handled during the arbitration proceedings?	N/A
Impact on Costs and Decision-Making: How can third-party funding impact the overall costs of arbitration? Are there measures in place to ensure that third-party funding does not unduly influence decision-making?	N/A
Resource Allocation: How does the centre manage its resources to handle caseloads effectively?	MIAC allocates resources depending on the complexity and nature of cases. MIAC's well-trained staff who hold a dual role with the PCA can efficiently handle the complexities of arbitration cases, ensuring smooth proceedings and timely resolution. MIAC also leverages technology to expedite case proceedings, reduce paperwork, and minimize logistical challenges.

Technological Infrastructure

Case Management System: Describe the case management system used at the arbitration centre.	MIAC uses the in-house case management system of the PCA.

Is it an in-house system or a commercially available platform?	
Online Case Filing: Does the centre offer online case filing options for parties? How streamlined is the process for submitting case documents electronically?	Parties may file their submissions via e-mail or through a secure platform such as Sharepoint or Box.
Virtual Hearings: To what extent does the centre utilize virtual hearings? Are there specific technologies or platforms used for virtual proceedings?	MIAC utilizes virtual hearings facilities frequently especially the platforms Microsoft Teams and Zoom
Security and Confidentiality: Describe the measures in place to ensure the security of case-related data How is sensitive information protected during electronic transmissions? How does the centre ensure the confidentiality of arbitration proceedings in an online environment?	MIAC undertakes a number of measures to ensure the security of case-related data and to safeguard sensitive information during electronic transmission. This includes: (i) secure data storage on servers housed in physically secure locations and protected by firewalls and intrusion detection systems; (ii) access control with access to case-related data restricted to authorized personnel only; (iii) data segregation with different cases' data segregated to prevent unauthorized access and the allocation of a unique identifier for each case; (iv) terms of appointment and/or procedural order n°1 providing for data protection and confidentiality; (v) secure communication channels such as encrypted e-mails; and (vi) ongoing training and awareness about the importance of confidentiality and security of case-related data.

Environmental Sustainability

Environmental Practices: What measures are in place to minimize the environmental impact of the centre's operations? Are there initiatives related to energy efficiency, waste reduction, or sustainable building practices?	MIAC has put in place several measures to minimize the environmental impact of its operations. This includes: (i) prioritizing digital documentation and electronic communication to reduce paper consumption and waste; (ii) implementing a waste reduction and recycling program; (iii) implementing water-saving measures; (iv) implementing energy saving and efficiency measures in line with local requirements; (v) maximizing daylight usage where applicable and (vi) ensuring that all office equipment purchased are ENERGY STAR certified.
Carbon Footprint: Has the centre conducted assessments to measure its carbon footprint? Are there strategies in place to offset or reduce the carbon footprint?	N/A

Quality Assurance

Code of Ethics: Existence of a code of ethics for arbitrators. Programs for arbitrator training and development.	N/A
Facilities: Description of hearing rooms and facilities. Measures taken to ensure accessibility for diverse participants.	MIAC offers a state-of-the-art hearing facility with a modern hearing room, three breakout rooms, and a library of arbitration and international law materials. The facilities are accessible for diverse participants on a single floor accessible with a lift.

User Experience: How does the centre collect feedback from parties regarding costs and the overall arbitration process? Are there avenues for parties to express concerns about costs?	MIAC seeks feedback from parties regarding costs and the overall arbitration process at the end of arbitral processes and in the context of hearings.
Collaborations: Any partnerships with legal institutions, organizations, or industry bodies.	MIAC collaborates with several leading legal institutions and organizations. From its establishment in 2011 until 2018, MIAC operated as part of a joint venture with the London Court of International Arbitration (LCIA-MIAC Arbitration Centre). Since 27 July 2018, the centre operates with the support of the Permanent Court of Arbitration (PCA). In 2022, MIAC entered into a cooperation agreement with the International Centre for the Settlement of Investment Disputes (ICSID). More recently in 2023, MIAC joined the International Arbitration Centre Alliance (IACA) in collaboration with Arbitration Place (Toronto, Canada), International Dispute Resolution Centre (London, United Kingdom), Maxwell Chambers (Singapore), ADGM Arbitration Centre (Abu Dhabi, United Arab Emirates) and International Arbitration Centre Chambers (Astana, Kazakhstan). MIAC also entered into a cooperation agreement with the Lagos Chamber of Commerce International Arbitration Centre (LACIAC) as well as a Memorandum of Understanding with Middlesex University Mauritius in relation to the Mauritius Arbitration Academy.
International Reach: Experience in handling international arbitration cases.	MIAC mainly handles international arbitration cases.

Compliance and Legal Framework: Adherence to relevant national and international arbitration laws.	MIAC complies with Mauritian laws as well as adheres to international standards.
Strategic Initiatives: Any upcoming plans or initiatives to enhance services.	MIAC intends to continue streamline administrative tasks, document management, and communication between parties, arbitrators, and the institution.
Continuous Improvement: Processes in place for continuous improvement.	The MIAC Registrar reports to the MIAC Board of Directors on a quarterly basis on the activities of the centre. In this occasion, the MIAC Board of Directors provide its feedback. In addition, MIAC seeks input from parties and arbitrators on the services provided and implements the comments received as and when appropriate. The MIAC Advisory Board and Practitioners Group may also submit suggestions to the MIAC Secretariat for continuous improvement.



AFRICA ARBITRATION ACADEMY
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Africa Arbitration Academy

Model Bilateral Investment Treaty for African States





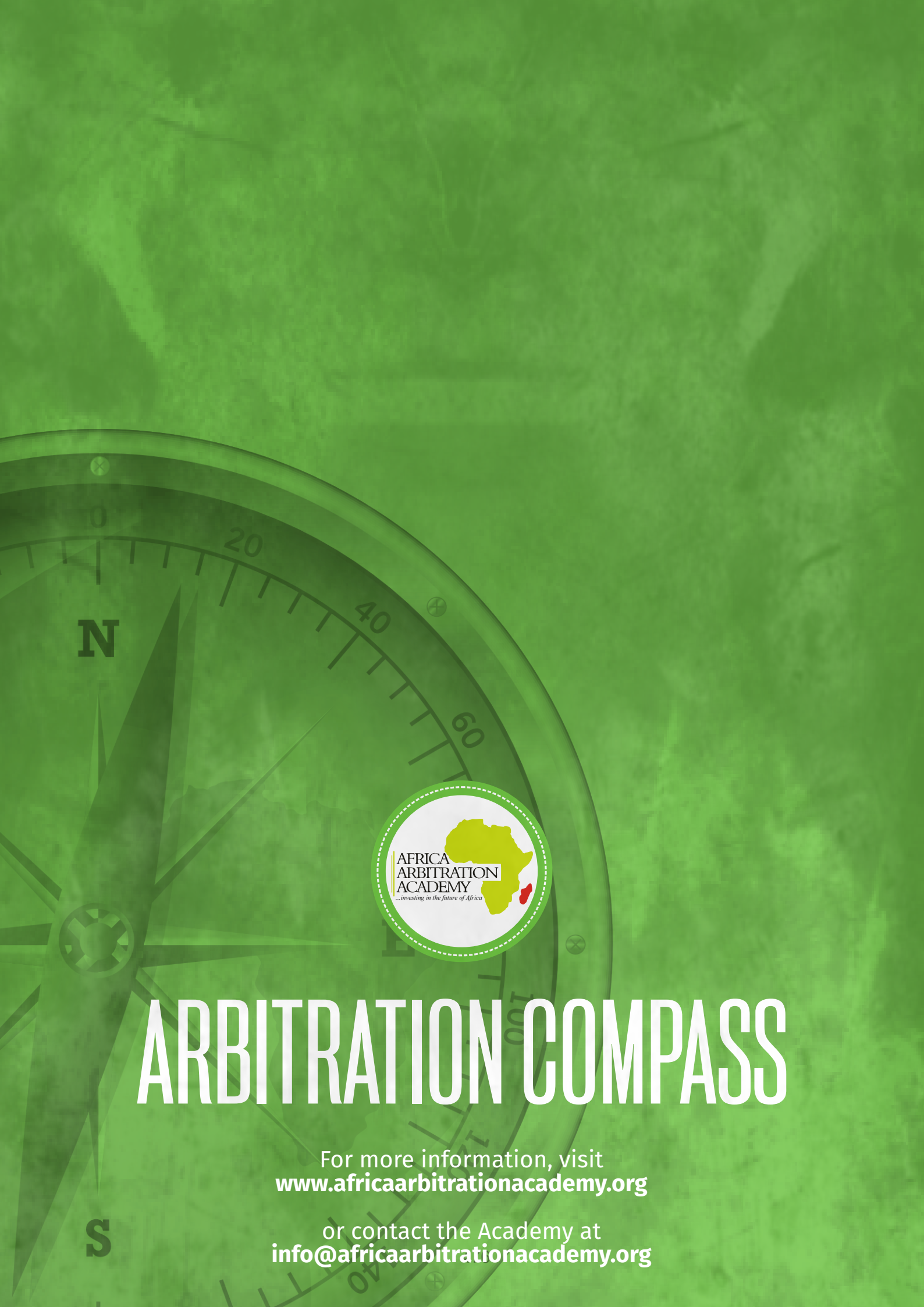
Survey on Costs and Disputes Funding in Africa

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AFRICA ARBITRATION ACADEMY PROTOCOL ON VIRTUAL HEARINGS IN AFRICA

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